

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Our File No. 672

RULE REVIEW CHECKLIST

1st submission withdrawn

DATE RULE RECEIVED ~~1/30/81~~ 2/25
DATE FOR REVIEW ~~2/7/81~~ 3/5
DATE DUE ~~2/13/81~~ 3/11

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed see S.R.

✓ Order Adopting 1.30.81

N/A Notice of Intent to Solicit Outside Opinion

___ Order for rulemaking
_____ Date of Hearing not submitted but see Selmeris memo 2/25/81

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
✓ 12.10.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 12.15.80 At least 30/~~20 days prior to hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference See my comment

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

___ Record (~~includes transcript or tape, exhibits~~, comments received by agency, ~~requests for a hearing, and other relevant materials~~)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : MICHAEL D. MARKMAN
Commissioner of Insurance

DATE: March 4, 1981

ATTN : James C. Selmer

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Commerce, Insurance Division, Governing the Issuance and Sale of Variable Life Insurance, Pursuant to Minn. Stat.§§ 61A.13-.21.

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. Please 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 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 to the rules in the approved set.

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

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance, Pursuant to Minn.
Stat.§§ 61A.13-.21.

I, Special Assistant Attorney General, James C. Selmer, do hereby declare that I have examined the proposed rules and all related documents and that based upon my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Dated: January 20, 1981.

James C. Selmer

JAMES C. SELMER
Special Assistant
Attorney General

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance, Pursuant to Minn.
Stat. §§ 61A.13 - .21.

Issued and entered this
24th day of February, 1981,
by Michael D. Markman,
Commissioner of Insurance

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 15, 1980, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. § 15.0412, subd. 4(h), on December 10, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR § 1.9401 through § 1.9411 (as modified in the Findings of Fact and Conclusions and Amended Findings of Fact and Conclusions) are adopted this 24th day of February, 1981, pursuant to the authority vested in the Commissioner of Insurance by Minn. Stat. § 61A.20.

STATE OF MINNESOTA

MICHAEL D. MARKMAN
Commissioner of Insurance

Department of Commerce
Insurance Division

Adopted Rules Governing
Variable Life Insurance

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Rules as Adopted

4 MCAR § 1.9401. Authority and Scope. The following regulations are applicable to all variable life insurance policies

issued in this State, and are promulgated under the authority of Minn. Stat. § 61A.20.

4 MCAR § 1.9402. Definitions. As used in this regulation:

A. "Assumed Investment Rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

B. "Benefit Base" means the amount, not less than the amount specified under 4 MCAR § 1.9406 B.2. specified by the terms of the variable life insurance policy to which the difference between the net investment return and the assumed investment rate is applied in determining the variable benefits of the policy.

C. "General Account" means all assets of the insurer other than assets in separate accounts established pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the Insurance Laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

D. "Incidental Insurance Benefit" means all insurance benefits in a variable life insurance policy, other than the

variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.

E. "Minimum Death Benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

F. "Net Investment Return" means the rate of investment return in a separate account to be applied to the benefit base after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.

G. "Separate Account" means a separate account established for variable life insurance pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding Section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

H. "Variable Death Benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of the minimum death benefit.

I. "Variable Life Insurance Policy" means any individual policy which provides for life insurance which varies according to the investment experience of any separate account or

accounts established and maintained by the insurer as to such policy, pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

J. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., §77a et. seq.

K. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., §78a et. seq.

L. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., §80a-1 et. seq.

M. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., §1001 et. seq.

4 MCAR § 1.9403. Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401 -1.9411, and the Commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to §61A.20.

B. Before any insurer shall deliver or issue for delivery any variable life insurance policy in this state, it must file with the Commissioner the following information for the consideration of the Commissioner in making the determination required by Minn. Stat. § 61A.19.

1. copies of and a general description of the variable life insurance policies it intends to issue;

2. a general description of the methods of operation of the variable life insurance business of the insurer;

3. with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective and orientation intended for the separate account.

4 MCAR § 1.9404. Insurance policy requirements.

A. The Commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR § 1.9404 and Minn. Stat. Ch. 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

1. Coverage shall be provided for the lifetime of the insured with the mortality and expense risk borne by the insurer.

2. Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but

this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.9404 C.2.).

4. The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:

a. fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or

b. variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy.

5. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

6. Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the Commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the

maximum interest rate permitted under the Standard Non-Forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

8. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

9. In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in 4 MCAR § 1.9406 G.1.a., b., d., and e.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each such policy shall contain:

a. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page, that the death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement that the minimum death benefit will be at least equal to the initial face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;

d. the rule, or a reference to the policy provision, which describes the method for determining the variable amount of insurance payable at death;

e. a captioned provision or endorsement to the policy which provides that the policyholder may cancel the variable life insurance policy by delivering or mailing a written notice or sending a telegram to the insurer and by returning the policy before midnight of the tenth day after the date the policyholder receives the policy, or before midnight of the forty-fifth day after the date of the execution of the application, whichever is later. Notice given by mail and return of the policy are effective on being postmarked properly addressed and postage prepaid. The insurer must return all payments made for the policy within ten days after it receives notice of cancellation and the returned policy.

f. such other items as are currently required by Minn. Stat. Ch. 61A.

2. a provision for a grace period of not less than thirty-one days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

3. a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight (8%) percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight (8%) percent per annum compounded annually; or

b. 110% of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight (8%) percent per annum compounded annually.

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

a. such separate account shall be used to fund only variable life insurance benefits;

b. the assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

c. the assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the Commissioner;

7. a provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy

loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

8. settlement options which shall be provided on a fixed basis only;

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

a. a schedule of cash value amounts per one thousand dollars of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or

b. one cash value schedule as described in paragraph 1. for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the

death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

10. premiums for incidental insurance benefits shall be stated separately.

D. Non-forfeiture, partial withdrawal, policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

1. A provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.

a. Variable extended term insurance may not be offered.

b. A given non-forfeiture option need not be offered on both a fixed and a variable basis.

c. The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available.

2. A provision for policy loans after three full years' premiums have been paid (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:

a. Up to 75% but if the loan is made from the general account not more than 90% of the policy's cash value may be borrowed;

b. The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;

c. The amount borrowed shall bear interest at a rate not to exceed 8% per year compounded annually;

d. Any indebtedness shall be deducted from the proceeds payable on death;

e. Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;

f. Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice;

g. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

h. In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;

i. All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;

j. Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and

shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, shall be on a fixed basis only;

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;

c. the amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;

d. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

e. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under 4 MCAR § 1.9404 D., except that a restriction that no more

than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9405. Reserve liabilities for variable life insurance.

A. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minn. Stat. § 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract

shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR § 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death

benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Reserve liabilities for all fixed incidental insurance benefits shall be maintained in the general account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR § 1.9406. Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

A. Establishment and administration of separate accounts. An insurer issuing variable life insurance in this state shall establish and administer one or more separate accounts pursuant to Minn. Stat. § 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

2. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the Commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.

3. The assets of such separate accounts established for variable life insurance policies shall be valued at least as often as variable benefits are determined but in any event at least monthly.

4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.

5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding

to dividend accumulations or other policyholder liabilities not involving life contingencies.

B. Amounts in the separate account.

1. The insurer shall maintain in each variable life insurance separate account assets with a fair market value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR § 1.9404 D.2.:

a. the valuation net premium for such period, for the variable portion of the policy, minus the discounted cost of term insurance for such period, based on the tabular mortality and interest rates used in determining valuation reserves; and

b. the valuation terminal reserve, for the variable portion of the policy, at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.

3. In lieu of the minimum benefit base requirement specified above, an insurer may otherwise qualify under 4 MCAR § 1.9406 B. if the policy benefits obtained over a 20-year period from the date of issue by the use of the insurer's

benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified above.

4. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.

C. Investments by the separate account.

1. Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision, only the following shall be considered "investments having a reasonably ascertainable market price:"

a. liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values;

b. securities listed and traded on the New York Stock Exchange, the American Stock Exchange, or regional stock exchanges or successors to such exchanges having the same or similar qualifications;

c. securities listed on the National Association of Securities Dealers Automated Quotations System (hereinafter referred to as the "NASDAQ System");

d. shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates, such book shares shall be deemed to be adequate evidence of ownership;

e. obligations of or guaranteed by the United States Government, the Canadian Government, any state, or municipality or governmental subdivision of a state;

f. commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank;

g. certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and

h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.

2. Assets allocated to a variable life insurance separate account shall not be invested in:

a. commodities or commodity contracts;

b. put and call options or combinations of such options;

c. short sales;

d. purchases on margins;

e. letter or restricted stock;

f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or

g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR § 1.9406 C.1.b.

D. Limitations on ownership.

1. A variable life insurance separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this regulation, would exceed 10% of the value of the assets of the separate account. The Commissioner shall waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer. The Commissioner shall waive this limitation in writing if he believes such

waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

3. The percentage limitation specified in 4 MCAR § 1.9406 D.1 shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 if the investments and investment policies of such investment companies comply substantially with the provisions of 4 MCAR § 1.9406 C. and other applicable portions of this regulation.

E. Valuation of assets of a variable life insurance separate account.

1. Investments of the separate account shall be valued at their market value on the date of valuation.

a. Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.

b. Market value for investments listed on the NASDAQ System means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the National Quotation Bureau sheets.

c. If the valuation date referred to in paragraphs a. and b. above is a day when the exchange or the NASDAQ System is not open for business, the valuation date shall be the last date when the exchange or the NASDAQ System was open for business.

2. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.

3. Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR § 1.9403 B.3. shall not be changed without filing the change with the Commissioner.

1. The Commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.

2. If the change is deemed material by the Commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.

3. At least thirty days prior to any public hearing under paragraph 2. above, the insurer shall mail a notice to each policyholder and to the Insurance Commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting.

4. Within sixty days after such public hearing, the Commissioner shall notify the insurer of his determination, and if it is that the change is detrimental to the interests of the policyholders of the insurer, the insurer shall not be allowed to make such change.

5. Should any policyholder object to the proposed change and the change is allowed by the Commissioner the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the Commissioner of such change, of converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

a. If the policy is in force on a premium paying basis, either:

(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance, based on the insurer's premium rates for fixed benefit life insurance at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:

(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value, or

(b) the death benefit payable under any paid-up insurance option if the policyholder elects such nonforfeiture option under the variable life policy.

b. If the policy is in force as paid-up variable life insurance, then conversion will be to a substantially comparable paid-up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

If conversion is made pursuant to paragraphs a.(1) or b. above, then (1) if the cash value of the variable life insurance policy exceeds the cash value of the fixed benefit life

insurance policy, the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life insurance policy, the difference shall be paid by the policyholder; and (3) any indebtedness under the variable life insurance policy shall become indebtedness under the fixed benefit policy, provided that any excess of such indebtedness over the cash value of the fixed benefit policy on the date the conversion shall be deducted from any amount otherwise payable to the policyholder.

G. Charges against a variable life insurance separate account.

1. The insurer may deduct only the following from the separate account:

a. taxes or reserves for taxes attributable to investment gains and income of the separate account:

b. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets.

c. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities.

d. charges for investment management expenses, including internal costs attributable to the investment management

of assets of the separate account, not exceeding the following percentages, on an annual basis, of the average net value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3.:

(1) .75% of that portion of separate account assets valued at or under $75,000,000; and

(2) .50% of that portion of separate account assets valued in excess of $75,000,000 but less than $150,000,000; and

(3) .40% of that portion of separate account assets valued in excess of $150,000,000 but less than $400,000,000; and

(4) .35% of that portion of separate account assets valued in excess of $400,000,000 but less than $800,000,000; and

(5) .30% of that portion of separate account assets valued in excess of $800,000,000.

e. a charge, at a rate specified in the policy, not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3., for mortality and expense guarantees.

f. Any amounts in excess of those required to be held in the separate account.

2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall

be considered part of the charges limited by 4 MCAR § 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.

4 MCAR § 1.9407. Information furnished to applicants. The requirements of 4 MCAR § 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information:

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description

of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 C.1.e. and Minn. Stat. § 61A.03(3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective and orientation intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

C. a statement of the net investment return of the separate account for each of the last ten years for which the separate account was in existence;

D. a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this Section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly

to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;

E. a statement of the annual taxes, brokerage fees, and similar costs, and the charges, expressed as an annual percentage, levied against the separate account during the previous year;

F. a summary of the method to be used in valuing assets held by the separate account;

G. a summary of the federal income tax liabilities of the policy applicable to the insured, the policy owner, and the beneficiary;

H. if the applicant is furnished illustrations of benefits payable under any variable life insurance contract, such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only;

I. a prominent statement either in contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on the page, providing in substance the following information:

1. The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.

2. No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund.

4 MCAR § 1.9408 Applications. The application for a variable life insurance policy shall contain:

A. a prominent statement that the death benefit may be variable or fixed under specified conditions;

B. a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);

C. questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

4 MCAR § 1.9409. Reports to policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR

§ 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than forty-five days prior to the mailing of such notice. This statement shall state in contrasting color or distinctive type that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR § 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the Commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;

4. any charges, taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

6. the names and principal occupations of each principal executive officer and each director of the insurer; and

7. the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10% or more of the outstanding voting securities of the company.

4 MCAR § 1.9410. Foreign companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially greater than that provided by this regulation,

the Commissioner shall consider compliance with such law or regulation as compliance with this regulation.

4 MCAR § 1.9411. Qualification of agents for the sale of variable life insurance. Any person who holds a valid license to solicit and sell life insurance in this state and has filed with the Commissioner evidence of compliance with all applicable state and federal securities laws shall be qualified pursuant to Minn. Stat. §60A.17, Subdivision 13(1) to sell or offer for sale variable life insurance policies in this state.

4 MCAR §§ 1.9412 to 1.9415. Reserved for future use.

APPROVED AS TO FORM AND LEGALITY

March 3 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H Theodore Thundal

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 3 1981
Joan Anderson Growe
Secretary of State
3:45 P.M.

DEPARTMENT OF COMMERCE

INSURANCE DIVISION

Adopted Rules Governing the
Issuance and Sale of Variable
Life Insurance

The rules proposed and published at the State Register, Volume 5, No. 24. pp. 960 - 971, December 15, 1980 (5 S.R. 960) are adopted with the following amendments:

4 MCAR § 1.9403. Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401 - 1.9421, and the Commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to § 61A.20.

4 MCAR § 1.9404. Insurance policy requirements.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.9404 C.2.).

7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the Commissioner or person filfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The

method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amount payable. Incidental minimum guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

b. one cash value schedule as described in paragraph ~~1.~~ 1. for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not euqal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

E. Other policy provision.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not

less favorable than that required of policy loans or partial withdrawls under 4 MCAR § 1.9404 ~~C~~D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9406. Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

B. Amounts in the separate account.

2. The benefit base of any variable life insruance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deduction amounts of any indebtedness pursuant to 4 MCAR § 1.9404 ~~C~~D.:

4 MCAR § 1.9407. Information furnished to applicants. ~~An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information.~~ The requirements of 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3 (a) (2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such application coincident with or prior to the execution of the application, the following information:

A. A summary explanation, in non-technical terms, of the principal terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such

explanation must include notices of the provision required by 4 MCAR § 1.9404 BC. 1.e. and Minn. Stat. § 61A.03 (3).

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance, Pursuant to Minn.
Stat. §§ 61A.13-.21.

Issued and entered this
27th day of January, 1981,
by Michael D. Markman,
Commissioner of Insurance

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled rules were proposed to be adopted without a public hearing on December 15, 1980, after proper notice of the intent to adopt these rules as required by Minn. Stat. § 15.0412 was served upon all persons, associations, and other interested groups registered with the Department of Commerce, Insurance Division, for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony and considered all of the evidence adduced upon the record, files, and proceedings herein, I find the following:

FINDINGS OF FACT

That the Equitable Life Assurance Society of the United States in their comment dated January 6, 1980, noted a typographical error in proposed rule 4 MCAR § 1.9407. In subdivision A of that rule, reference was made to 4 MCAR § 1.9404B.1.e. The reference should have been made to 4 MCAR § 1.9404C.1.e. p. 32

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

CONCLUSIONS

1. That the proposed rules should be modified to correct

the typographical error in 4 MCAR § 1.9404 as follows:

4 MCAR § 1.9404. Information furnished to applicants.

A. A summary explanation, in non-technical terms, of principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 ~~B.~~ C.1.e. and Minn. Stat. § 61A.03(3).

2. That the Modification made herein does not constitute a substantial change from the rules as originally proposed.

Dated: January 27, 1981.

STATE OF MINNESOTA

MICHAEL D. MARKMAN
Commissioner of Insurance

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance, Pursuant to Minn.
Stat. §§ 61A.13 - .21.

Issued and entered this
24th day of February 1981,
by Michael D. Markman,
Commissioner of Insurance

AMENDED FINDINGS OF FACT AND CONCLUSIONS

The above-entitled rules were proposed to be adopted without a public hearing on December 15, 1980, after proper notice of the intent to adopt these rules as required by Minn. Stat. § 15.0412 was served upon all persons, associations, and other interested groups registered with the Department of Commerce, Insurance Division, for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony and considered all of the evidence adduced upon the records, files, and proceedings herein, I further find the following:

FINDINGS OF FACT

1. The Finding of Fact and Conclusions of the Commissioner of Insurance in this matter dated January 27, 1981, are hereby incorporated herein by reference.

2. Upon filing the adopted rules with the Attorney General on January 30, 1981, the following changes were required:

a. 4 MCAR § 1.9403 A. The cite in line 4 should be changed

from "1.9401 - 1.9412" to "1.9401 - 1.9411".

b. 4 MCAR 6 1.9404 B. 3. The cite in 4 should be changed from "1.904 C. 2." to "1.9404 C. 2".

c. 4 MCAR § 1.9404 B. 7. The phrase "or person fulfilling the equivalent function" should be inserted in line 5 after the word "Commissioner".

d. 4 MCAR § 1.9404 C. 9. b. In line 2 the parenthesis around (1) should be deleted, and a period inserted after the 1.

e. 4 MCAR § 1.9404 E. 3. The cite in line 5 should be changed from " 1.9404 C." to "1.9404 D.".

f. 4 MCAR § 1.9406 B. 2. The cite in line 4 should be changed from " 1.9404 C. 2. " to " 1.9404 D. 2.".

g. 4 MCAR § 1.9407. For greater clarity the first paragraph should be rearranged so that the portion of the paragraph commencing "The requirements of..." and ending "there of" is placed ahead of the portion commencing "An insurer delivering..." and ending "following information." Further the period after "information" would be deleted and a colon inserted.

Based upon the foregoing Findings of Fact, the Commissioner makes the following

CONCLUSIONS

1. The proposed rules should be modified as specified in the aforementioned Findings of Fact.

2. The modifications made herein do not constitute a substantial change from the rules as originally proposed.

MICHAEL D. MARKMAN
Commissioner of Insurance

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

IN THE MATTER OF PROPOSED RULES OF THE MINNESOTA DEPARTMENT OF COMMERCE, INSURANCE DIVISION, GOVERNING THE ISSUANCE AND SALE OF VARIABLE LIFE INSURANCE, PURSUANT TO MINN. STAT. § 61A.13 - .21.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on February 13, 1981, the Minnesota Department of Commerce, Insurance Division (hereinafter "Division"), submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of certain documents in rules to be proposed; and

WHEREAS, pursuant to Minnesota Statutes § 15.0412, subd. 4e, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the following documents:

1. Securities Act of 1933, 15 U.S.C. § 77a et. seq., referred to in proposed rule 4 MCAR § 1.9407;
2. Securities Exchange Act of 1934, 15 U.S.C. § 78a et. seq., referred to in proposed rule 4 MCAR § 1.9406;
3. Investment Company Act of 1940, 15 U.S.C. § 80a - 1 et. seq., referred to in proposed rule 4 MCAR § 1.9406;
4. Employment Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et. seq., referred to in proposed rule 4 MCAR § 1.9407.

and has found them to be in excess of 3,000 words and has determined that they would exceed five pages of publication in the State Register; and

WHEREAS, the Division has indicated and the Chief Hearing Examiner thus finds that the documents are conveniently available for viewing, copying and acquistion by interested persons.

NOW, THEREFORE, IT IS ORDERD that the Division shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced documents.

Dated: February 18, 1981.



DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance, Pursuant to Minn.
Stat. §§ 61A.13-.21.

Issued and entered this
30th day of January, 1981,
by Michael D. Markman,
Commissioner of Insurance

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 15, 1980, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. § 15.0412, subd. 4(h), on December 10, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR § 1.9401 through § 1.9411 (as modified in the Findings of Fact and Conclusions) are adopted this 30th day of January, 1981, pursuant to the authority vested in the Commissioner of Insurance by Minn. Stat. § 61A.20.

STATE OF MINNESOTA

MICHAEL D. MARKMAN
Commissioner of Insurance

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

INSURANCE DIVISION

In the Matter of the Proposed Rules of the Minnesota Department of Commerce, Insurance Division, Relating to the Issuance and Sale of Variable Life Insurance pursuant to Minn. Stat. §§ 61A.13-21.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Insurance Division of the Department of Commerce proposes to adopt the above-captioned rules, without a public hearing, pursuant to Minn. Stat. § 15.0412, subd. 4h.

These rules are proposed pursuant to the authority vested in the Insurance Commissioner by the provision of Minn. Stat. § 61A.20.

The proposed rules if adopted would establish standards and procedures by which the issuance of variable life insurance policies could be regulated in Minnesota. The adoption, of these proposed rules would further implement the provisions of Minn. Stat. §§ 61A.13-21, relating to the sale and issuance of variable life policies in Minnesota. Specifically, the proposed rules would set forth (a) the qualification of insurers to issue variable life insurance in Minnesota, (b) the variable life insurance policy requirements and the filing of such policies with the Insurance Commissioner of the State of Minnesota, (c) the establishment of reserve liabilities for the variable life insurance, (d) the establishment and administration of separate accounts for variable life insurance, (e) the

information to be furnished to applicants for variable life insurance, (f) the form and content of applications for variable life insurance, (g) the reports that must be given periodically to variable life insurance policyholders, and (h) the qualifications of agents to sell variable life insurance.

Variable life insurance is authorized to be written in Minnesota pursuant to Minn. Stat. §§ 61A.13-21. Variable life insurance is life insurance that varies in terms of both the death benefit and cash values. Premiums remain fixed and level. Variable life insurance combines traditional life insurance protection with the potential growth of equity investments. The major differences between variable life insurance and traditional fixed life insurance are as follows: Under variable life insurance policies, assets supporting policy benefits are held in a separate account and invested primarialy in common stocks and other equity type securities. The death benefit increases or decreases depending on investment results of the separate account. In no event, however, will the death benefit fall below a guaranteed minimum equal to the face amount of insurance specified in the policy. Under the traditional fixed life insurance policy, the death benefit is determined and fixed at the time the policy is purchased and issued. Cash values under variable life insurance policies will increase or decrease depending on investment results of the separate account, but there is no guaranteed minimum cash value, as with fixed life insurance policies.

All interested persons may submit written comment or data on these proposed rules, within 30 days of the publication of these proposed rules in the State Register to:

John Ingrassia

Supervisor of the Life and Health Section

Insurance Division

Department of Commerce

500 Metro Square Building

St. Paul, Minnesota 55101

Telephone: (612) 296-2202

No public hearing will be held unless seven or more persons make a written request for hearing within the 30-day comment period. Such written request must be filed with John Ingrassia of the Minnesota Insurance Division.

The proposed rules may be modified if the modifications are supported by the data and views submitted. A copy of the rules and statement of need and reasonableness is available for review, without charge, by making a written or telephone request to John Ingrassia at the above-referenced address.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may do so by writing to Mr. Ingrassia.

Dated: November 24, 1980.

MICHAEL D. MARKMAN

Commissioner of Insurance

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Commerce, Insurance Division, Governing the Issuance and Sale of Variable Life Insurance, Pursuant to Minn. Stat. §§ 61A.13-.21.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Pamela L. Tomforhde, being first duly sworn, deposes and says:

That on the 10th day of December, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail, at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed, who have registered with the Department of Commerce, Insurance Division, for the purpose of receiving notice of rule hearings. A list of those persons and associations is attached.

Pamela Tomforhde

Subscribed and sworn to before me this 28th day of January, 1981.

Adam J. Mikrot
Notary Public

ADAM J. MIKROT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires August 10, 1984

GENERAL LIST

TO RECEIVE NOTICE OF RULEMAKING HEARINGS IN COMMERCE

Bonnie Bannanno
Room 300 - 1745 Univ. Ave.
St. Paul, Mn. 55104

Kenneth Peterson
Exec. Director
Minn. Public Interest Research Group
2412 Univ. Ave. S. E.
Minneapolis, Mn. 55414

James Miller, Sr., Attorney
Minn. Public Interest Research Group
2412 Univ. Ave. S. E.
Mpls, Mn. 55414

John A. Knapp
Hessian, McKasy & Soderberg
1500 Midwest Plaza Bldg.
Minneapolis, Mn. 55402

Director, Developmental
Disabilities Planning Office
200 Capitol Sq. Bldg.
St. Paul, Mn. 55101

Fredrik M. Christiansen
Room 911 - Capitol Square Bldg.
St. Paul, Mn. 55101

Minnesota Board of Nursing
717 Delaware St. S. E.
Minneapolis, Mn. 55414

John T. Farmer, Exec. Director
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STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE OF MAILING LIST

In the Matter of the Proposed
Adoption of Rules of the
Minnesota Department of Commerce,
Insurance Division, Governing the
Issuance and Sale of Variable
Life Insurance

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4, that their names be placed on file with and maintained by the Department of Commerce, Insurance Division, for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of the 10th day of December, 1980.

Dale L. McDonnell

Dale L. McDonnell

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 24

December 15, 1980

Pages 955-998

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
25	Monday Dec 8	Monday Dec 15	Monday Dec 22
26	Monday Dec 15	Monday Dec 22	Monday Dec 29
27	Monday Dec 22	Monday Dec 29	Monday Jan 5
28	Monday Dec 29	Monday Jan 5	Monday Jan 12

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

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

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

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

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
December 15-19, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 23	Board of Examiners for Nursing Home Administrators Waiver of Certain Licensure Requirements; Repeal of NHA 22 and 23 Hearing Examiner: Jon Lunde	9:30 a.m., Room 105, MN Dept. of Health Bldg., 717 Deleware St., Minneapolis, MN

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

Department of Commerce
Insurance Division

Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance (Pursuant to Minn. Stat. §§ 61A.13-21)

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Insurance Division of the Department of Commerce proposes to adopt the above-captioned rules, without a public hearing, pursuant to Minn. Stat. § 15.0412, subd. 4h.

These rules are proposed pursuant to the authority vested in the Insurance Commissioner by the provision of Minn. Stat. § 61A.20.

The proposed rules if adopted would establish standards and procedures by which the issuance of variable life insurance policies could be regulated in Minnesota. The adoption of these proposed rules would further implement the provisions of Minn. Stat. §§ 61A.13-21, relating to the sale and issuance of variable life policies in Minnesota. Specifically, the proposed rules would set forth (a) the qualification of insurers to issue variable life insurance in Minnesota, (b) the variable life insurance policy requirements and the filing of such policies with the Insurance Commissioner of the State of Minnesota, (c) the establishment of reserve liabilities for the variable life insurance, (d) the establishment and administration of separate accounts for variable life insurance, (e) the information to be furnished to applicants for variable life insurance, (f) the form and content of applications for variable life insurance, (g) the reports that must be given periodically to variable life insurance policyholders, and (h) the qualifications of agents to sell variable life insurance.

Variable life insurance is authorized to be written in Minnesota pursuant to Minn. Stat. §§ 61A.13-21. Variable life insurance is life insurance that varies in terms of both the death benefit and cash values. Premiums remain fixed and level. Variable life insurance combines traditional life insurance protection with the potential growth of equity investments. The major differences between variable life insurance and traditional fixed life insurance are as follows: Under variable life insurance policies, assets supporting policy benefits are held in a separate account and invested primarily in common stocks and other equity type securities. The death benefit increases or decreases depending on investment results of the separate account. In no event, however, will the death benefit fall below a guaranteed minimum equal to the face amount of insurance specified in the policy. Under the traditional fixed life insurance policy, the death benefit is determined and fixed at the time the policy is purchased and issued. Cash values under variable life insurance policies will increase or decrease depending on investment results of the separate account, but there is no guaranteed minimum cash value, as with fixed life insurance policies.

All interested persons may submit written comment or data on these proposed rules, within 30 days of the publication of these proposed rules in the *State Register* to:

John Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-2202

No public hearing will be held unless seven or more persons make a written request for hearing within the 30-day comment period. Such written request must be filed with John Ingrassia of the Minnesota Insurance Division.

The proposed rules may be modified if the modifications are supported by the data and views submitted. A copy of the rules and statement of need and reasonableness is available for review, without charge, by making a written or telephone request to John Ingrassia at the above-referenced address.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may do so by writing to Mr. Ingrassia.

November 24, 1980.

Michael D. Markman
Commissioner of Insurance

Rules as Proposed

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4 MCAR § 1.9401 Authority and scope.
4 MCAR § 1.9402 Definitions.
4 MCAR § 1.9403 Qualification of insurer to issue variable life insurance.
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4 MCAR § 1.9405 Reserve liabilities for variable life insurance.
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4 MCAR § 1.9411 Qualification of agents for the sale of variable life insurance.
4 MCAR § 1.9412-1.9415 Reserved for future use.

4 MCAR § 1.9401 Authority and scope. The following regulations are applicable to all variable life insurance policies issued in this state, and are promulgated under the authority of Minn. Stat. § 61A.20.

4 MCAR § 1.9402 Definitions. As used in this regulation:

A. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

B. "Benefit base" means the amount, not less than the amount specified under 4 MCAR § 1.9406 B.2. specified by the terms of the variable life insurance policy to which the difference between the net investment return and the assumed investment rate is applied in determining the variable benefits of the policy.

C. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

D. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.

E. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

F. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.

G. "Separate account" means a separate account established for variable life insurance pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

H. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of the minimum death benefit.

I. "Variable life insurance policy" means any individual policy which provides for life insurance which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

J. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., § 77a *et seq.*

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

K. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., § 78a *et seq.*

L. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., § 80a-l *et seq.*

M. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., § 1001 *et seq.*

4 MCAR § 1.9403 Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.9412, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to § 61A.20.

B. Before any insurer shall deliver or issue for delivery any variable life insurance policy in this state, it must file with the commissioner the following information for the consideration of the commissioner in making the determination required by Minn. Stat. § 61A.19.

1. copies of and a general description of the variable life insurance policies it intends to issue;

2. a general description of the methods of operation of the variable life insurance business of the insurer;

3. with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective and orientation intended for the separate account.

4 MCAR § 1.9404 Insurance policy requirements.

A. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR § 1.9404 and Minn. Stat. ch. 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

1. Coverage shall be provided for the lifetime of the insured with the mortality and expense risk borne by the insurer.

2. Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.904 C.2.).

4. The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:

a. fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or

b. variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy.

5. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

6. Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such

premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

8. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

9. In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in 4 MCAR § 1.9406 G.1.a., b., d., and e.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each such policy shall contain:

a. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page, that the death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement that the minimum death benefit will be at least equal to the initial face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;

d. the rule, or a reference to the policy provision, which describes the method for determining the variable amount of insurance payable at death;

e. a captioned provision or endorsement to the policy which provides that the policyholder may cancel the variable life insurance policy by delivering or mailing a written notice or sending a telegram to the insurer and by returning the policy before midnight of the tenth day after the date the policyholder receives the policy, or before midnight of the forty-fifth day after the date of the execution of the application, whichever is later. Notice given by mail and return of the policy are effective on being postmarked properly addressed and postage prepaid. The insurer must return all payments made for the policy within ten days after it receives notice of cancellation and the returned policy.

f. such other items as are currently required by Minn. Stat. ch. 61A.

2. a provision for a grace period of not less than thirty-one days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

3. a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight (8%) percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight (8%) percent per annum compounded annually; or

b. 110% of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight (8%) percent per annum compounded annually.

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

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a. such separate account shall be used to fund only variable life insurance benefits;

b. the assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

c. the assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

8. settlement options which shall be provided on a fixed basis only;

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

a. a schedule of cash value amounts per one thousand dollars of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or

b. one cash value schedule as described in paragraph (1) for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and team insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

10. premiums for incidental insurance benefits shall be stated separately.

D. Non-forfeiture, partial withdrawal, policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

1. A provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.

a. Variable extended term insurance may not be offered.

b. A given non-forfeiture option need not be offered on both a fixed and a variable basis.

c. The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available.

2. A provision for policy loans after three full years' premiums have been paid (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:

a. Up to 75% but if the loan is made from the general account not more than 90% of the policy's cash value may be borrowed;

b. The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;

c. The amount borrowed shall bear interest at a rate not to exceed 8% per year compounded annually;

d. Any indebtedness shall be deducted from the proceeds payable on death;

e. Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;

f. Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice;

g. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit

up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

h. In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;

i. All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;

j. Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, shall be on a fixed basis only;

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;

c. the amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;

d. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

e. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under 4 MCAR § 1.9404 C., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9405 Reserve liabilities for variable life insurance.

A. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minn. Stat. § 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be

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less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR § 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Reserve liabilities for all fixed incidental insurance benefits shall be maintained in the general account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR § 1.9406 Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

A. Establishment and administration of separate accounts. An insurer issuing variable life insurance in this state shall establish and administer one or more separate accounts pursuant to Minn. Stat. § 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

2. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.

3. The assets of such separate accounts established for variable life insurance policies shall be valued at least as often as variable benefits are determined but in any event at least monthly.

4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.

5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.

B. Amounts in the separate account.

1. The insurer shall maintain in each variable life insurance separate account assets with a fair market value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR § 1.9404 C.2.:

a. the valuation net premium for such period, for the variable portion of the policy, minus the discounted cost of term insurance for such period, based on the tabular mortality and interest rates used in determining valuation reserves; and

b. the valuation terminal reserve, for the variable portion of the policy, at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.

3. In lieu of the minimum benefit base requirement specified above, an insurer may otherwise qualify under 4 MCAR § 1.9406 B. if the policy benefits obtained over a 20-year period from the date of issue by the use of the insurer's benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified above.

4. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.

C. Investments by the separate account.

1. Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision, only the following shall be considered "investments having a reasonably ascertainable market price":

a. liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values;

b. securities listed and traded on the New York Stock Exchange, the American Stock Exchange, or regional stock exchanges or successors to such exchanges having the same or similar qualifications;

c. securities listed on the National Association of Securities Dealers Automated Quotations System (hereinafter referred to as the "NASDAQ System");

d. shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates, such book shares shall be deemed to be adequate evidence of ownership;

e. obligations of or guaranteed by the United States Government, the Canadian Government, any state, or municipality or governmental subdivision of a state;

f. commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank;

g. certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and

h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.

2. Assets allocated to a variable life insurance separate account shall not be invested in:

a. commodities or commodity contracts;

b. put and call options or combinations of such options;

c. short sales;

d. purchases on margins;

e. letter or restricted stock;

f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or

g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR § 1.9406 C.1.b.

D. Limitations on ownership.

1. A variable life insurance separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this regulation, would exceed 10% of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer. The commissioner shall waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

3. The percentage limitation specified in 4 MCAR § 1.9406 D.1. shall not be construed to preclude the investment of the

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assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 if the investments and investment policies of such investment companies comply substantially with the provisions of 4 MCAR § 1.9406 C. and other applicable portions of this regulation.

E. Valuation of assets of a variable life insurance separate account.

1. Investments of the separate account shall be valued at their market value on the date of valuation.

a. Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.

b. Market value for investments listed on the NASDAQ System means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the National Quotation Bureau sheets.

c. If the valuation date referred to in paragraphs a. and b. above is a day when the exchange or the NASDAQ System is not open for business, the valuation date shall be the last date when the exchange or the NASDAQ System was open for business.

2. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.

3. Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR § 1.9403 B.3. shall not be changed without filing the change with the commissioner.

1. The commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.

2. If the change is deemed material by the commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.

3. At least thirty days prior to any public hearing under paragraph 2. above, the insurer shall mail a notice to each policyholder and to the insurance commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting.

4. Within sixty days after such public hearing, the commissioner shall notify the insurer of his determination, and if it is that the change is detrimental to the interests of the policyholders of the insurer, the insurer shall not be allowed to make such change.

5. Should any policyholder object to the proposed change and the change is allowed by the commissioner the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the commissioner of such change, of converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

a. If the policy is in force on a premium paying basis, either:

(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance, based on the insurer's premium rates for fixed benefit life insurance at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:

(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value, or

(b) the death benefit payable under any paid-up insurance option of the policyholder elects such nonforfeiture option under the variable life policy.

b. If the policy is in force as paid-up variable life insurance, then conversion will be to a substantially comparable paid-up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

If conversion is made pursuant to paragraphs a.(1) or b. above, then (1) if the cash value of the variable life insurance policy

exceeds the cash value of the fixed benefit life insurance policy, the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life insurance policy, the difference shall be paid by the policyholder; and (3) any indebtedness under the variable life insurance policy shall become indebtedness under the fixed benefit policy, provided that any excess of such indebtedness over the cash value of the fixed benefit policy on the date the conversion shall be deducted from any amount otherwise payable to the policyholder.

G. Charges against a variable life insurance separate account.

1. The insurer may deduct only the following from the separate account:

a. taxes or reserves for taxes attributable to investment gains and income of the separate account:

b. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets.

c. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities.

d. charges for investment management expenses, including internal costs attributable to the investment management of assets of the separate account, not exceeding the following percentages, on an annual basis, of the average net value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3.:

(1) .75% of that portion of separate account assets valued at or under $75,000,000; and

(2) .50% of that portion of separate account assets valued in excess of $75,000,000 but less than $150,000,000; and

(3) .40% of that portion of separate account assets valued in excess of $150,000,000 but less than $400,000,000; and

(4) .35% of that portion of separate account assets valued in excess of $400,000,000 but less than $800,000,000; and

(5) .30% of that portion of separate account assets valued in excess of $800,000,000.

e. a charge, at a rate specified in the policy, not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3., for mortality and expense guarantees.

f. Any amounts in excess of those required to be held in the separate account.

2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by 4 MCAR § 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.

4 MCAR § 1.9407. Information furnished to applicants. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of 4 MCAR § 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to section 3(a)(2) thereof.

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 B.1.e. and Minn. Stat. § 61A.03(3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective and orientation intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

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C. a statement of the net investment return of the separate account for each of the last ten years for which the separate account was in existence;

D. a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;

E. a statement of the annual taxes, brokerage fees, and similar costs, and the charges, expressed as an annual percentage, levied against the separate account during the previous year;

F. a summary of the method to be used in valuing assets held by the separate account;

G. a summary of the federal income tax liabilities of the policy applicable to the insured, the policy owner, and the beneficiary;

H. if the applicant is furnished illustrations of benefits payable under any variable life insurance contract, such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only;

I. a prominent statement either in contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on the page, providing in substance the following information:

1. The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.

2. No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund.

4 MCAR § 1.9408 Applications. The application for a variable life insurance policy shall contain:

A. a prominent statement that the death benefit may be variable or fixed under specified conditions;

B. a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);

C. questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

4 MCAR § 1.9409. Reports to policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR § 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than forty-five days prior to the mailing of such notice. This statement shall state in contrasting color or distinctive type that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR § 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the Commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;

4. any charges, taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

6. the names and principal occupations of each principal executive officer and each director of the insurer; and

7. the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10% or more of the outstanding voting securities of the company.

4 MCAR § 1.9410 Foreign companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially greater than that provided by this regulation, the commissioner shall consider compliance with such law or regulation as compliance with this regulation.

4 MCAR § 1.9411 Qualification of agents for the sale of variable life insurance. Any person who holds a valid license to solicit and sell life insurance in this state and has filed with the commissioner evidence of compliance with all applicable state and federal securities laws shall be qualified pursuant to Minn. Stat. § 60A.17, subd. 13(1) to sell or offer for sale variable life insurance policies in this state.

4 MCAR §§ 1.9412 to 1.9415. Reserved for future use.

State Board of Education
Department of Education
Special and Compensatory Education Division

Proposed Amendment of A Rule Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who Are Handicapped (5 MCAR § 1.0127 A.5.e.(3))

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Board of Education proposes to amend the above-entitled rule without a public hearing. The board has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Rule 5 MCAR § 1.0127 A.5.e.(3) is proposed to be amended to bring it into compliance with the Federal Education for All Handicapped Children Act (20 U.S.C. § 1401, *et seq.*) and the corresponding federal regulations, 45 C.F.R. part 121a, as presently interpreted. The proposed amendment is necessary in order to enable the State of Minnesota and its public school districts to obtain federal money available under the federal law. If 5 MCAR § 1.0127 A.5.e.(3) is not amended, the U.S. Department of Education has advised the Minnesota Department of Education that the State of Minnesota and its public school districts may not receive such federal money.

Rule 5 MCAR § 1.0127 A.5.e.(3) governs the procedure by which a conciliation conference and due process hearing are commenced to determine whether an independent assessment requested by the parents will be at public expense. The current language of the rule is not acceptable to the U.S. Department of Education and the provision must be changed in order to make federal money under the Education for All Handicapped Children Act available to Minnesota public school districts. The State Board of Education proposes to amend 5 MCAR § 1.0127 A.5.e.(3) to bring it into compliance with federal law particularly 45 C.F.R. § 121a.503(b). Therefore, 5 MCAR § 1.0127 A.5.e.(3) is proposed to be amended as set forth herewith.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f.

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

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Wayne A. Erickson
Manager, Special Education Section
802 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone (612) 296-4163

Authority for the adoption of these rules is contained in Minn. Stat. § 120.17, subd. 3. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Wayne A. Erickson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, and the Statement of Need and Reasonableness, all written comments received, and the final Rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Wayne A. Erickson.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Wayne A. Erickson.

Howard B. Casmey
Commissioner of Education

Amendments As Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction And Services for Children And Youth Who Are Handicapped

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules. All notices must:

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) ~~request that~~ obtain an independent assessment ~~be conducted~~ at public expense. ~~in which case the district has the option of denying such a request. When a district denies such a request, the parents may request a conciliation conference and due process hearing to resolve the disagreement.~~ However, a district may initiate a due process hearing to show that its assessment is appropriate. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense.

Department of Public Welfare
Income Maintenance Bureau

Proposed Rule Governing the Surveillance and Utilization Review Program (12 MCAR § 2.064)

Notice of Hearing

A public hearing concerning the above-entitled matter will be held at the Minnesota Veterans Home, East 51st Street and Minnehaha, Building 15, Chapel Auditorium Building, Minneapolis, Minnesota, on January 14, 1981, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The proposed rule may be modified as a result of the

hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. 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 to Jon L. Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 612/296-5938, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Public Welfare and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all evidence and argument which the Department of Public Welfare anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Proposed rule 12 MCAR § 2.064 sets standards for the Surveillance and Utilization Review (SUR) program. The Surveillance and Utilization Review Division is responsible for identifying and investigating suspected fraud, theft, abuse and inappropriate utilization of services by eligible recipients and enrolled providers in the Medical Assistance, General Assistance Medical Care, and Catastrophic Health Expense Protection Program programs of the Department of Public Welfare. Through its computer generated exception reports and referrals, SUR identifies patterns of provision and utilization of medical services, equipment and supplies which may be indicative of fraud and abuse. SUR then conducts investigations to verify this information and determine if corrective actions are required. SUR is authorized to sanction providers and recipients as appropriate for documented abuse, misutilization, fraud, and violation of federal regulations, state law, or agency rules. SUR has a range of possible sanctions which may be imposed, including recovery of overpayments, suspension, termination, referral for peer review, restriction, and civil or criminal actions.

Proposed rule 12 MCAR § 2.064 is divided into several subsections. Subsection A. contains the introduction which explains the scope of the rule and its statutory basis. Subsection B. contains several definitions of terms used throughout the rule. Subsection C. explains the purposes for which and the methods whereby records are examined by authorized state agency personnel. Subsection D. describes the process of identification and investigation of suspected fraud, theft or abuse of the programs by enrolled health care providers. This section further describes the grounds for monetary recovery and sanctions, as well as the range of corrective actions, which may be imposed against an abberant provider. Subsection E. describes the process of identification and investigation of suspected fraud, theft or abuse of the programs by eligible recipients. This section further describes grounds for monetary recovery and sanctions, as well as the range of corrective actions, which may be imposed against a recipient. Subsection F. outlines the appeal process available to recipients and providers in the event that a corrective action is imposed by the department.

The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 256B.04, subd. 10 as amended by Minn. Laws of 1980, ch. 349, Minn. Stat. § 256D.03, subd. 3 as amended by Minn. Laws of 1980, ch. 349, and Minn. Stat. § 62E.53, subd. 3 as amended by Minn. Laws of 1980, ch. 349.

The Department of Public Welfare estimates that there will be no cost to local public bodies in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Larry Woods, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-9943. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Larry Woods at (612) 296-9943.

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 rule 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.

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Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.), 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, St. Paul, Minnesota 55155, telephone (612) 296-5615.

November 19, 1980

Arthur E. Noot
Commissioner of Public Welfare

Rules as Proposed (all new material)

12 MCAR § 2.064 Surveillance and Utilization Review Program.

A. Introduction.

1. This rule governs procedures to be used by the Surveillance and Utilization Review (SUR) Section, Minnesota Department of Public Welfare in the identification and investigation of suspected fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services not medically necessary, or false statement or representation of material facts by a provider or recipient of health care in the Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection Programs.

2. The provisions of this rule are to be read in conjunction with Titles XVIII and XIX of the Federal Social Security Act; Title 42 of the Code of Federal Regulations; Minn. Stat., ch. 62E, 256, 256B, 256D and 609; Minnesota Laws of 1980, ch. 349; and other rules of the Minnesota Department of Public Welfare.

3. The Minnesota Department of Public Welfare, as the state agency responsible for the administration of the Minnesota Medical Assistance, General Assistance Medical Care and Catastrophic Health Expense Protection programs, will issue instructional bulletins, manual materials and forms as necessary to assist others in the interpretation of this rule. Such publications do not have the force and effect of law; however, they do contain the state agency's interpretation of this rule.

4. The provisions of this rule are binding on all county welfare boards (hereinafter referred to as local welfare agencies) in the State of Minnesota administering the programs, on all providers of health care participating in the programs, on all recipients under the programs, and on the state agency.

B. Definitions. For the purposes of this rule, the following terms shall be defined as indicated.

1. "Abuse." A pattern of practice by a provider, or a pattern of health care utilization by a recipient which is characterized by, but not limited to, the presence of one of the following conditions:

a. The repeated submission of claims by a provider from which required data is missing or incorrect. Examples include but are not limited to: incorrect or missing procedure or diagnosis codes, false mathematical entries, incorrect or missing third party liability information, incorrect use of procedure code modifiers.

b. The repeated submission of claims by a provider presenting procedure codes which overstate the level or amount of health care provided.

c. The repeated submission of claims by a provider for health care which is not reimbursable under the programs.

d. Failure of a provider to develop and maintain patient care records which document the nature, extent, and evidence of the medical necessity of health care provided.

e. Failure of a provider to use generally accepted accounting principles unless otherwise indicated by federal or state law or rule.

f. The repeated submission of claims by a provider for health care that is contrary to the generally accepted standards of practice of a provider's field of practice or specialty.

g. The repeated submission of claims by a provider for health care which exceeds that requested or agreed to by the recipient or his responsible relative or guardian or that otherwise required by federal or state law or rule.

h. The recipient permitting the use of his/her medical identification card by any unauthorized individual for the purpose of obtaining health care through any of the programs.

i. Obtaining unneeded equipment, supplies or pharmaceuticals by a recipient for the purpose of resale.

j. Obtaining duplicate services by a recipient, from a multiple number of providers, for the same health care condition excluding confirmation for diagnosis, evaluation or assessment.

2. "Commissioner." The Commissioner of Public Welfare or his designee.

3. "Health care." Services, equipment, or supplies provided by any individual, organization or entity that participates in the Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs.

4. "Health care record." Written documentation of the nature, extent and evidence of the medical necessity of health care provided to the program recipients by a provider other than a medical doctor and billed to the programs.

5. "Medicaid Management Information System." (MMIS) A centralized automated processing and payment system certified by the United States Department of Health and Human Services and implemented in Minnesota to administer the Title XIX program.

6. "Medical record." Written documentation of the nature, extent and evidence of the medical necessity of health care provided to program recipients by or under the authority of a medical doctor and billed to the programs.

7. "Medically necessary." Health care that is within the generally accepted standards of practice of a provider's field of practice or specialty and is:

a. Provided to maintain at least the minimum level of care required for certification and licensure of a long term care facility by the Minnesota Department of Health, or

b. Provided in response to life threatening conditions, or

c. Provided in response to pain, or

d. Provided to treat injuries, illness, or infections, or

e. Provided as periodic examination and diagnosis, or

f. Provided as preventive health care.

8. "Pattern." An identifiable series of events or activities.

9. "Programs." The Minnesota Medical Assistance program, the General Assistance Medical Care program and/or Catastrophic Health Expense Protection program.

10. "Provider." An individual, organization, or entity that has entered into an agreement with the state agency to be reimbursed by Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs for health care provided to a recipient(s).

11. "Recipient." An individual who has established eligibility to receive health care paid by Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs.

12. "Records." Medical, health care and financial records pertaining to health care provided program recipients and billed to the programs.

13. "State agency." The Minnesota Department of Public Welfare.

14. "Surveillance and Utilization Review." (SUR) The section of the Department of Public Welfare responsible for the identification and investigation of suspected fraud and abuse by providers and recipients participating in the programs. For the purpose of this rule, this definition specifically excludes the utilization control activity of the SUR section.

15. "Suspending participation." Making a provider ineligible for reimbursement by the programs for a stated period of time.

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

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17. "Terminating participation." Making a provider permanently ineligible for reimbursement by the programs.

18. "Utilization control." The activity within the state agency responsible for the ongoing evaluation of the necessity for and the quality and timeliness of services provided in long term care facilities not under the responsibility of a Professional Standards Review Organization.

19. "Withholding of payments." A reduction or adjustment of the amounts paid to a provider for purposes of offsetting overpayments previously made to the provider, or of recovering payments made to a provider for services not documented in the recipient's medical or health care record.

C. Records.

1. Medical and health care records.

a. Medical and health care records must be developed and maintained as a condition for reimbursement by the programs. Program funds paid for health care not documented in the medical and health care record shall be subject to monetary recovery.

b. Medical and health care records shall be legible throughout to at least the individuals providing care.

c. Medical and health care records shall contain the following information:

(1) Each page of the record shall name or otherwise identify the patient.

(2) Each entry in the record shall be signed and dated by the individual providing health care. Record entries for health care provided by an individual under the supervision of a licensed provider, and which is billed directly to the programs by the provider, shall be countersigned by the provider.

(3) Initial and final diagnoses, assessments or evaluations.

(4) The patient case history and results of oral or physical examination.

(5) The plan of treatment or patient care plan shall be entered in the physical record or shall be otherwise available on-site.

(6) Quantities and dosages of any prescribed drugs ordered and/or administered shall be entered in the record.

(7) The results of all diagnostic tests and examinations.

(8) The record shall indicate the patient's progress, response to treatment, any change in treatment, and any change in diagnosis.

(9) Copies of consultation reports relating to a particular recipient.

(10) Dates of hospitalization relating to service provided by a particular provider.

(11) A copy of the summary of surgical procedures billed to the programs by the provider.

d. The requirements of C.1.c. of this rule shall not apply to pharmacies, laboratories, ambulance services and medical transportation providers, or suppliers of medical equipment and nondurable supplies. For the purpose of this rule provider groups mentioned in this section shall develop and maintain the following records:

(1) Pharmacies.

(a) Prescriptions or equivalent computer record.

(b) This rule shall not require the development and maintenance of a recipient drug profile; however, if available, the state agency shall be authorized to review such a record.

(2) Laboratories.

(a) Documentation of provider orders for laboratory tests or procedures.

(b) Documentation of test results.

(3) Ambulance service and medical transportation providers.

(a) Documentation of physician authorization for medical transportation.

(b) Trip tickets.

(c) Documentation of durable and nondurable supplies expended on a recipient.

(4) Suppliers of medical equipment and nondurable supplies.

(a) Prescriptions.

(b) Documentation of physician orders related to the provision of equipment and supplies.

2. Financial records.

a. Financial records pertaining to the provider's costs and charges for health care provided to program recipients shall be developed and maintained.

b. Financial records for all providers, other than nursing homes and board and care homes certified by the Minnesota Department of Health, shall include:

(1) Purchase invoices.

(2) All accounting records including, but not limited to, payroll ledgers, cancelled checks, and bank deposit slips.

(3) All contracts for supplies and services which relate to the providers cost and charges for health care billed to the programs.

(4) Evidence of the providers usual and customary charges and written evidence of charges to non-recipient patients without violating non-recipient patient rights to confidentiality.

(5) Records of other third-party claims, charges and payments.

c. Financial records for nursing homes and board and care homes certified by the Minnesota Department of Health, shall include:

(1) All records identified in C.2.b. of this rule.

(2) Records of deposits and expenditures for patient personal needs allowance accounts.

3. For the purposes of this rule, as set forth in A.1., providers shall grant the state agency access during regular business hours to examine medical, health care and financial records related to health care billed to the programs. The SUR section shall notify the provider at least 24 hours before gaining access to such records. Upon the request of the provider, the SUR section shall present a copy of the recipient's written authorization to examine personal medical records unless the provider already has received written authorization from the recipient. A provider's refusal to grant the state agency access to examine records when authorized shall be grounds for sanction. Nothing in this section shall be construed as applying to the Utilization Control Unit of the SUR section of the state agency.

4. The state agency is authorized to photocopy or otherwise duplicate any medical or financial record which it is authorized to examine.

5. Providers shall retain all records for at least five (5) years.

6. In the event of a change of ownership of a facility or practice all records generated prior to the change shall be retained by the provider assuming responsibility for the health care of recipients. Nothing in this provision shall have the effect of making either party involved in a change of ownership liable for the actions of the other party.

7. In the event a provider withdraws or is terminated from the programs, all records developed during participation in the programs, and not subject to the provisions of item 6 of this section, shall be retained by the provider for a period of five (5) years and shall be available for review by the state agency.

8. A recipient's consent to the state agency's review of his or her medical or health care records shall be presumed competent if given in conjunction with an application for coverage under the programs. This presumption shall exist regardless of whether the application was signed by a recipient, a guardian, next of kin, friend, or other person.

D. Provider Surveillance and Utilization Review.

1. Identification of suspected fraud and abuse.

a. SUR shall be responsible for the detection and identification of suspected fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services not medically necessary, or false statement or representation of material facts by providers who have billed the programs for health care rendered to a recipient.

b. For the purposes of this rule, SUR shall be authorized to utilize information from sources which shall include, but not be limited to:

(1) Computer reports generated by MMIS, using claim data to develop profiles on the provision and utilization of

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health care reimbursed by the programs. The profiles compare data on a peer group basis, and identify providers and recipients who appear exceptional when compared to group norms.

(2) Units of local, state and federal government.

(3) Other third-party payers including health insurance carriers.

(4) Professional Standards Review Organizations.

(5) Citizens, including recipients.

(6) Providers, professional associations, and health care professionals.

c. In assessing questions of medical necessity, SUR shall utilize health care professionals either employed by or serving as consultants to the state agency.

2. Investigation of suspected fraud or abuse.

a. SUR shall be responsible for the investigation of suspected fraud and abuse identified pursuant to D.1. of this rule. An investigation shall be conducted for the purposes of determining one or more of the following:

(1) Whether the suspected aberrant activity of a provider is the result of a legitimate condition of practice.

(2) Whether suspected fraud and abuse exists and can be documented.

(3) Whether sufficient evidence can be developed to support administrative, civil or criminal action as to such fraud and abuse.

b. A SUR investigation may include, but is not limited to:

(1) Examination of records pursuant to C. of this rule.

(2) Interviews of providers, their associates and employees.

(3) Interviews of program recipients.

(4) Verification of the professional credentials of providers, their associates and employees.

(5) Examination of any equipment, stock, materials or other items used in or for the treatment of program recipients.

(6) Examination of prescriptions written for program recipients.

(7) Determination of whether the health care provided was medically necessary.

c. Following the completion of an investigation SUR shall take one or more of the following actions:

(1) Determine that no further action is warranted and so notify the provider.

(2) Impose administrative sanctions against a provider in accordance with D.3. of this rule.

(3) Seek monetary recovery from a provider as set forth in D.3. of this rule.

(4) Refer the case in writing to the Attorney General for possible civil or criminal legal action.

3. Monetary recovery and sanctions. The commissioner shall be authorized to seek monetary recovery or impose administrative sanctions to protect the public welfare and the interests of the program. Monetary recovery and sanctions implemented by the commissioner shall be based upon documentation of fraud and abuse as set forth in D.1. and D.2. of this rule.

a. Grounds for monetary recovery and sanctions.

(1) The commissioner may seek monetary recovery against providers for any of the following:

(a) Fraud, theft, or abuse in connection with health care services billed to the programs.

(b) Presentment of false or duplicate claims, or claims for services not medically necessary.

(c) False statement of material facts for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

(2) The commissioner may impose administrative sanctions against providers for any of the following:

(a) Fraud, theft, or abuse in connection with health care services billed to the program.

(b) A pattern of presentment of false or duplicate claims or claims for services not medically necessary.

(c) A pattern of making false statement of material facts for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

(d) Refusal to grant the state agency access to records pursuant to C.3. of this rule.

(3) The commissioner shall suspend or terminate any provider who has been suspended or terminated from participation in the Medicare program because of fraud or abuse in connection with the Title XVIII of the Social Security Act.

b. The commissioner shall make monetary recovery from providers of monies erroneously paid due to violations described in D.3.a.(1) of this rule by the following means:

(1) Permitting voluntary repayment by the provider of monies erroneously paid, either in lump sum payment or installment payments.

(2) Withholding of payments.

(3) Debiting from program payments, monies determined to have been erroneously paid.

(4) Using any legal process to collect such monies.

c. For the purpose of D.3.b. of this rule, the commissioner shall be authorized to make monetary recovery from providers of monies erroneously paid, based upon extrapolation from a random, unbiased sample of claims billed to the programs by a provider, for a specific procedure code. The sampling method shall adhere to generally accepted statistical procedures regarding sample size, sample selection, and extrapolation from the results of the sample.

d. The commissioner may impose any of the following sanctions for the conduct described in D.3.a.(2) of this rule:

(1) Referral to the appropriate state regulatory agency.

(2) Referral to the appropriate peer review mechanism.

(3) Transfer to a provider agreement of limited duration not to exceed 12 months.

(4) Transfer to a provider agreement which stipulates specific conditions of participation.

(5) Suspending or terminating participation.

e. Notice to providers.

(1) The state agency shall notify providers in writing of any recovery of money or sanction it intends to impose.

(2) The notice shall state:

(a) The factual basis for alleging discrepancies or violations;

(b) The dollar value to such discrepancies or violations;

(c) How such dollar value was computed;

(d) What actions the state agency intends to take;

(e) The provider's right to dispute the state agency's factual allegations and to provide evidence to support the provider's position; and

(f) The provider's right to appeal the state agency's proposed action pursuant to F. of this rule.

(3) The effective date of the proposed monetary recovery or sanction shall be at least 20 calendar days following receipt of certified mail notifying the provider of the proposed action. If the provider appeals pursuant to F. of this rule, the action shall not be implemented until the commissioner's order is issued following the hearing on appeal, provided that the suspending or withholding of payment shall be effective on the date the notice is received, if in the commissioner's opinion such action is necessary to protect the public welfare and interests of the program. However, the commissioner shall not order a prehearing suspension or withholding of payments to a nursing home or board and care home. Implementation of a proposed action following the hearing on appeal may be postponed if in the opinion of the commissioner the delayed action is necessary to protect the welfare or interests of program recipients.

f. The decision as to the sanction to be imposed against a provider, pursuant to subsection D.3.a.(2) of this rule, shall be at the discretion of the commissioner. The following factors shall be considered in determining the sanctions to be imposed:

(1) Nature and extent of offenses or violations;

(2) History of prior violations;

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(3) Provider's willingness to obey program rules; and

(4) Actions taken or recommended by other state regulatory agencies.

g. Suspension or termination from participation shall preclude a provider from submitting any claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association for any health care provided under the programs, except for health care provided prior to the suspension or termination.

h. No clinic, group, corporation, or other association which is a provider of services shall submit any claim for payment for any health care provided by an individual provider within such organization who has been suspended or terminated from participation in the programs, except for health care provided prior to the suspension or termination. The state agency shall seek monetary recovery of such claims. Knowing submission of such claims shall be a ground for administrative sanction.

i. When a provider has been sanctioned in accordance with subsection D.3.c. of this rule, the state agency shall notify the appropriate professional society, board of registration or licensure, and federal or state agencies of the findings made, sanctions imposed, appeals made and the results of any subsequent appeal.

4. Nothing in this rule shall prevent the commissioner from simultaneously seeking monetary recovery and imposing sanction against a provider.

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

6. The commissioner is authorized to suspend or withhold payments to a provider prior to a hearing, if:

a. There is a substantial likelihood of prevailing in an action pursuant to D.3. of this rule.

b. There is a substantial likelihood that the provider's pattern of practice which prompted a SUR investigation, will continue in the future.

c. There is reasonable cause to doubt a provider's financial ability to refund any amounts determined to be due the program.

7. To the extent that federal law or regulation mandates sanctions against providers or recipients which conflict with provisions of this rule, such federal law or regulation shall prevail.

E. Recipient Surveillance and Utilization Review.

1. Identification of suspected fraud and abuse.

a. SUR shall be responsible for the detection and investigation of suspected fraud, theft or abuse by recipients of the programs.

b. For the purpose of this rule, SUR shall be authorized to utilize at least the sources of information identified in D.1.b. of this rule.

c. In assessing the question of medical necessity, SUR shall utilize health care professionals either employed by or serving as consultants to the state agency.

2. Investigation of suspected fraud and abuse.

a. SUR shall be responsible for the investigation of suspected fraud and abuse identified pursuant to E.1. of this rule. A SUR investigation shall be conducted for the purpose of determining:

(1) Whether suspected fraud, theft, or abuse exists and can be documented.

(2) Whether sufficient evidence can be developed to support restricting recipient participation in the programs in accordance with E.3. of this rule.

(3) Whether sufficient evidence exists to support the imposition of other sanctions in accordance with E.3. of this rule.

3. Sanctions.

a. Grounds for sanctions. SUR may impose administrative sanctions against program recipients for any of the following:

(1) Altering or duplicating the medical identification card in any manner.

(2) Permitting the use of his or her medical identification card by any unauthorized individual for the purpose of obtaining health care through the programs.

(3) Using a medical identification card that belongs to another person.

(4) Using the medical identification card to assist any unauthorized individual in obtaining health care for which the programs are billed.

(5) Duplicating or altering prescriptions.

(6) Knowingly misrepresenting material facts as to physical symptoms for the purpose of obtaining equipment, supplies, or drugs.

(7) Knowingly furnishing incorrect eligibility status or information to a provider.

(8) Knowingly furnishing false information to a provider in connection with health care previously rendered which the recipient has obtained and for which the programs have been billed.

(9) Knowingly obtaining health care in excess of established program limitations, or knowingly obtaining health care which is clearly not medically necessary.

(10) Knowingly obtaining duplicate services from a multiple number of providers for the same health care condition, excluding confirmation of diagnosis.

(11) Otherwise obtaining health care by false pretenses.

b. Sanctions against program recipients. SUR may impose any of the following sanctions for the conduct described in E.3.a. of this rule:

(1) Referring the recipient for appropriate health counseling in order to correct inappropriate or dangerous utilization of health care.

(2) Restricting the recipients participation in a program to receiving health care from a provider(s) whom the recipient has had the opportunity to select. The restriction shall be for a specified period of time and all changes in the designation of a provider(s) during the restriction period shall be approved by the state agency. Reimbursement for non-emergency health care shall be limited to the designated provider(s).

(3) Recovery from recipients, to the extent permitted by law all amounts incorrectly paid by the programs.

(4) Terminating participation for that period during which a potential recipient refuses to sign a consent for release of records.

(5) Referring the recipient to the Attorney General for possible criminal or civil legal action.

c. Notice to recipients.

(1) The state agency shall cause the recipients to be notified in writing of any sanction it intends to impose.

(2) The notice shall state:

(a) The factual basis for alleging discrepancies or violations;

(b) The dollar value to such discrepancies or violations;

(c) How such dollar amount was computed;

(d) What actions the state agency intends to take;

(e) The recipient's right to dispute the state agency's factual allegations; and

(f) The recipient's right to appeal the state agency's proposed action pursuant to F. of this rule.

d. Emergency health care provided a restricted recipient by any provider shall be eligible for reimbursement by the programs if the claim for reimbursement is accompanied by a full explanation of the emergency circumstances.

e. The programs shall pay for specialized health care provided a restricted recipient if a copy of the written referral by the recipient's chosen provider is sent to the SUR section.

f. The fact that a recipient is restricted shall be clearly indicated on the medical card.

F. Appeal.

1. A provider may appeal the state agency's proposed administrative sanction, proposed suspension or withholding of

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payment, or demand for monetary recovery against a provider pursuant to the provisions of Minn. Stat. § 15.0418 pertaining to contested cases. An appeal shall be considered timely if written notice of appeal is received by the commissioner within 20 days of the date notice is received pursuant to D.3.e. of this rule.

2. A recipient may appeal any sanction proposed by the state agency pursuant to the provisions of Minn. Stat. § 256.045.

3. Nothing in this rule shall prevent a provider or recipient, upon receipt of a notice of intended sanction, from meeting with the commissioner to informally discuss the matter in dispute, so long as a Chapter 15 contested case has not been commenced.

4. Generally, the state agency shall have the burden of proving the facts in dispute by a preponderance of the evidence. However, when the state agency only seeks to make a monetary recovery, the burden of proof shall shift to the provider or recipient after the state agency has established a prima facie case.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources

Adopted Amendments to the Boat and Water Safety Rules

The rules proposed and published at *State Register*, Volume 5, Number 8, pp. 271-277, August 25, 1980 (5 S.R. 271) are now adopted with the following amendments:

Amendments as Adopted

NR 200 Licensing of watercraft.

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than ¾ inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and numerals within each group must be spaced not less than ½ inch nor more than ¾ inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is

impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. The pennant required under Minn. Stat. § 361.215 shall be triangular in shape and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

NR 201 Rental of watercraft.

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence of alcohol or a controlled substance.

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.

(4) A non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels. Motor-powered watercraft should always keep clear and pass astern of ~~such~~ non-motorized watercraft.

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in Minn. Stat. § 361.085).

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

(c) Personal flotation (lifesaving) devices.

(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices.

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

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(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers.

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) Ventilation equipment.

(g) Lighting equipment.

(7) All watercraft over 65 feet in length must display the lights required by NR 202 (g)(4).

(8) All non-motorized watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. Such light or lantern shall be displayed in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements.

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) Safe maximum horsepower;

(bb) Maximum number of persons at 150 pounds per person;

(cc) Properly located maximum weight in pounds of persons, motor and gear.

(2) Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufactured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72."

(3) Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72."

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons, motor and gear) in pounds

Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 CFR Part 183.

(c) The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers.

(b) Channel marker buoys.

(1) Every channel marker buoy shall have the external form of a cylinder having a circular transverse cross-section not less than 9 inches in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have a circular transverse cross section measuring not less than 9 inches in diameter and shall extend at least 36 inches above the surface of the water. Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy may have a diameter of over 24 inches if circular or a width of more than 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed in or upon the water of the state except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least one inch wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(e) Regulatory and information signs and buoys.

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted, limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

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Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicated winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside height and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the ice on public waters of the state within 150 feet of a diver's warning flag described in Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background.

NR 205 Marking of legally designated swimming areas.

(b) Other areas.

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. The borders of the diamond and cross outline shall not be less than 2 inches in width. The color of these borders shall be orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 Water skiers.

Length of ski tow ropes. No person being towed on water skis, aquaplane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state.

(a) Generally. No person shall leave any temporary structure not extending from shore, or any buoy or sign in the waters of this state between the hours of sunset and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations.

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the Department of Natural Resources. All claims will be subject to audit by the state.

NR 211 Penalties. Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days or both~~. [Note: This section was not in the proposed rules, but appears here because of an oversight of a 1977 statute changing the penalty for a misdemeanor, and a recommendation by the hearing examiner. It does not constitute a substantial change in these rules.]

Department of Public Welfare
Social Services Bureau

Adopted Rule Governing Subsidized Adoption

The proposed rule 12 MCAR § 2.200 published at *State Register*, Volume 5, Number 10, p. 384-390, September 8, 1980, (5 S.R. 384) is adopted with the following amendments:

Amendments as Adopted

12 MCAR § 2.200 A.2.j. Placing agency: The Minnesota licensed child placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial responsibility for a ward of the Commissioner of Public Welfare. The placing agency retains adoptive planning responsibility for the child even though another agency is supervising.

12 MCAR § 2.200 C.4.e.(1)(a)(ii) Notify the commissioner in writing within thirty (30) days in the event of change in status and its effect on the expenses covered by the subsidy.

12 MCAR § 2.200 C.4.e.(1)(a)(iii) Notify the commissioner in writing within thirty (30) days of any change which may affect the duration or amount of the subsidy needed.

12 MCAR § 2.200 C.4.e.(1)(a)(iv) Notify the commissioner in writing within thirty (30) days of a change in address to ensure proper mailing of payments.

12 MCAR § 2.200 C.4.e.(1)(a)(v) Participate in and use health insurance and financial programs available for the child.

12 MCAR § 2.200 C.4.e.(1)(a)(vi) Notify the commissioner in writing at least thirty (30) days before a planned medical or special expense is incurred to ensure prompt payment after expense statements are submitted to the commissioner.

12 MCAR § 2.200 C.4.e.(1)(a)(vii) Notify the commissioner in writing soon after an emergency of the anticipated cost so that the commissioner may begin to budget for that expense.

12 MCAR § 2.200 C.4.e.(1)(b)(ii) Assist the adoptive parent(s), subsequent guardian or conservator in the review or modification of the agreement.

12 MCAR § 2.200 C.4.e.(1)(c)(iv) Payments may be terminated at the written request of the adoptive parents, subsequent guardian or conservator.

12 MCAR § 2.200 C.4.e.(6) The adoptive parents, subsequent guardian or conservator may request modification or termination of agreement at any time by a written contact with the placing agency or the commissioner.

12 MCAR § 2.200 C.4.e.(7) The adoptive parents, subsequent guardian or conservator have the right to appeal to the commissioner pursuant to Minn. Stat. § 256.045, when the commissioner denies, discontinues, or modifies the agreement. The appeal shall be initiated by a written request to the commissioner within thirty (30) days after receiving written notice of the action or decision from the Commissioner or within ninety (90) days if the parent(s) show good cause why the request was not submitted within the thirty (30) day time limit.

12 MCAR § 2.200 C.4.g.(4) The placing agency shall submit purchase of service agreements to the commissioner for approval and for review of anticipated expenses.

Department of Public Welfare
Social Services Bureau

Adopted Rule Governing the Administration of Public Social Services

The rule proposed and published at *State Register*, Volume 4, Number 45, pp. 1756-1766, May 12, 1980 (4 S.R. 1756) is adopted with the following amendments:

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Amendments as Adopted:

12 MCAR § 2.160 A.6.p. Mandatory services means services required by agency rule, state law or federal regulations to be made available by the county board of commissioners or human services board.

12 MCAR § 2.160 C.2.h. Protective services for children—including ~~MR~~ mental retardation guardianship and conservatorship services.

12 MCAR § 2.160 E.3. Before an applicant's signature is requested on any forms, each applicant shall be given a complete and comprehensive written statement of his rights and responsibilities on the form prescribed by the state agency. For those individuals who cannot make use of or understand the written statement for any reason, the agency representative shall read out loud or interpret (if foreign language interpreting capability is available) and explain the written statement to the individual or to a responsible person acting on behalf of the individual. The agency representative also shall respond to any questions the applicant or his representative may have. For deaf and hard of hearing individuals who rely on visual language reception as their primary mode of communication, the local agency shall have access to interpreting services (sign language) so that the applicant may receive the same quality of direct services as provided "hearing" clients.

12 MCAR § 2.160 E.7.b. The local social services agency shall give the social services recipient timely, advance notice of any proposed agency action which may adversely affect the recipient. This notice shall be in writing and shall inform the recipient of the right to appeal the action, the right to be represented by an attorney or other interested party at the hearing, and the conditions under which social services may be continued. Furthermore, the letter shall cite the specific rule upon which the reduction or termination of services is based. The local social services agency shall mail the notice to the recipient at least ten days before the action becomes effective. However, when the local social services agency learns that social services should be discontinued, reduced or terminated because of probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of agency action shall be considered timely if mailed at least five days before the action becomes effective.

12 MCAR § 2.160 H.7.c.(8) A minor child regardless of living arrangement who receives family planning services as specified in H. ~~7.~~ 6. of this rule.

12 MCAR § 2.160 H.10.c.(5)(6) Each local social services agency within the area served by a community mental health board authorized by ~~M.S.~~ Minn. Stat. §§ 245.61-245.69 may contract directly with the board; however, if a local social services agency outside of the geographic area served by the board wishes to purchase services, the host county policy applies.

Department of Public Welfare
Department of Health
Department of Public Safety
Executive Divisions

Adopted Rules of the Minnesota Merit System Governing the Compensation Plan; Salary Adjustments and Increases; and Leaves of Absence

The rules proposed and published at *State Register*, Volume 5, Number 13, pp. 484-538, September 29, 1980 (5 S.R. 484) are adopted as proposed.

Department of Revenue
Petroleum Tax Division

Adopted Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

The rules proposed and published at *State Register*, Volume 5, Number 12, pp. 460-467, September 22, 1980 (5 S.R. 460) are now adopted with the following amendments:

Amendments as Adopted

13 MCAR § 1.4007 **Other taxable products.** Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline tax paid thereon.

13 MCAR § 1.4012 ~~Gas Tax 12~~ Refunds and credits.

B.7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1 ~~(m)~~ shall be treated as if they were corporations.

13 MCAR § 1.4013 Road tax.

D. Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each calender quarter. The motor carrier's report shall be for a complete three-month period and is due to be filed by the last day of April, July, October and January. The report shall be on a form prescribed and furnished by the Commissioner of Revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

SUPREME COURT

Decisions Filed Friday, December 5, 1980

Compiled by John McCarthy, Clerk

51257/Sp. Benedictine Sisters Benevolent Association, d.b.a. St. Mary's Hospital, Duluth, Minnesota, petitioner, vs. George R. Pettersen, M.D., State of Minnesota, Commissioner of Health, Minnesota Department of Health, Appellant. Hennepin County.

The requirement of Minn. Stat. § 145.838, subd. 1 (Supp. 1979), prescribing the time in which the Commissioner of Health shall issue a decision on an application for a certificate of need is directory only, and his decision is valid whether or not issued within that period.

Reversed. Otis, J.

51345/Sp. State of Minnesota vs. Ronald Lee Palm, Appellant. Cottonwood County.

Evidence on the issue of identification was not, as defendant contends, legally insufficient.

Trial court did not err in denying motion to suppress, which was based on claim that police should have given defendant a *Miranda* warning before they questioned him at his house.

Affirmed. Otis, J. Took no part, Sheran, C. J.

50943/Sp. The Mediterranean, Inc., vs. The City of Bloomington, et al, Appellants. Hennepin County.

Claims for refund of liquor license fees are governed by the city code's specific liquor license refund provision rather than the provision governing refunds for license fees generally. By failing to qualify under the specific refund provision, respondent is not entitled to recover previously-paid liquor license fees.

Reversed. Yetka, J.

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

OFFICIAL NOTICES

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

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

Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is extending the deadline from November 1, 1980 to January 15, 1981 for the submission of statements and comments from sources outside the agency regarding the amending of rules governing the contents of the annual report and forecast submitted by electric utilities.

The original Notice to Solicit Outside Opinion was published in the September 22, 1980 issue of the *State Register* at 5 S.R. 471.

December 8, 1980

Dan Quillin
Energy Specialist Intermediate

Department of Commerce
Insurance Division

Petition by the Workers' Compensation Insurers Rating Association of Minnesota for Changes in the Basic Manual for Workers' Compensation and Employers' Liability Insurance

Notice of and Order for Hearing

On October 22, 1980, the Workers' Compensation Insurers Rating Association of Minnesota (hereinafter "WCIRA") filed a Petition to amend the Basic Manual for Workers' Compensation and Employers' Liability Insurance (hereinafter "Basic Manual"). The Basic Manual contains rules governing the issuing, underwriting, classification and auditing of workers' compensation insurance risks and policies within the state of Minnesota. The proposed amendments to the Basic Manual, as alleged in the petition of the WCIRA, would consist primarily of a rewriting of the existing form of the Basic Manual, a reorganization of the existing Basic Manual, a restatement of certain rules of practice, an implementation of certain changes in rules, an elimination of all references to gender, and an inclusion of references to endorsements. The Petition for Hearing sets forth sufficient facts and information indicating the need for amendment to the Basic Manual.

It is hereby ordered that pursuant to Minn. Stat. §§ 79.076, subd. 2(2), 79.071 and 79.072, a hearing shall be held to consider the facts and issues raised by the Petition for Hearing of WCIRA. The hearing shall be conducted before Hearing Examiner Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-6910, a Hearing Examiner duly appointed by the Chief Hearing Examiner of the State of Minnesota.

The hearing in this matter will be held for the purpose of providing the Petitioner WCIRA with an opportunity to present evidence in support of the amendments to the Basic Manual requested in its Petition. The hearing will be conducted as a contested case hearing according to the procedures set forth in Minn. Stat. §§ 15.0411-15.052, 79.076, subd. 2(2), 79.071, 79.072 and pursuant to the Rules of Contested Case Procedures adopted by the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299.

Throughout the proceedings in this matter, interested parties may be represented by legal counsel or by a person or representative of their choice, if not otherwise prohibited as the unauthorized practice of law. Questions concerning the hearing should be directed to the hearing examiner. Questions concerning this order, concerning discovery or concerning an informal disposition of this matter may be directed to the hearing examiner or to Alberto Quintella, 1100 Bremer Tower, 7th and Minnesota Street, St. Paul, Minnesota 55101, telephone (612) 296-9412.

Notice is hereby given that a prehearing conference will be held at 1:30 p.m. on the 19th day of January, 1981, at 500 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota, before the Hearing Examiner. This prehearing conference will be held for the purpose of establishing a hearing date for this matter, and to consider any pretrial motions properly raised before the

Hearing Examiner regarding discovery, witnesses, or intervention of parties pursuant to the Rules of the Office of Administrative Hearings (9 MCAR § 2.213) which rules govern prehearing procedures.

Any person or organization who intends to appear at the hearing must file a Notice of Appearance with the hearing examiner within 20 days of the publication or service of this Notice of and Order for Hearing. If no person or organization contests the proposals or the petition, they may be deemed true. In the event the proposals are taken as true or the issues are deemed proven, it is possible that the proposed amendments to the Basic Manual requested by the WCIRA will be granted.

Copies of the proposed amendments to the Basic Manual may be obtained from the Workers' Compensation Insurers Rating Association of Minnesota, 510 Marquette Avenue, Minneapolis, Minnesota 55402, telephone (612) 338-4500. In addition, copies may be inspected during regular business hours at the Minnesota Insurance Division, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2488.

November 26, 1980

Michael D. Markman
Commissioner of Insurance

Department of Economic Security Unemployment Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules for the Unemployment Insurance Program

Notice is hereby given that the Department of Economic Security is drafting amendments to existing rules and new rules pertaining to the administration of the Unemployment Insurance Program. The rules are authorized by Minn. Stat. § 268.12, subd. 3 and other provisions in §§ 268.03 to 268.24.

It is the intent of these rules to provide comprehensive procedures and policies governing the administration of the Unemployment Insurance Program including but not limited to employer liability, employer accounts, employer contributions, benefit payments, disqualification for benefits, eligibility for benefits, benefits under reciprocal benefit agreements, extended benefits, appellate procedures, overpayment procedures and other provisions.

The department invites all interested persons or groups to provide information, comments, advice or opinions to:

James Connolly
Unemployment Insurance Division
390 North Robert Street
St. Paul, MN 55101
(612) 296-3568

All statements of information or comment must be received by January 19, 1981. Any written material received by the Department will become part of the public hearing record.

State Board of Investment

Notice of Investment Advisory Council Meeting

The Investment Advisory Council will meet Tuesday, December 16, at 7:30 a.m. at the St. Paul Companies, 385 Washington Avenue, Saint Paul.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. **Application deadline is January 6, 1981.**

COUNCIL FOR THE HANDICAPPED has one vacancy open immediately for a public member. The council advises the governor, legislature, service-providing agencies and the public on the needs and potentials of disabled people. Members are appointed by the Governor, and receive $35 per diem. For specific information, contact Council for the Handicapped, Suite 208 Metro Square Bldg., St. Paul 55101; (612) 296-6785.

CRIME CONTROL PLANNING BOARD has one vacancy open immediately. The board provides comprehensive planning for improvement of crime control and administers the Omnibus Crime Control and Safe Streets Act and the Juvenile Justice and Delinquency Prevention Act. Members are appointed by the Governor and confirmed by the Senate, and receive $35 per diem plus expenses. For specific information, contact Crime Control Planning Board, 444 Lafayette Rd., St. Paul 55101; (612) 296-3133.

MERIT SYSTEM COUNCIL has one vacancy open immediately. The council hears personnel appeals, sets policy for administration of examinations, and reviews classification and compensation plans. Members are appointed by the Governor, and receive $50 per meeting. No member may have held political office, been a member of a political organization, an employee of a state agency, or a member of a county welfare board for 1 year preceding appointment. For specific information, contact Merit System Council, 4th Floor, Centennial Bldg., St. Paul 55155; (612) 296-3996.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Development Development Resources Division

Notice of Request for Proposals for a Feasibility Study of Establishing A Direct Reduction Demonstration Plant

Proposals are being accepted for a feasibility study to establish a semi-commercial, direct reduction demonstration plant in Minnesota.

The study will examine the technical feasibility and institutional constraints of the development of such a plant. A significant portion of the study will be devoted to a financial and economic analysis of the proposed development. The findings will be reported to the Minnesota Legislature on or before March 15, 1981.

Proposals must be submitted no later than 4:00 p.m., January 5, 1981. Copies of the Request for Proposal is available by calling Victoria Kostohyrz (612) 297-2242 or writing Department of Economic Development, 480 Cedar Street, St. Paul, Minnesota 55101.

Housing Finance Agency

Notice of Availability of Contract for Auditing Services

The Minnesota Housing Finance Agency intends to engage the services of a certified public accounting firm to audit its Section 8 Federal Housing Assistance Payments Program for the two-year period ending December 31, 1980. Proposals must be received in writing by the agency no later than 4:30 p.m., Friday, January 16, 1981. For detailed information, please contact:

Mr. Alan L. Hans, Director of Finance
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
Saint Paul, Minnesota 55101
(612) 296-9813

Metropolitan Transit Commission in Cooperation with the Department of Transportation, Office of State Aid

Notice of Invitation to Engineering/Architecture Firms for Submittal of Qualification and Requests for Consideration in An Anticipated Contract for Preliminary Engineering, Project Development and Design Services for A Transportation Center (Phase I)

The Metropolitan Transit Commission (MTC) in cooperation with the office of State Aid, Minnesota Department of Transportation will require services of a qualified consultant to perform feasibility and preliminary engineering services on a Transportation Center in the southern area of Hennepin County.

The purpose of the Transportation Center is to provide a focal point for present and future transit service and a coordinated transfer point for transit patrons in the South Hennepin area.

The work will consist of conducting project development studies in accordance with Metropolitan Transit Commission and Federal Highway Administration policies and procedures. Services may include data collection and analysis, location study reports, design study reports, and any auxiliary reports as may be necessary. The work period for this initial phase is expected to be not more than six months.

Following review of each firm's qualifications, the MTC will establish a list of firms from whom technical proposals will be separately solicited. It is anticipated that a contract for Phase I will be awarded about March 1, 1981, and that further phases through construction will be advertised at a later date.

Candidate firms must have expertise in architecture, engineering, transportation planning and design, including cost estimating. Interested firms should also have the capability to manage all facets of a construction project.

The cost for these services is limited to $28,500.

Firms desiring consideration shall express their interest and submit their current Federal Forms 254 and 255 to the Metropolitan Transit Commission by January 12, 1981.

This is not a request for proposals. Please direct questions and expressions of interest together with your firm's qualifications and experience to:

David R. Jessup, P.E.
Manager of Civil Engineering
Metropolitan Transit Commission
801 American Center Building
St. Paul, MN 55101
Phone: (612) 221-0939

Office of the State Public Defender

Notice of Availability of Contract for Legal Services

The Office of the State Public Defender requires the services of experienced attorneys to perform legal services to indigents.

The legal services will include the following:

1. Prepare post-conviction proceedings.
2. Prepare and attend parole revocation hearings.
3. Prepare appellant briefs and do legal research.
4. Prepare and lecture at training schools.

The estimated range for these services is $750-$1,050 per month. Attorneys in the State of Minnesota are to be given first consideration. Experience required.

Attorneys desiring consideration should submit a resume of their work immediately. The decision will be made in the month of December 1980. Send your response to:

C. Paul Jones
State Public Defender
95 Law Building, University of Minnesota
Minneapolis, Minnesota 55455
(612) 373-5725

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

506 Rice Street
St. Paul, Minnesota 55103
(612) 296-8239

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance Policies Pursuant to Minn. Stat. §§61A.13-61A.21

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

STATEMENT OF NEED AND AUTHORITY

Variable life insurance is authorized in Minnesota pursuant to Minn. Stat. §§61A.13 through 61A.21, enacted by the Laws of 1969 c. 752, authorizing contracts on a variable basis, as subsequently amended by the Laws of 1973, c. 480. The above-captioned rules are proposed by the Commissioner of Insurance (hereinafter "Commissioner") for adoption as permanent rules pursuant to the authority vested in the Commissioner by Minn. Stat. §61A.20 as appropriate to carry out the purposes and provisions of Minn. Stat. §§61A.13 through 61A.21.

Variable life insurance is life insurance that varies in terms of both the death benefit and cash values. Premiums remain fixed and level. Variable life insurance is designed to combine traditional life insurance protection with the potential growth of equity investments. It is not a substitute for traditional fixed life insurance but is intended to be an adjunct thereto.

Under variable life insurance policies, assets supporting policy benefits are held in a separate account invested primarily in common stocks and other equity type securities, and the death benefit increases or decreases depending on investment results of the separate account. In no event, however, will the death benefit fall below a guaranteed

minimum equal to the face amount of insurance specified in the policy. This is in contrast to traditional fixed life insurance where the death benefit is determined and fixed at the time the policy is purchased. Cash values under variable life insurance policies will increase or decrease depending on investment results of the separate account but no minimum cash value need be guaranteed, as in fixed life insurance.

As will be more fully shown herein, these proposed rules are intended to more precisely delineate the terms, conditions, and requirements of insurance companies desiring to sell variable life insurance policies in the State of Minnesota. The proposed rules are also intended to implement and make effective the provisions of Minn. Stat. §§61A.13 through 61A.21.

In order to establish standards to guide the Commissioner, Minn. Stat. §61A.13 through §61A.21 authorizes the Commissioner to permit life insurance companies to sell variable life insurance policies when he is satisfied that the condition and method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders.

The Insurance Division believes that rules are needed to establish specifications for (a) the qualification of insurers to issue variable life insurance in Minnesota, (b) the variable life insurance policy requirements and the filing of such policies with the Commissioner, (c) the establishment of reserve liabilities for variable life insurance (d) the establishment and administration of separate accounts for variable life insurance (e) the information to be furnished to applicants for variable life insurance, (f) the form and content of applications for variable life insurance, (g) the reports that must be given periodically to variable life

insurance policyholders, and, (h) the qualifications of agents to sell variable life insurance. The proposed rules cover these specifications in detail.

As more fully indicated below, the proposed rules reasonably address the above-stated needs.

HISTORY

On July 30, 1979, the Commissioner published Notice of Intent to Solicit Outside Information at 4 S.R. 89 for his consideration in the promulgation of regulations under Minn. Stat. §61A.20. In response to the solicitation, The Equitable Life Assurance Society of the United States (hereinafter referred to as "Equitable Life") submitted a draft regulation governing variable life insurance. This proposal made by Equitable Life was based on the current Model Variable Life Insurance Regulation, as adopted by the National Association of Insurance Commissioners. After review and revision of this proposal the Commissioner proposed rules governing variable life insurance on November 24, 1980, and published the proposed rules in the State Register on December 15, 1980.

FACTS ESTABLISHING REASONABLENESS

As more specifically set forth herein, the proposed rules reasonably address the requirements of Minn. Stat. §61A.13 through §61A.21, and constitute a reasonable attempt to furtner delineate and give effect to the terms, conditions, and requirements for the marketing and sale of variable life insurance in this state.

4 MCAR §1.9401

Proposed rule 4 MCAR §1.9401 sets forth the authority and scope of the proposed rules. The provisions of this

section are intended to provide affected persons with a concise statement of the general scope and applicability of the proposed rules.

4 MCAR §1.9402

4 MCAR §1.9402 defines certain terms used in the proposed rules. Promulgation of these definitions is deemed by the Commissioner to be reasonable and necessary to enable persons affected by Minn. Stat. §61A.13 through §61A.21 and these proposed rules to comprehend the full meaning and effect thereof.

Subdivisions A., B., C., D., E., F., G., and H. of this proposed rule define certain terms necessary to clarify the meaning of the requirements of these rules. Where the definitions are material to a full understanding of the proposed rules, they will be more fully discussed in the context of the substantive provisions of the proposed rule in which they occur.

The definition in Subdivision I. of this proposed rule is meant to clarify the meaning of Minn. Stat. §61A.13, Subd. 1, which defines the meaning of contracts on a variable basis. This definition is offered in the interest of conciseness and clarity in the text of the proposed rules.

The definitions in Subdivisions J., K., L., and M. of this proposed rule set forth definitions which are intended to serve as shorthand references to the phrases which they define. These definitions are offered in the interest of conciseness and clarity in the text of the proposed rules.

4 MCAR §1.9403

Proposed rule 4 MCAR §1.9403 clarifies and delineates the requirements for all insurers seeking the authority to issue variable life insurance in the State of Minnesota.

Subdivision A. clarifies the requirement of Minn. Stat. §61A.19 in that no insurer shall issue variable life insurance policies in this state until authorized by the Commissioner. It is reasonable to require that such authorization will not be granted unless the insurer complies with the statutory requirements governing variable life insurance (Minn. Stat. §61A.13 through §61A.21), and these proposed rules.

Subdivision B. of this proposed rule lists certain information that must be filed with the Commissioner prior to his granting of approval. Minn. Stat. §61A.19 states that the Commissioner shall not grant an insurer the authority to issue variable life policies until he is satisfied that the condition and method of operation of that insurer in connection with the issuance of such policies will not render its operation hazardous to the public or its policyholders in this state. In this regard, the minimal information required to be filed describing their method of operation, the investment policy they will use with the separate accounts and copies of the variable life policies they intend to issue are needed in order for the Commissioner to make his determination as required by statute. Further, the Commissioner needs to examine this information in order to determine if the public interest is safeguarded and that the insurer will comply with the law and these proposed rules.

4 MCAR §1.9404

Proposed rule 4 MCAR §1.9404 specifies the requirements that each variable life insurance policy must meet before it can be filed with the Commissioner. The requirements of this rule are similar to the requirements applicable to fixed life insurance policies but have been modified when necessary to reflect the variable nature of the benefits provided by a variable life insurance policy. This rule is needed in order to assure the Commissioner that the provisions of variable life insurance policies issued in Minnesota are in conformance with the Minnesota law and the interests of Minnesota policyholders under such policies are protected.

Subdivision A. of this proposed rule sets out the basic requirement that the Commissioner cannot accept any filing of a variable life insurance policy unless it meets the requirements of these proposed rules and Minn. Stat. §61A. It is reasonable to require variable life policies to conform to these rules since it is the intent of these rules to provide basic standards for all variable life insurance policies issued in this state to protect the interest of the owners of such policies. Since variable life is merely another form of life insurance it is reasonable to require that all such policies meet the requirements of Chapter 61A which deals with life insurance generally, insofar as such requirements are appropriate to variable life insurance. Further, this requirement is mandated by Minn. Stat. §61A.21 which states that all appropriate provisions of Chapter 61A shall apply to contracts issued on a variable basis, except those which are inconsistent with the provisions contained in Minn. Stat. §61A.13 to 61A.20.

Subdivision B of proposed rule 4 MCAR §1.9404 delineates the basic benefit and design requirements for all variable life insurance policies issued in this state.

Paragraph 1 of this Subdivision provides that coverage shall be provided for the lifetime of the insured. This requirement de-emphasizes the investment aspects of variable life insurance. The requirement that the mortality expense and risks are to be borne by the insurer is basic to all life insurance contracts and is included to clarify the fact that mortality and expense risks will not be paid from the investment return of the separate account. This is reasonable, since it is a concept that is common to all life insurance.

Paragraph 2 of this Subdivision provides another minimum design requirement that is basic to most life insurance policies - that premiums be level for the duration of the premium payment period. This provision is needed and necessary to prohibit variable life policy designs where the premiums would vary with the investments results of the separate account. This provision also requires premiums for variable death benefits to be level, but explicitly permits additional premiums that are normally allowed for incidental insurance benefits.

Paragraph 3 of this Subdivision requires that the variable life policy provide a minimum death benefit. This provision is necessary in order to assure policyholders that regardless of the investment return of the separate account, the death benefit will always be at least equal to the amount of coverage purchased at issue.

Paragraph 4 of this Subdivision provides that the variable death benefits of a variable life policy reflect the investment return of the separate account and provides how such return is to be used. This provision is needed in order to permit variations in the death benefits that reflect the investment experience of the separate account.

Paragraph 5 of this Subdivision requires that the policy be credited with the full amount of the net investment return. This provision is necessary in order to assure that the policyholder is credited in full with the net investment return realized on the premiums he pays.

Paragraph 6 of this Subdivision provides that the variable death benefits be determined at least annually. Paragraph 7 of this Subdivision requires that the cash value be determined at least monthly. These requirements are reasonable and necessary so that a policyholder's benefits will be valued at reasonably frequent intervals in order to give effect to the purpose of the variable life insurance policy. Paragraph 7 also sets forth guidelines as to how the cash value of a variable life policy should be computed. These standards, which must follow general actuarial procedures, are meant to give notice to the policyholder of how the cash value will be computed and to assure that the policyholder is being credited with the proper cash value.

Paragraph 8 of this Subdivision permits the insurer to use reasonable approximations in computing values required for variable life policies. This provision recognizes that in some instances it will be very difficult to determine exact values so

that it permits the insurer to use approximations when it is reasonable and necessary.

Paragraph 9 of this Subdivision clarifies that in computing the net investment return to be applied to the benefit base for the separate account that the insurer may only deduct those specific charges so identified in proposed rule 4 MCAR §1.9406 G. 1. a., b., d., and e. The reasonableness of permitting the deduction for only these charges will be discussed in more detail in the context of the discussion of proposed rule 4 MCAR §1.9406 G.1.

Subdivision C. of proposed rule 4 MCAR §1.9404 specifies certain provisions that must be incuded in all variable life policies. While Subdivision B. of this proposed rule sets forth minimum standards for all policies, Subdivision C. sets forth mandatory policy provisions. Paragraph 1. of Subdivision C. sets forth the items that must be disclosed on the cover page of the policy. Items a. and b. are needed in order to make sure that the consumer is aware of the type of contract being purchased. Items c. and d. are included in order to highlight the minimum death benefit of the policy and how the insurer is to determine the amount to be paid on the insured's death. Item e. is included so that the consumer will have a chance to examine the policy and cancel without any cost. This provision permits the consumer to make an informed decision as to whether or not to return the policy for a full refund of premiums. Item f. is included so that any other requirements of Chapter 61A. for inclusion on the cover page for the protection of the insured in fixed benefit policies are also included in variable life policies.

Paragraph 2. of Subdivision C. requires that there be a thirty-one day grace period. Minn. Stat. §61A.21 requires that each variable life policy shall contain a provision for grace appropriate to such a policy. This provision is similar to the standard provision that is contained in all life policies and is very similar to the requirement stated in Minn. Stat. §61.A.03(2) for fixed benefit life insurance policies.

Paragraph 3. of this Subdivision sets forth the requirement for a reinstatement provision. Minn. Stat. §61.A.21 requires a reinstatement provision in these policies that is appropriate to variable life insurance. This provision provides that the payment required for reinstatement of a variable life insurance policy may not exceed the larger of back premiums, with interest, or 110% of the increase in cash value resulting from reinstatement. The requirement of payment of back premiums, with interest, is characteristic of conventional fixed life insurance. And in order to prevent situations in which the policyowner might speculate against the insurer, this provision permits the alternative standard based on the cash value.

Paragraph 4. of this Subdivision requires a provision that will fully describe the benefit base and method of calculation used to readjust variable benefits. This requirement is needed in order to assure that the consumer is made aware of these points which are very important to the determination of what benefits will be paid under the policy.

Paragraph 5. of this Subdivision provides requirements relating to the separate account. These requirements in Subparagraphs a., b., and c. are needed in order to protect the

interest of the policyholder and by mandating that such provisions appear in the policy, the policyholder will be aware of this protection. Since the cash values must be permitted to vary at least monthly, it is, therefore, necessary that the assets in the separate account be valued at least monthly.

Paragraph 6. of this Subdivision requires that the policy state that the approval process the insurer uses in changing the investment policy of the separate account is on file with the Commissioner. Any change in the investment policy of the separate account will be important to a policyholder. Thus, he should be permitted to know the procedure an insurer must follow to change that investment policy. For that reason the policyholder should be made aware that this process is on file with the Commissioner and can be reviewed by the policyholder at any time.

Paragraph 7. of this Subdivision requires that payments under a variable life policy may be deferred for a period of time under certain conditions. It is essential that a variable life policy have a deferment provision providing that payment of policy benefits that depend on investment experience may be deferred when the New York Stock Exchange is closed or the Securities and Exchange Commission has determined that a state of emergency exists. Under these circumstances there will be no way to sell investments and pay to the policyholder benefits which depend on investment performance, since those investments cannot be readily sold. This Paragraph also allows for the customary six month deferment of those benefits which do not depend on investment performance.

Paragraph 8. of this Subdivision requires that a provision state that settlement options will be paid on a fixed basis only. Settlement options are customarily paid on this basis, and it would be impractical to have them paid on any other basis.

Paragraph 9. of this Subdivision requires that the basis for computing the cash surrender value be stated in the policy. This is required so that the policyholder will be aware of how such computations are made. The method of computations stated in provisions a. and b. of this paragraph is the customary way in which surrender values are required to be determined, with some modifications included that reflect the variable nature of the policy.

Paragraph 10. of this Subdivision requires that all charges for incidental insurance benefits be stated separately in the policy. This is needed so that the policyholder is aware of the total premium he is to pay and the breakdown of that premium so that the consumer will know what he is paying for.

Subdivision D. of proposed rule 4 MCAR §1.9404 delineates the minimum requirements for all variable life insurance policies as relating to non-forfeiture and policy loan provisions. Minn. Stat. §61A.21 requires non-forfeiture and policy loan provisions that are appropriate to variable life insurance. This Subdivision reasonably meets that need.

Paragraph 1. of this Subdivision requires that at least one non-forfeiture benefit shall be on a fixed basis when there has been a default in the payment of premiums. Fixed

non-forfeiture benefits are standard and customary for all life insurance policies and it would be impractical to provide such non-forfeiture benefits only on a variable basis. Provisions a., b. and c. are standard requirements in the industry modified to recognize the nature of variable life insurance policies.

Paragraph 2. of this Subdivision further delineates minimum policy requirements regarding policy loan provisions. Subparagraph a. requires that only 75% of a variable life insurance policy's cash value may be borrowed. This 75% limit is mandated in order to avoid overloan situations, i.e., situations where a sharp drop in investment performance would result in a policy's cash value being lower than the loan amount. Subparagraphs b. through j., inclusive, either meet or exceed the customary standards in this area and the requirements of the Standard Nonforfeiture Law for Life Insurance, Minn. Stat. §61A.24.

Subdivision E. of proposed rule 4 MCAR §1.9404 pertains to optional policy provisions. These provisions need not be included in any variable life policy, but if they are, the provisions must meet the minimum standards set forth in this Subdivision. Paragraph 1. of this Subdivision merely requires that if incidental benefits are offered they must be on a fixed basis. It would be impractical to permit such incidental benefits to be offered on a variable basis.

Paragraph 2. of this Subdivision requires that if the variable life insurance policy is issued on a participating basis, the policy must offer to pay dividends in cash. Further, this Paragraph allows for a number of dividend options which

should be made available to policyholders of participating policies. These dividend options are standard for participating fixed life insurance policies.

Paragraph 3. permits the insurer to offer an automatic premium loan. This provision is customary in fixed life insurance contracts.

4 MCAR §1.9405

Proposed rule 4 MCAR §1.9405 delineates the requirements for determining reserve liabilities for variable life insurance. Minn. Stat. §61A.21 requires that the reserve liability for contracts on a variable basis shall be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and any mortality guarantees. The reserve standards set forth in Subdivisions A., B. and C., and Paragraphs 1., 2. and 3. of Subdivision B. of this proposed rule, are in general accord with the Standard Valuation Law, Minn. Stat. §61A.25, and customary usage in the industry as modified to recognize the variable nature of the contract.

4 MCAR §1.9406

Proposed rule 4 MCAR §1.9406 delineates the requirements for the establishment and administration of the variable life insurance separate account. These requirements and guidelines are needed in order for the Commissioner to properly regulate the establishment and continuing operations of variable life insurance separate accounts.

Subdivision A. of this proposed rule specifies the custodial requirements and standards applicable to persons who have access to the assets of the separate account. This Subdivision requires that each insurer that issues variable life insurance establish and administer one or more separate accounts. The requirement of separate accounts is essential to the proper administration of variable life insurance so as to segregate the general funds of the insurer from those funds accumulated through selling variable life insurance. This segregation is needed so as to accurately reflect the investment return on the assets of the separate account and to insulate such assets from the liabilities arising out of any other business the company may conduct.

Paragraph 1. of this Subdivision requires that those individuals with the insurance company that have access to the assets in the separate account must be bonded. This provision is needed in order to more adequately protect the policyholder's assets that are in the separate account from any impropriety on the part of individuals administering the account. The minimum amount of the bond required by this provision is $3,000,000, which is reasonable considering the amount of cash and securities that will be held in the separate account.

Paragraph 2. of this Subdivision is intended to prevent insurers from arbitrarily creating more than one separate account which may not be to the benefit of the policyholders. Therefore it is reasonable to require insurers that establish more than one separate account to file their justification for such a decision with the Commissioner.

Paragraph 3. of this Subdivision is needed so that the variable benefits and cash values of the policy can be properly determined. Further, 4 MCAR §1.9404 B.7. requires that the cash value be determined at least monthly.

Paragraph 4. of this Subdivision requires that separate accounts established to fund tax-qualified policies shall not be used to fund any other policies in order to avoid jeopardizing the qualified status of the account.

Paragraph 5. of this Subdivision prohibits variable life separate accounts from being used to fund variable annuities or the investment of dividends, except where such accounts are used exclusively in connection with tax-qualified plans. This Paragraph is needed to de-emphasize the investment aspects of variable life insurance.

Subdivision B. of the proposed rule defines the amounts that must be maintained in the separate account. These definitions assume that the insurer will maintain assets in the separate account adequate to support the benefits of each variable life policyholder.

Paragraph 1. of this Subdivision requires that the insurer maintain in the separate account an amount equal to the greater of the valuation reserve or the benefit base for each policy. This requirement is needed so that each policyholder will receive investment earnings on the full amount of the assets underlying his policy.

Paragraph 2. of this Subdivision provides a definition of the benefit base. The benefit base is essentially the

amount of funds attributable to a policyholder in the separate account. This definition is needed so that the investment earnings of the account are appropriately distributed among the variable life policyholders.

Paragraph 3 of this Subdivision permits an insurer to use an alternative definition of the benefit base, if the insurer can demonstrate that the policyholder's benefits are not adversely affected by the use of such definition. This paragraph is needed to provide the insurer with some flexibility where it is not to the policyholder's disadvantage.

Paragraph 4 of this Subdivision permits the benefit base for substandard mortality risks to be the same as the base for standard risks. This paragraph is essentially equivalent to the fixed life practice of providing the same scale of cash values for standard and substandard policies.

Subdivision C. of this proposed rule delineates the investments which can be made with the assets in the separate account. Paragraph 1. of this Subdivision requires that the assets in the separate account be invested in such a manner that they have a reasonably ascertainable market value. This is needed so that they can be valued at least monthly as required by Subdivision A. of 4 MCAR §1.9406. All of the types of investments listed in Subparagraphs a. through h. have reasonably ascertainable market values.

Paragraph 2. of this Subdivision delineates those types of investments which cannot be made with the assets in the separate account. The investments listed in this paragraph are not permitted because of their unstable nature and because

their value is not reasonably ascertainable. The financial integrity of the separate accounts must be protected, and prohibiting these types of investments accomplishes that.

Subdivision D. of this proposed rule limits the amounts of certain investments that a separate account may purchase.

Paragraph 1. of this Subdivision prohibits separate accounts from investing more than 10% of the assets of the account in the securities of any one issuer. Paragraph 2 prohibits an insurer from acquiring more than 10% of the total securities of any issuer. These limitations are reasonable in that they assume the diversification of the account assets, and are in accordance with similar requirements for general account assets.

Paragraph 3. of this Subdivision indicates that the limit in Paragraph 1. does not preclude an insurer from investing in shares of investment companies, provided those companies comply substantially with the applicable portions of the proposed rules. This Paragraph is needed in that it permits a separate account to invest in shares of investment companies when it may be to the account's advantage to do so.

Subdivision E. of this proposed rule delineates the requirements for the valuation of separate account assets.

Paragraph 1. of this Subdivision requires that the investments of the separate account be valued at market value and defines how market value is to be determined. This Paragraph is needed so that a policyholder's benefits can be accurately determined on the date they are calculated.

Paragraph 2. of this Subdivision defines how the market value of an investment that ceases to be traded shall be determined, and is necessary in order to provide a uniform and reasonable method of making such determinations.

Paragraph 3. of this Subdivision requires insurers to notify the Commissioner whenever an investment of the separate account ceases to be traded. This Paragraph is needed so that the Commissioner will be kept informed in situations where the rules in Paragraph 2. are put into use.

Subdivision F. of this proposed rule delineates the procedures a domestic insurer must follow in changing the investment policy of a separate account. The investment policy of an account, and any changes therein, may significantly affect policy values. It is reasonble, therefore, that procedures for any such changes be proscribed by the proposed rule.

The procedure for changes in the investment policy of a foreign insurer are not included in this rule. Proposed rule 4 MCAR §1.9403 B.3, however, requires an insurer proposing to do a variable life business in Minnesota to submit a statement of the procedures for changing the investment policy of the separate account to the Commissioner. Then the Commissioner has the authority to see that such procedures are on a substantially consistent basis with the procedures required for domestic companies.

This Subdivision requires that any such change must be filed with the Commissioner. Paragraphs 1. through 5. of this Subdivision present the procedures that must be followed. The

Commissioner has sixty days to determine if the proposed change is a material change. If the change is deemed material the Commissioner shall hold a public hearing after prior notification of each policyholder and the Insurance Commissioner of each state in which the affected policies are being sold.

Within 60 days after the hearing the Commissioner shall notify the insurer as to whether or not the change is detrimental, and if so the change shall not be permitted.

If the change is not detrimental, and is allowed, any policyholder that objects to it shall be given the opportunity of converting, without evidence of insurability, to a substantially comparable permanent form of fixed life insurance offered by the insurer or an affiliate.

This Subdivision provides a reasonable and necessary method of protecting the interests of the variable life policyholder, while at the same time permitting an insurer to make changes in investment policy that are to the policyholder's advantage.

Subdivision G. of this proposed rule delineates the charges that an insurer may make against a separate account. These definitions are needed to prevent an insurer from making arbitrary deductions from the separate account.

Subparagraphs a. b. and c. of Paragraph 1. indicate that the insurer may deduct from the separate account taxes (or reserves for taxes) attributable to investment gains and income, the actual cost of reasonable brokerage and similar fees, and the actuarially determined costs of insurance and the

release of reserves consistent with the release of separate account liabilities. These deductions are needed to permit an insurer to administer the account in an appropriate manner.

Subparagraph d. of Paragraph 1. permits the insurer to deduct charges for investment management expenses not to exceed a sliding scale that declines with the size of the account. This Subparagraph is needed to reasonably compensate the insurer for investment management expenses.

Subparagraph e. of Paragraph 1. permits an insurer to deduct a charge not exceeding .50% per year for mortality and expense guarantees and is needed to reasonably compensate the insurer for the mortality and expense risks it assumes.

Subparagraph f. of Paragraph 1. permits an insurer to transfer out of the account any amounts in excess of those required to be maintained in the account. This is needed to permit an insurer to take out of the account funds which are part of the insurer's surplus that are not needed to support policy benefits.

Paragraph 2. of this Subdivision requires that any charge against the account made by an affiliate of the insurer or an unaffiliated fund be considered part of the charges imposed by the insurer. This provision is needed to prevent insurers from circumventing the requirements of this Subdivision.

4 MCAR §1.9407

Proposed rule 4 MCAR §1.9407 specifies the information that must be furnished to applicants for variable life

insurance. The proposed rule requires that the insurer obtain from the applicant written acknowledgement of receipt of the specified information. The proposed rule further provides that the requirements thereof will be satisfied if an effective prospectus pursuant to the Securities Act of 1933 is delivered to the applicant or, if the policy is exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof, the information and reports required by the Employee Retirement Income Security Act of 1974 are delivered to the applicant.

Subdivision A. of this proposed rule requires the insurer to provide the applicant with a non-technical summary explanation of the principal features of the policy. Such explanation must include notice of the policyholder's right to cancel the policy before the later of the tenth day after the policyholder receives the policy or the forty-fifth day after the execution of the application and receive a return of all payments made for the policy. It also must include a statement that the policy and any papers attached thereto by the insurer, including the application, constitute the entire contract.

Subdivision B. of this proposed rule requires the insurer to furnish the applicant with a statement of the investment policy of the separate account, including a description of investment objectives and principal types of investments to be made and any restrictions or limitations on the way the separate account is intended to be operated.

Subdivision C. of this proposed rule requires the insurer to disclose the separate account's net investment return over the preceding ten years for which the separate account was in existence.

Subdivision D. of this proposed rule requires that a statement be furnished to the applicant regarding the level of commissions or equivalent payments to be paid to agents as a result of the proposed sale.

Subdivision E. of this proposed rule requires a statement of the annual taxes, brokerage fees and similar costs, and the charges, expressed as an annual percentage, levied against the separate account during previous years.

Subdivision F. of this proposed rule requires a summary of the method to be used in valuing assets held by the separate account.

Subdivision G. of this proposed rule requires a summary of the federal income tax liabilities of the policy applicable to the insured, the policyowner and the beneficiary.

Subdivision H. of this proposed rule requires that any illustrations of benefits furnished to the applicant must be based on hypothetical assumed rates of return and may not include projections of past performance into the future.

Subdivision I. of this proposed rule requires that the insurer provide the applicant with a prominent statement providing in substance that (1) the purpose of the variable life insurance policy is to provide insurance protection for the beneficiary and (2) no claim is made that the variable life policy is in any way similar or comparable to a systematic plan of a mutual fund.

As heretofore pointed out, the above requirements shall be deemed satisfied to the extent that a disclosure of

the information required is contained in a prospectus furnished to the applicant pursuant to the Securities Act of 1933 or the information and reports required by the Employee Retirement Income Security Act of 1974 are furnished to the applicant.

The above requirements are reasonable and needed to provide assurance that the applicant will be making an informed decision on the suitability of the proposed coverage to his needs.

4 MCAR §1.9408

Proposed rule 4 MCAR §1.9408 specifies the content of the application for variable life insurance.

Subdivision A. of this proposed rule requires a prominent statement that the death benefit may be variable or fixed under specified conditions.

Subdivision B. of this proposed rule requires a prominent statement that the cash values may increase or decrease in accordance with the experience of the separate accounts, subject to any specified minimum guarantees.

Subdivision C. of this proposed rule requires questions in the application to elicit information which will enable the insurer to determine the suitability of variable life insurance for the applicant.

These requirements are needed to assure that the applicant is fully aware of the variable nature of the policy and that variable life insurance is suitable to his or her needs.

4 MCAR §1.9409

Proposed rule 4 MCAR §1.9409 requires annual reporting to existing variable life insurance policyholders.

Subdivision A. of this proposed rule requires that within thirty days after each anniversary of the policy, the insurer must furnish the policyholder with a statement of his cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge and any optional payments, computed as of the policy anniversary date. The statement shall state in contrasting color or distinctive type that the cash values and variable death benefits may increase or decrease in accordance with the investment experience of the separate account and shall specify any guarantees as to such death benefit.

Subdivision B. of this proposed rule requires that annually, the insured shall furnish the policyholder with a statement including

1. a summary of the financial statement of the separate account based on the annual statement last filed with the Commissioner.

2. the net investment return of the separate account for the last year.

3. a list of the investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with Commissioner.

4. the expense charges, taxes and brokerage fees payable by the separate account for the previous year.

5. any changes in investment policy since the last report.

6. the names and principal occupations of each principal executive officer and each director of the insurer.

7. information regarding the insurer's major stockholders.

This rule is needed to keep the policyholder fully informed as to the status of his policy and policy values, and financial information regarding the separate account and its management so that he can determine appropriate future action with respect to his rights under the policy.

4 MCAR §1.9410

Proposed rule 4 MCAR §1.9410 provides that the Commissioner, in the case of a foreign insurer, shall consider compliance with the law or regulation of another state as compliance with the proposed regulation, if such law or regulation provides a degree of protection to the policyholders and public of this state that is greater than that provided by the proposed regulation.

This rule is reasonable and is needed in order to permit the Commissioner to authorize a foreign insurer to write variable life insurance in this state on the same basis that it is writing such insurance in other states provided the writing of such insurance in this state is written in a manner that is consistent with the proposed regulation and will not be detrimental to the residents of Minnesota.

4 MCAR §1.9411

Proposed rule 4 MCAR §1.9411 delineates the qualifications that must be met by any person who desires to offer and sell variable life insurance in this state. This rule states that an individual must comply with state and

federal securities law and meet the qualifications to sell life insurance in this state. This rule is needed and reasonable in order to assure the public that individuals that sell variable life insurance are knowledgeable about securities and life insurance which are both essential to the competent solicitation of variable life insurance.

4 MCAR §§1.9412 to 1.9415 are reserved for future use.

Dated: December 11, 1980

Thomas L O'Malley

Assistant Insurance Commissioner
500 Metro Square Building
St. Paul, Minnesota 55101

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Commerce, Insurance Division, Governing the Issuance and Sale of Variable Life Insurance, Pursuant to Minn. Stat. §§ 61A.13-.21.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Audrey Ostergren, being first duly sworn, deposes and says:

That on the 30th day of January, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission upon the Attorney General by depositing in the State of Minnesota Central Mailing System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Audrey Ostergren

Subscribed and sworn to before me this 30th day of January, 1981.

Cynthia L. Johnson
Notary Public

CYNTHIA L. JOHNSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Aug. 30, 1984

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Commerce, Insurance Division, Governing the Issuance and Sale of Variable Life Insurance, Pursuant to Minn. Stat. §§ 61A.13-.21.

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 15.0412, subd. 4(h):

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, January 30, 1981, for review as to form and legality. The Attorney General has 14 days after receipt to approve or disapprove the rules. If you wish to comment on the legality of these rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Dale McDonnell, Insurance Division, 500 Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-8591.

Dated: January 30, 1981.

MICHAEL D. MARKMAN
Commissioner of Insurance

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

ADDRESS REPLY TO:
1100 BREMER TOWER
SEVENTH PL. AND MINNESOTA ST.
ST. PAUL, MN 55101
TELEPHONE: (612) 296-9412

January 30, 1981

Francis C. Cleary, Jr., Esq.
Law Department
John Hancock Mutual Life
Insurance Company
John Hancock Place
P.O. Box 111
Boston, Massachusetts 02117

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Commerce, Insurance Division, Governing the Issuance and Sale of Variable Life Insurance, Pursuant to Minn. Stat. § 61A.13-.21

Dear Mr. Cleary:

Notice is hereby given that the above-captioned rules have been submitted to the Administration Division of the Attorney General's Office for review.

Very truly yours,

JAMES C. SELMER
Special Assistant
Attorney General

aso

cc: Ted Grindal, Esq.

AN EQUAL OPPORTUNITY EMPLOYER

for file

MONARCH LIFE INSURANCE COMPANY
1250 STATE STREET, SPRINGFIELD, MASSACHUSETTS 01133
(413) 785-5811

BENJAMIN F. JONES, CLU, President

STATE OF MINNESOTA

JAN 8 1981

DEPARTMENT OF COMMERCE

January 5, 1981

Mr. John T. Ingrassia
Supervisor of the Life & Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Mr. Ingrassia:

Re: Proposed Regulations Relating to the Issuance and Sale of Variable Life Insurance Pursuant to Minnesota Statute §§61A.13-21

We were happy to review the above-captioned proposals published in the Minnesota State Register on December 15, 1980 implementing the issuance and sale of variable life insurance in Minnesota. We are also pleased to note the Commissioner's Notice of Intent to adopt the rules without a public hearing.

Monarch believes that these regulations are in the best interest of Minnesota residents. For this reason, Monarch completely agrees with the rules as published, and urges their adoption and promulgation as soon as possible.

As we prepare for our nationwide introduction of variable life insurance, Monarch looks forward to making this product available to the residents of Minnesota in the very near future.

Sincerely,

BFJ/mw

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES
1285 Avenue of the Americas, New York, N.Y. 10019

JOSEPH F. SOMELOFSKE
Vice President and Counsel

December 22, 1980

STATE OF MINNESOTA
DEC 26 1980
DEPARTMENT OF COMMERCE

Mr. John T. Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance Pursuant to Minn. Stat. §§ 61A.13-21.

Dear Mr. Ingrassia:

We are happy to note the publication of the above-captioned proposed rules in the Minnesota State Register on December 15, 1980 to implement the issuance and sale of variable life insurance in Minnesota and the Notice by the Commissioner of his intention to adopt the rules without a public hearing.

The proposed rules are in the best interest of Minnesota residents interested in and who purchase variable life insurance. The Equitable is in complete agreement with the rules as published and urges their adoption as soon as possible.

The Equitable looks forward to variable life insurance being made available to the residents of Minnesota in the very near future.

Sincerely,

Joseph F. Somelofske
Vice President and Counsel

JFS:ch

EQUITABLE
VARIABLE LIFE INSURANCE COMPANY
EVLICO

EQUITABLE VARIABLE LIFE INSURANCE COMPANY
1285 Avenue of the Americas
New York, New York 10019

Donald J. Mooney, C.L.U.
President

STATE OF MINNESOTA
DEC 26 1980
DEPARTMENT OF COMMERCE

December 22, 1980

Mr. John T. Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance Pursuant to Minn. Stat. §§ 61A.13-21.

Dear Mr. Ingrassia:

We have reviewed the above-captioned proposed rules that were published in the Minnesota State Register on December 15, 1980 relating to the issuance and sale of variable life insurance in Minnesota. Also, we are pleased to note the Commissioner's Notice of Intent to Adopt the Rules Without a Public Hearing.

Equitable Variable Life Insurance Company (EVLICO) supports the proposed rules as published and urges their adoption and promulgation as soon as possible.

As one of the companies that is currently selling variable life insurance policies to the general public, EVLICO looks forward to making its variable life insurance policies available to the residents of Minnesota in the very near future.

Sincerely,

Donald J. Mooney, CLU

John Hancock Mutual Life Insurance Company

John Hancock Place
Post Office Box 111
Boston, Massachusetts 02117

Law Department

Francis C. Cleary, Jr.
Counsel

(617) 421-6220

for free

STATE OF MINNESOTA
JAN 9 1981
DEPARTMENT OF COMMERCE

January 7, 1981

Mr. John T. Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Minnesota Rules Relating to Issuance and Sale of Variable Life Insurance

Dear Mr. Ingrassia:

John Hancock Variable Life Insurance Company, a wholly owned subsidiary of John Hancock Mutual Life Insurance Company, is one of the few companies currently marketing variable life insurance.

We have carefully reviewed your proposed rules relating to the issuance of variable life insurance in Minnesota in the light of our experience with comparable rules in Massachusetts, New York and a number of other states. It is our opinion that the current draft represents a fine balancing of the interests of the prospective purchasers of such insurance in Minnesota and the interests of the issuers of this extensively regulated life insurance product. We have no changes to suggest and endorse the adoption of the proposed rules.

If convenient, we would appreciate being informed if and when the proposed rules are submitted to the Attorney General for approval.

Very truly yours,

Francis C. Cleary, Jr.

Francis C. Cleary, Jr.
Counsel

FCC:kec

cc John Longmoore

Rule is comm of this. Mm

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES
1285 Avenue of the Americas, New York, N.Y. 10019

JOSEPH F. SOMELOFSKE
Vice President and Counsel

STATE OF MINNESOTA
JAN 12 1981
DEPARTMENT OF COMMERCE

January 6, 1981

Mr. John T. Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance pursuant to Minn. Stat. §§ 61A.13-21.

Dear Mr. Ingrassia:

We have noted the following typographical error in the above rules that were published on page 969 of the December 15, 1980 issue of the State Register:

The reference to § 1.9404B.1.e. in Section A. of 4 MCAR § 1.9407 should be § 1.9404C.1.e. (Underscoring added for emphasis only)

Sincerely,

Joseph F. Somelofske
Vice President and Counsel

JFS:ch

for file — copy to Dale

LEAGUE INSURANCE COMPANIES

Corner Providence Dr. & Greenfield Rd. • Southfield, Michigan
Mailing Address G.P.O. Box 430-A • Detroit, Michigan 48232

TELEPHONE NUMBERS (AREA 313)
POLICYHOLDER SERVICE 557-1300
CLAIMS 557-6200
ALL OTHER CALLS 557-3210

January 6, 1981

STATE OF MINNESOTA
JAN 8 1981
DEPARTMENT OF COMMERCE

Mr. John Ingrassia, Supervisor
Life and Health Section
Insurance Division, Dept. of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance (Pursuant to Minn. Stat. §§ 61A.13-21)

Dear Mr. Ingrassia:

We suggest amending Proposed Rule 4 MCAR § 1.9406(C)(1)(g) relating to permissible investments for separate accounts to read as follows:

> (g) certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration; and

The National Credit Union Administration is also a Federal Agency which issues insurance in the same amounts as that offered by the other agencies appearing in the proposed rule. Therefore, there appears to be no reason to exclude certificates of deposit issued by credit unions insured by the NCUA.

Sincerely yours,

James M. Edwards

James M. Edwards
Secretary and General Counsel

PM:mb