

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 699

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5/4/81
DATE FOR REVIEW 5/13/81
DATE DUE 5/18/81

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

Approved 5/14 Disapproved ____ Returned to Agency 5/15

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 5/14

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 4.28.81

✓ Notice of Intent to Solicit Outside Opinion 12.22.80

✓ Order for rulemaking
N/A Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
2.9.81 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

✓ 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

ADMIN. 1000 Rev. 1-73
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MICHAEL D. MARKMAN
Commissioner of Insurance
Department of Commerce, Insurance Division

DATE: 5/14/81

ATTN : THOMAS F. PURSELL
Special Assistant Attorney General

FROM : H. THEODORE GRINDAL HTG

PHONE: 6-1288

Special Assistant
Attorney General

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Insurance Division, Department of Commerce, Governing the Replacement of Group Insurance Coverage.

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.

HTG/gy

Enc.

cc: Duane Harves
Susan Robertson

Department of Commerce

Insurance Division

Adopted Rules Governing

Group Insurance Coverage Replacement

Rules As Adopted.

4 MCAR § 1.9251. Authority and scope. Rules 4 MCAR § § 1.9251 through 1.9253 apply to all policies and subscriber contracts issued or provided by an insurance company, non-profit service plan corporation or health maintenance organization on a group basis, and are promulgated pursuant to the authority of Minn. Stat. § 60A.082.

4 MCAR § 1.9252 Definitions. For purposes of these rules "carrier" shall mean any insurance company as defined in Minn. Stat. § 60A.02, subd 4; any service plan corporation as defined in Minn. Stat. § 62C.02, subd 6; and any health maintenance organization as defined in Minn. Stat. § 62D.02, subd. 4.

4 MCAR § 1.9253 Continuation of coverage in situations involving replacement of one carrier by another.

A. Purpose. The purpose of this rule is to indicate which carrier is responsible for coverage in those cases where one carrier's plan of benefits replaces a prior plan which offered similar benefits.

B. Liability of the prior carrier. The prior carrier remains liable to the extent of its accrued liability and extension of benefits pursuant to its existing contractual liability at the time of replacement.

C. Liability of the succeeding carrier.

1. Each individual who is eligible under the succeeding carrier's plan, with respect to provisions regarding class eligibity, activity at work, and non-confinement, shall be covered by the succeeding carrier's plan of benefits as of the effective date of that plan.

2. Each individual who is not eligible for coverage in accordance with 4 MCAR § 1.9252 C.1. shall nevertheless be covered by the succeeding carrier in accordance with the following rules, provided that such individual (including an individual who has exercised the option for extension of benefits pursuant to Minn. Stat. §§ 62A.148 and 62A.17) was validly covered under the prior plan on the date it was discontinued and such individual is a member of a class of individuals otherwise eligible for

coverage under the succeeding carrier's plan.

a. The minimum level of benefits which shall be provided by the succeeding carrier shall be the lesser of:

(1) The benefits available under the prior carrier's plan reduced by any benefits payable by the prior carrier; or

(2) The benefits available under the succeeding carrier's plan.

b. Coverage shall be provided by the succeeding carrier pursuant to 4 MCAR § 1.9252 C. 2. at least until the earlier of the following dates:

(1) The date the individual becomes eligible under the terms of the succeeding carrier's plan; or

(2) The date the individual's coverage would otherwise terminate, for each type of coverage, in accordance with the individual termination of coverage provisions of the succeeding carrier's plan .

3. Each individual subject to a pre-existing condition limitation contained in the succeeding carrier's plan shall nevertheless be covered by the succeeding carrier, provided that such individual was validly covered under the prior plan on the date it was discontinued. The minimum level of

benefits which shall be provided by the succeeding carrier for a pre-existing condition shall be the lesser of:

a. The benefits of the new plan determined without regard to the pre-existing condition limitation; or

b. The benefits of the prior plan.

4. In applying any deductible or waiting period in its plan, the succeeding carrier shall give credit for the full or partial satisfaction of the same or similar provisions under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods, to the extent the same expenses are recognized under the terms of the succeeding carrier's plan and are subject to a similar deductible provision.

5. In any situation where a determination of the prior carrier's benefits is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits available and other pertinent information sufficient to permit the succeeding carrier to verify or determine benefits.

6. Benefits of the prior plan shall be determined in accordance with the definitions, conditions, and

covered expense provisions of the prior plan rather than those of the succeeding plan.

4 MCAR § 1.9254 Reserved for future use.

APPROVED AS TO FORM AND LEGALITY

May 14 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY [signature]

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 14 1981

Joan Anderson Growe
Secretary of State

2:45 p.m.

SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL - Bremer Tower

TO : AG Rule Review Staff

DATE: 4/30/81

FROM : Thomas F. Pursell
Special Assistant
Attorney General

PHONE: 6-9461

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Insurance Division, Department of Commerce, Governing the Replacement of Group Insurance Coverage.

Enclosed for your review are the documents in the above-referenced matter. Please call if you have any questions.

TFP:sab
Enc. (1) file

RECEIVED
MAY 4
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed
Adoption of Rules of the Insurance
Division of the Department of Commerce,
Governing the Replacement of
Group Insurance Coverage

Issued and entered this
28th day of April, 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 February 9, 1981, 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 (n), on February 5, 1981. 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 § 1.9251 through § 1.9253 (as modified in the Findings of Fact and Conclusions) are adopted, pursuant to the authority vested in the Commissioner of Insurance by Minn. Stat. § 60A.032.

STATE OF MINNESOTA

MICHAEL D. MARKMAN
Commissioner of Insurance

In the Matter of the Proposed Adoption of Rules of the Insurance Division of the Department of Commerce, Insurance Division Governing Replacement of Group Insurance Coverage

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Pamela Tomfohrde, being first duly sworn, deposes and says:

That on the 29th day of April, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing at said City of St. Paul, 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.

Pamela Tomfohrde
Pamela Tomfohrde

Subscribed and sworn to before me this 29th day of April, 1981.

Adam J. Mikrot

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

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules of the Insurance Division of the Department of Commerce, Insurance Division Governing Replacement of Group Insurance Coverage

NOTICE OF SUBMISSION OF THE ATTORNEY GENERAL

Issued and entered this 28th day of April, 1981 by Michael D. Markman Commissioner of Insurance

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April , 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 14 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned 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. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are intertested 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 L. McDonnell, Insurance Division, Department of Commerce, 500 Metro Square Building, Saint Paul, Minnesota, 55101, telephone number (612) 296-8591.

MICHAEL D. MARKMAN
Commissioner of Insurance

Department of Commerce

Insurance Division

Proposed Rules Governing

Group Insurance Coverage Replacement

Rules As Proposed

4 MCAR § 1.9251. Authority and scope. Rules 4 MCAR §§ 1.9251 and 1.9252 apply to all policies and subscriber contracts issued or provided by an insurance company, non-profit service plan corporation or health maintenance organization on a group basis, and are promulgated pursuant to the authority of Minn. Stat. § 60A.082.

4 MCAR § 1.9252 Continuation of coverage in situations involving replacement of one insurer by another.

A. Purpose. The purpose of this rule is to indicate which insurer is responsible for coverage in those cases where one insurer's plan of benefits replaces a prior plan which offered similar benefits.

B. Liability of the prior insurer. The prior insurer remains liable to the extent of its accrued liability and extension of benefits.

C. Liability of the succeeding insurer.

1. Each individual who is eligible under the succeeding insurer's plan, with respect to provisions regarding class eligibity, activity at work, and non-confinement, shall be covered by the succeeding insurer's plan of benefits as of the effective date of that plan.

2. Each individual who is not eligible for coverage in accordance with 4 MCAR § 1.9252 C. 1. shall nevertheless be covered by the succeeding insurer in accordance with the following rules, provided that such individual was validly covered under the prior plan on the date it was discontinued and such individual is a member of a class of individuals otherwise eligible for coverage under the succeeding insurer's plan.

   a. The minimum level of benefits which shall be provided by the succeeding insurer shall be the lesser of:

      (1) The benefits available under the prior insurer's plan reduced by any benefits payable by the prior insurer; or

      (2) The benefits available under the succeeding insurer's plan.

   b. Coverage shall be provided by the succeeding insurer pursuant to 4 MCAR § 1.9252 C. 2. at least until the earlier of the following dates:

(1) The date the individual becomes eligible under the terms of the succeeding insurer's plan; or

(2) The date the individual's coverage would otherwise terminate, for each type of coverage, in accordance with the individual termination of coverage provisions of the succeeding insurer's plan .

3. Each individual subject to a pre-existing condition limitation contained in the succeeding insurer's plan shall nevertheless be covered by the succeeding insurer, provided that such individual was validly covered under the prior plan on the date it was discontinued. The minimum level of benefits which shall be provided by the succeeding insurer for a pre-existing condition shall be the lesser of:

a. The benefits of the new plan determined without regard to the pre-existing condition limitation; or

b. The benefits of the prior plan.

4. In applying any deductible or waiting period in its plan, the succeeding insurer shall give credit for the full or partial satisfaction of the same or similar provisions under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods,

to the extent the same expenses are recognized under the terms of the succeeding insurer's plan and are subject to a similar deductible provision.

5. In any situation where a determination of the prior insurer's benefits is required by the succeeding insurer, at the succeeding insurer's request the prior insurer shall furnish a statement of the benefits available and other pertinent information sufficient to permit the succeeding insurer to verify or determine benefits.

6. Benefits of the prior plan shall be determined in accordance with the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan.

4 MCAR §§ 1.9253 - § 1.9254 Reserved for future use.

which will be provided under contract, are outlined in detail in the Request for Proposal (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Ronald E. Sundberg
Minnesota Energy Agency
Alternative Energy Division
980 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the state of $50,000. The deadline for the submission of completed proposals will be 4:30 p.m., January 12, 1981.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Bldg., St. Paul, MN 55101.

Department of Public Safety
Office of Public Information

Notice of Availability of A Television PSA Production Contract

The Department of Public Safety is seeking proposals for a television PSA production contract not to exceed $10,000. The term of the contract runs from January 15, 1981 through September 30, 1981. The contract is for the production of 30-second PSAs on occupant restraints, the 55 miles per hour speed limit, drunk driving and other traffic safety factors.

Contractor will be responsible for directing production; filming or videotaping; editing; providing talent, music and voice-overs as necessary; and site selections. Contractor will be required to provide storyboards before filming/videotaping, and actual photographs from final productions for use as pictorial aids to be sent to station public service directors. Contractor may also be called upon to revise PSAs obtained by the department from other sources (re-record sound tracks, change ID tags, etc.) Contractor will be expected to assist the department in developing effective PSA concepts, rewriting scripts provided by the department, and all other matters relating to producing broadcast quality PSAs.

Prospective bidders must be prepared to pick up and deliver materials to the department as needed; illustrate their professional broadcast quality capability with demonstration tapes or films; and accomplish all the tasks required by the contract in a timely manner to meet department deadlines.

A detailed Request for Proposals is available. Contact Larry A. Etkin (296-8238) or Paul J. Kokesch (296-8383), Information Officers, Department of Public Safety, 318 Transportation Building, St. Paul, MN 55155. Final submission date for proposals is January 9, 1981.

OFFICIAL NOTICES

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

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

Department of Commerce
Insurance Division

Notice of Intent to Solicit Outside Information on Proposed Rules Governing Group Coverage Replacement

Notice is hereby given that the Department of Commerce, Insurance Division, has begun consideration of proposed permanent rules governing group coverage replacement pursuant to Minn. Stat. § 60A.082 (Laws of 1980, ch. 459). In order to

adequately determine the utility and nature of such rules, the Commerce Department, Insurance Division, hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

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

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

Energy Agency
Alternative Energy Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Concerning the Certification of Solar Collectors

The Alternative Energy Development Division of the Energy Agency is drafting rules concerning the certification of solar collectors for the residential energy tax credit authorized by Laws of 1980, Chapter 607, § 7, amending Minnesota Statutes § 290.06, subd. 14 (Supp. 1979). An earlier notice of intent to solicit outside opinion cited the law incorrectly. The agency again invites interested persons and organizations to provide information, comments and advice on the subject. Comments should be submitted in writing or orally within ten (10) days to:

John R. Dunlop
Manager, Minnesota Solar Office
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/296-4737

Recommendations submitted will be made part of the public hearing record of the rulemaking process.

Ethical Practices Board

1981 Campaign Expenditure Limits

In accordance with Minn. Stat. § 10A.25, subd. 7, the following campaign expenditures will be applicable in calendar year 1981 which is a non-election year for all candidates.

Office	Non-election Year
Governor/Lt. Governor	$120,000
Attorney General	$ 20,300*
Secretary of State, State Treasurer, State Auditor	$ 10,200*
State Senate	$ 3,000
State House of Representatives	$ 1,500

*Note that an increase in the state population has had an impact on these limits *only*.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

INSURANCE DIVISION

Before the Commissioner of Insurance

In the Matter of the Proposed Adoption of
Rules of the Insurance Division of the
Department of Commerce Governing Replacement
of Group Insurance Coverage.

Issued and entered this
26th day of January, 1981,
by Michael D. Markman,
Commissioner of Insurance

ORDER FOR NOTICE OF INTENT
TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 26th day of January, 1981, that Notice of intent to Adopt Rules Without a Public Hearing in the Above-entitled matter be given to all persons who have registered their names with the Insurance Division of the Department of Commerce for that purpose and be published in the State Register.

STATE OF MINNESOTA

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 Insurance Division of the Department of Commerce Governing Replacement of Group Insurance Coverage.

Issued and entered this
26th day of January, 1981
by Michael D. Markman
Commissioner of Insurance

NOTICE OF INTENT TO ADOPT
RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Insurance Division of the Department of Commerce proposed to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has

elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

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 Minnesota Statutes section 15.0412, subdivision 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Authority for adoption of these rules is contained

in Minnesota Statutes section 60A.082. 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 Mr. Ingrassia upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, 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 these rules to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Ingrassia.

These proposed rules are intended to implement the provisions of Minnesota Statutes section 60A.082 as required by that law.

The proposed rules if adopted, would establish standards and procedures by which a person covered by a group life, group accidental death and dismemberment, group disability income or group medical expense insurance, would not be denied benefits solely because of a change in the insurer writing the coverage.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Mr. Ingrassia.

Dated: January 26, 1981

STATE OF MINNESOTA

MICHAEL D. MARKMAN
Commissioner of Insurance

In the Matter of the Proposed Adoption
of Rules of the Insurance Division
of the Department of Commerce Governing
Replacement of Group Insurance Coverage

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Pamela Tomfohrde, being first duly sworn, deposes and says:

That on the 5th day of February, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing a copy thereof, properly envoloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Insurance Division of the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by this agency.

Pamela Tomfohrde

Subscribed and sworn to before me
this 10 day of Feb., 1981.

Joan M. Schaeppi

Notary Public

JOAN M SCHAEPPI
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My Commission Expires April 5 1985

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the Insurance Division of
the Department of Commerce
Governing Replacement of Group
Insurance Coverage

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 Insurance Division of the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 9:00 A.M., this 5th day of February, 1981.

Dale L. McDonald

INSURANCE LIST TO RECEIVE NOTICES OF RULEMAKING HEARINGS

James C. Shipman
Exec. Director
Assn. of Minn. Counties
2305 Ford Parkway
St. Paul, Mn. 55116

Bruce A. Poulsen, Counsel
8th fl., Prudential Ins. Co. of America
P.O. Box 1143
Minneapolis, Mn. 55440

James N. Denn
Minn. Motor Transport Assn.
1821 Univ. Ave., Rm 134N
St. Paul, Mn. 55104

Ohio State Life Insurance Co.
Attn: Harold I. Phillian
471 E. Broad St.
Columbus, Ohio 43215

Martin V. Timmins
Vice President & Gen. Counsel
The Wisconsin Life Insurance Co.
709 North Segoe Road,
Madison, Wisconsin 53705

National Assoc. of Independent
Insurers
2600 River Road,
Des Plaines, Illinois 60018

Compliance Services
Metropolitan Property and
Liability Insurance Co.
700 Quaker Lane, P.O.Box 350
Warwick, Rhode Island 02887

Nicholas T. Kakos
Comp., Insurance & Benefit Fund
Federal Cartridge Corp. / Admin.
Twin Cities Army Ammunition Plant
New Brighton, MN 55112

Jerrold T. Miller
J. T. Miller Co.
1000 Currie Ave.
Minneapolis, Mn. 55403

Colonial Penn Group, Inc.
Government Affairs Dept.
5 Penn Center Plaza
Philadelphia, PA 19103

Security Insurance Co.
1000 Asylum Ave.
Hartford, CT. 06105

Murray M. McColloch
Senior Vice President, Secretary
& Counsel
J. C. Penney Life Ins. Co.
2020 Live Oak
Dallas, Texas 75221

The Connecticut Indemnity Co.
1000 Asylum Ave.
Hartford, CT 06105

The Fire & Casualty Ins. Co.
of Connecticut
1000 Asylum Avenue
Hartford, CT 06105

James M. Shamberger
Vice President-Government Relati
Reinsurance Assoc. of America
1025 Connecticut Ave. Suite 512
Washington, D. C. 20036

Edward J. Ilsley
Compliance Services
Metropolitan Property & Liabilit
700 Quaker Lane Co.
P.O. Box 350
Warwick, RI 02887

Abe Rosenthal
Executive Vice President
Minnesota Transport Services Assn.
1821 University Ave.
St. Paul, MN 55104

Alliance of American Insurers
Attn: Fred W. Beck
20 North Wacker Drive, Suite 2140
Chicago, Illinois 60606

Richard D. Kothe
Manager
League Service Corporation
575 University Ave.
Saint Paul, MN 55103

Workers Compensation Reinsurance Assoc.
750 Northern Federal Bldg.
386 North Wabasha
St. Paul, MN 55102

Union Fidelity Life Insurance Co.
Union Fidelity Office Park,
Trevose, Pennsylvania, 19049
Attn: Lewis Taylor, Assoc. Counsel

Trauner, King & Cohen Attn: Kevin King
38 Old Ivy Road, N. E
Atlanta, Georgia 30342

Robert E. Swift, Vice President
Title Insurance Co. of Minnesota
400 Second Ave. So.
Minneapolis, MN. 55401

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
Saint Louis, Missouri 63105

J. Robert Hunter, FCAS
President, The National Ins. Consumer Organization
344 Commerce St.
Alexandria, Virginia 22314

John M. Boothby
Branch Manager, Central Region
Alliance of American Insurers
20 North Wacker Dr.,
Chicago, Illinois 60606

Stan Bass
Snyder Larsen & Peters
2636 Portland Ave.
Mpls., Mn. 55407

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
Minn. Manufactured Housing Assn.
222 East Little Canada Rd., Suite 222
Little Canada, Mn. 55117

Kent E. Eklund, Coms'r.
Minn. Dept. of Econ. Develop.
480 Cedar St.
St. Paul, Mn.

Charles Schaffer,
Research Analyst
Minn. Dept. of Econ. Develop.
480 Cedar St.
St. Paul, Mn.

Richard C. Buske
Administrative Director
Minn. Dept. of Econ. Develop.
480 Cedar St.
St. Paul, Mn.

Michael J. Ahern
Moss, Flaherty, Clarkson
& Fletcher
2350 IDS Center
80. South Eighth St.
Minneapolis, Mn. 55402

Charles A. Kroeger
Exec. Director
QSS Inc.
P.O. Box 838
Faribault, Mn. 55021

Courey, Schwinn, Kodadek &
1830 Soo Line Bldg./ Reece
Minneapolis, Mn. 55402

Minneapolis Tribune
425 Portland Ave.
Minneapolis, Mn. 55488

MacArthur Co.
2400 Wycliff St.
St. Paul, Mn. 55114

Susan P. Robertson
Exec. Director
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STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 32

February 9, 1981

Pages 1211-1230

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		
33	Monday Feb 2	Monday Feb 9	Monday Feb 16
34	Monday Feb 9	Friday Feb 13	Monday Feb 23
35	Friday Feb 13	Monday Feb 23	Monday Mar 2
36	Monday Feb 23	Monday Mar 2	Monday Mar 9

*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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NOTICE

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:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

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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.

Department of Commerce
Insurance Division

Proposed Rules Governing Replacement of Group Insurance Coverage

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Insurance Division of the Department of Commerce proposed to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980).

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 Minnesota Statutes, § 15.0412, subd. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Authority for adoption of these rules is contained in Minnesota Statutes, § 60A.082. 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 Mr. Ingrassia upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, 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

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these rules to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Ingrassia.

These proposed rules are intended to implement the provisions of Minnesota Statutes, § 60A.082 as required by that law.

The proposed rules, if adopted, would establish standards and procedures by which a person covered by a group life, group accidental death and dismemberment, group disability income or group medical expense insurance, would not be denied benefits solely because of a change in the insurer writing the coverage.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Mr. Ingrassia.

January 26, 1981

Michael D. Markman
Commissioner of Insurance

Rules As Proposed (all new material)

4 MCAR § 1.9251 Authority and scope. Rules 4 MCAR §§ 1.9251 and 1.9252 apply to all policies and subscriber contracts issued or provided by an insurance company, non-profit service plan corporation or health maintenance organization on a group basis, and are promulgated pursuant to the authority of Minn. Stat. § 60A.082.

4 MCAR § 1.9252 Continuation of coverage in situations involving replacement of one insurer by another.

A. Purpose. The purpose of this rule is to indicate which insurer is responsible for coverage in those cases where one insurer's plan of benefits replaces a prior plan which offered similar benefits.

B. Liability of the prior insurer. The prior insurer remains liable to the extent of its accrued liability and extension of benefits.

C. Liability of the succeeding insurer.

1. Each individual who is eligible under the succeeding insurer's plan, with respect to provisions regarding class eligibility, activity at work, and nonconfinement, shall be covered by the succeeding insurer's plan of benefits as of the effective date of that plan.

2. Each individual who is not eligible for coverage in accordance with 4 MCAR § 1.9252 C.1. shall nevertheless be covered by the succeeding insurer in accordance with the following rules, provided that such individual was validly covered under the prior plan on the date it was discontinued and such individual is a member of a class of individuals otherwise eligible for coverage under the succeeding insurer's plan.

a. The minimum level of benefits which shall be provided by the succeeding insurer shall be the lesser of:

(1) The benefits available under the prior insurer's plan reduced by any benefits payable by the prior insurer; or

(2) The benefits available under the succeeding insurer's plan.

b. Coverage shall be provided by the succeeding insurer pursuant to 4 MCAR § 1.9252 C.2. at least until the earlier of the following dates:

(1) The date the individual becomes eligible under the terms of the succeeding insurer's plan; or

(2) The date the individual's coverage would otherwise terminate, for each type of coverage, in accordance with the individual termination of coverage provisions of the succeeding insurer's plan.

3. Each individual subject to a pre-existing condition limitation contained in the succeeding insurer's plan shall nevertheless be covered by the succeeding insurer, provided that such individual was validly covered under the prior plan on the date it was discontinued. The minimum level of benefits which shall be provided by the succeeding insurer for a pre-existing condition shall be the lesser of:

a. The benefits of the new plan determined without regard to the pre-existing condition limitation; or

b. The benefits of the prior plan.

4. In applying any deductible or waiting period in its plan, the succeeding insurer shall give credit for the full or partial satisfaction of the same or similar provisions under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods, to the extent the same expenses are recognized under the terms of the succeeding insurer's plan and are subject to a similar deductible provision.

5. In any situation where a determination of the prior insurer's benefits is required by the succeeding insurer, at the succeeding insurer's request the prior insurer shall furnish a statement of the benefits available and other pertinent information sufficient to permit the succeeding insurer to verify or determine benefits.

6. Benefits of the prior plan shall be determined in accordance with the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan.

4 MCAR §§ 1.9253-1.9254 [Reserved for future use.]

Department of Labor and Industry
Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards

Request for Comment

Please take notice that Harry D. Peterson, Commissioner of the Minnesota Department of Labor and Industry, has determined that the following revisions to the Occupational Safety and Health Codes shall be promulgated pursuant to Minn. Stat. § 182.655 (1980) establishing, modifying, or revoking Occupational Safety and Health Standards as printed below. This is an action to adopt standards that have already been proposed and adopted by the Federal Occupational Safety and Health Administration.

Complete copies of the specific standards, changes, additions, deletions and corrections are available by writing: Deputy Commissioner, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

Interested persons are hereby afforded a period of thirty (30) days to submit written data or comments on the rules proposed. Any interested person may file with the commissioner written objections to the proposed rules stating the grounds therefor and such person may request a public hearing on such objections.

Harry D. Peterson
Commissioner

Rules as Proposed

MOSHC 1 (8 MCAR § 1.7001) Minnesota Occupational Safety and Health Codes and Rules, MOSHC 1 (§ 1.7001) are hereby changed and modified by incorporating and adopting by reference changes, additions, and corrections made prior to January 1, 1981 to the following parts of Title 29 of the Code of Federal Regulations:

Part 1910 Occupational Safety and Health Standards for General Industry as published in Part II, Volume 39, No. 125 of the *Federal Register* on October 24, 1978 and corrected on November 7, 1978; and Part 1926 Construction Safety and Health Regulations as published in Part VII, Volume 44, No. 29 of the *Federal Register* on February 9, 1979:

A. Mechanical Power Presses: Corrections to Final Rule, as published in the *Federal Register*, Volume 45, No. 28 on Friday, February 8, 1980 (pages 8593-8594). This notice announces corrections of typographical errors contained in the current mechanical power press standard, 29 CFR 1910.217. The provisions of 1910.217 were derived from the American National Standards Institute ANSI B11.1-1971 national consensus standard. When the provisions of ANSI B11.1-1971 were reorganized into the OSHA standard in 1910.217, several errors were made in the internal references; paragraphs (d)(3), (d)(5) and (d)(9)(i) contain references to paragraph (b) where they should refer to paragraph (c). Additionally, when OSHA General Industry Standards (Part 1910) were republished, a typesetting error resulted in 1910.217(b)(8)(iv) referring to a "nominal 240-volt d.c. supply obtained from a transformer," where it should read, "a nominal 120-volt a.c. supply obtained from a transformer." These are the only corrections made to this standard.

B. Commercial Diving Operations: Correction to Final Rule, as published in the *Federal Register*, Volume 45, No. 121, on Friday, June 20, 1980 (page 41634). As originally published, the commercial diving operations standard, 29 CFR 1910.423, was inadvertently misnumbered and included two paragraphs labeled (c)(4). The purpose of this notice is to correct the numbering error and label the second (c)(4) paragraph as (c)(5); subsequently, the original (c)(5) paragraph is renumbered (c)(6). No further corrections or changes are made to this standard.

C. Guarding of Low-Pitched Roof Perimeters During the Performance of Built-up Roofing Work, as published in the *Federal Register*, Volume 45, No. 222, on Friday, November 14, 1980. This notice amends Subpart M of 29 CFR Part 1926, by adding a standard for the guarding of low-pitched-roof perimeters during the performance of built-up roofing work. It provides for the use

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of motion-stopping safety systems, warning lines, and safety monitoring systems in certain specified situations, requires the use of safety belt or guardrail systems at hoisting and storage areas, prohibits the use of mechanical equipment near unprotected roof sides or edges and requires training for all employees engaged in built-up roofing work. It also clarifies the application of the existing standards on perimeter guarding contained in Subpart M. Existing Section 1926.500 is amended by adding a new paragraph (g) "Guarding of Low-pitched Roof Perimeters During the Performance of Built-up Roofing Work;" adding a new paragraph (p) to 1926.502 "Definitions Applicable to This Subpart;" and adding Appendix A to Subpart M for 1926.500(g) to provide guidelines to assist employers in complying with the appropriate requirements of Subpart M.

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 Public Welfare
Bureau of Social Services
Bureau of Mental Health

Repeal of Rules Relating to the Administration of Child Care Facilities Act Grant-In-Aid and the Reimbursement for Mentally Ill Patients Relocated by the Closing of Hastings State Hospital (12 MCAR §§ 2.009 and 2.017)

Notice is hereby given that the rules published at *State Register*, Volume 5, Number 19, pp. 752-753, November 10, 1980 (5 S.R. 752) are now repealed as proposed.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Walter O. and Catherine Noreen, Appellants,

v.

The Commissioner of Revenue, Appellee.
Docket No. 2878

and

Pearl M. Ranta, Appellant,

v.

The Commissioner of Revenue, Appellee.
Docket No. 2944

Order Dated January 26, 1981.

Judge Jack Fena

These two cases, involving substantially identical income tax issues, were consolidated for trial by Order of the Court at a pre-trial hearing held on October 12, 1979. The trial was held on December 19, 1979. Appellants Noreen were represented by J. B. Kelly, Attorney at Law, and Appellant Ranta was represented by Paul Simonson, Attorney at Law. Apellee was represented by Paul R. Kempainen, Special Assistant Attorney General, Department of Revenue, State of Minnesota.

The Court having heard and considered the evidence introduced by the parties, the oral arguments of counsel and being fully advised in the matter and upon all the files, testimony, records and proceedings herein,

Decision

It is hereby ordered, that the Commissioner of Revenue's determination of tax liability relating to the income tax liabilities of both Appellants for the taxable year ending December 31, 1978, be and hereby is reversed.

Said Order being based upon the following Findings of Fact, Conclusions of Law and Memorandum, which is made a part of this decision.

Findings of Fact

Jack Fena

1. The Appeal of Walter O. and Catherine Noreen:

A. The Appellants, Walter O. and Catherine Noreen, at all times material to this appeal, were cash-basis, calendar year taxpayers and residents of the State of Minnesota. During the taxable year at issue herein, 1978, Walter Noreen was retired and receiving annuity payments from the United States Civil Service Commission Bureau of Retirement, Insurance, and Occupational Health.

B. Prior to his retirement on January 7, 1977, Walter Noreen was employed by the Federal Government in a classified civil service position subject to the Civil Service Retirement Act, 5 U.S.C. § 8331, et seq. (1964). During said employment he contributed a total of $24,139.00 to his Federal Civil Service annuity contract, which amount was withheld from his payroll check and deposited with the Treasury of the United States to the credit of the "Civil Service Retirement and Disability Fund."

C. After his retirement, Appellant, Walter Noreen, began receiving Federal Civil Service annuity payments. In 1977, annuity payments received were in the total amount of $18,289.40. In 1978, annuity payments received were in the total amount of $21,810.00.

D. On his 1977 Federal income tax return, Appellant reported his 1977 Federal annuity payments of $18,289.40. This amount was correctly excluded on Schedule E of said return as a recovery of his contributions to the annuity contract for Federal income tax purposes.

E. On his 1978 Federal income tax return, Appellant reported his 1978 Federal annuity payments of $21,800.00. The amount of $5,849.60 was correctly excluded on Schedule E of said return as the recovery of the remainder of his contributions to the annuity contract for Federal income tax purposes. Consequently, the amount of $15,960.40 was included in Appellants' adjusted gross income for Federal income tax purposes.

F. On line 1 of their 1978 Minnesota income tax return, Appellants included the $15,960.40 of the annuity payments shown on their Federal income tax return. On line 5 of their 1978 State income tax return, the amount of $15,960.40 was subtracted upon the ground it reflected recovery of a portion of the contribution to the Federal annuity contract for State income tax purposes.

G. Upon audit of the Appellants' 1978 State income tax return, Appellee disallowed the subtraction of $15,960.40, and allowed a subtraction of only $2,259.99. As a result of this change, adjustments also were made in computing the additional State income tax liability reducing Appellants' 1978 Federal income tax deduction and itemized deductions were reallocated.

H. Upon the basis of these audit changes, Appellee calculated an additional state income tax liability against Appellants in the amount of $613.00 for 1978. An Order of the Commissioner assessing this liability was issued on March 7, 1979.

I. The Appellants Noreen have filed a timely Notice of Appeal to the Tax Court from the Commissioner's Order.

II. The Appeal of Pearl M. Ranta:

A. The Appellant, Pearl M. Ranta, is a cash-basis, calendar year taxpayer and resident of the State of Minnesota. During the taxable year at issue herein, 1978, Pearl Ranta was the recipient of a surviving spouse's pension payment in the amount of $12,054.00 from the United States Civil Service Commission.

B. Pearl Ranta received her Federal pension payment as a result of her spouse's employment by the Federal Government. During said employment Appellant's spouse contributed a total of $17,607.00 to the Federal Civil Service pension plan.

C. On Schedule E of their Federal income tax returns for years prior to 1978, Pearl Ranta and/or her spouse had already excluded the full amount ($17,607.00) of her spouse's employee's contributions to the pension plan for purposes of calculating their federal adjusted gross income in those years.

D. On her duly filed 1978 Federal income tax return, Pearl Ranta included the entire amount ($12,054.00) of her 1978 pension payment in the calculation of her federal adjusted gross income for that year. No amount of the pension payment was excluded on her 1978 Schedule E as a recovery of employee's contributions.

E. On line 1 of her duly filed 1978 Minnesota income tax return, Pearl Ranta used her 1978 federal adjusted gross income as the starting point for calculating her state tax. This amount included her $12,054.00 Federal pension payment. However, on line 5 of her 1978 return, Pearl Ranta subtracted the amount of $12,054.00 upon the ground that it represented a recovery of her spouse's contributions to the plan.

F. Upon audit of the Appellant's 1978 return, the Commissioner of Revenue disallowed Pearl Ranta's subtraction of the entire $12,054.00 in pension payments from her federal adjusted gross income, and instead allowed a subtraction of only $830.00 calculated pursuant to Minn. Stat. (1978) § 290.01, subd. 20(b) (6). An additional adjustment (not at issue herein) was also made to Appellant's itemized deductions, disallowing a claimed deduction of $32.00 for medical transportation expense.

G. Upon the basis of these audit changes, the commissioner calculated an additional state income tax liability against Appellant in the amount of $1,050.91, plus interest. An Order of the Commissioner assessing this liability was issued on May 29, 1979.

H. The Appellant Ranta has filed a timely Notice of Appeal to the Tax Court from the Commissioner's Order.

Conclusions of Law

1. By enacting L. 1978, c. 721, art. VI, amending Minn. Stat. § 290.01, subd. 20 (b) (6) (1978), the legislature intended to tax public pensions for state purposes by including in Minnesota Gross Income only the employer's share of the public pensions, subject to a specific subtraction up to $7,200.00.

2. The provisions of Minn. Stat. § 290.08, subd. 4 (1957) allows a taxpayer to exclude from Minnesota Gross Income an amount equal to their contribution to the pension and/or annuity plan which is being included in the Minnesota Gross Income for the first time after December 31, 1977, the effective date of L. 1978, c. 721, art. VI.

Memorandum

The issue in the two cases before the Court is the question of the excludability of the taxpayer's contribution to a pension plan when the taxpayer has recovered this contribution prior to the taxable year beginning January 1, 1978.

Minn. Stat. § 290.08, subd. 4 (1957) allows a Minnesota taxpayer to exclude from his Minnesota Gross Income this contribution recovery to the extent that said recovery is received after January 1, 1978. Since this recovery of a taxpayer's contribution is also excludable from the taxpayer's Federal Adjusted Gross Income, there is no modification required upon the Minnesota tax return.

Prior to January 1, 1978, all public pensions were excluded from Minnesota Gross Income pursuant to Minn. Stat. § 290.08, subd. 6, which was repealed effective for tax years commencing after December 31, 1977. Prior to its repeal, this statute read as follows:

Subd. 6. Pensions, benefits, and allowances from State and United States. Amount, including interest, received by any person from the United States or from the State of Minnesota or any of its political or governmental subdivisions, *either as a refund of contributions to or by way of payment as a pension, public employee retirement benefit*, unemployment compensation benefit, social security benefit or railroad retirement or unemployment compensation benefit, family allotment, or other similar allowance; (Emphasis added.)

Therefore, although Minn. Stat. § 290.08, subd. 4(d) allowed a taxpayer to exclude his contribution to the public pension to the extent that the pension payment was received from a government entity, the entire pension was not includable in the Minnesota Gross Income and the taxpayer was not required to take advantage of the exclusion provided for by Minn. Stat. § 290.08, subd. 4(d).

Since the repeal of § 290.08, subd. 6, can the taxpayer first exclude his contribution? To answer this question, we are left with interpreting these two statutes, which are in conflict as applied to this narrow question. Under Minn. Stat. § 290.01, subd. 20(b) (6), the pension payments received by a former government employee are taxable for the first time commencing with the year 1978 and, for the first time, these public pension payments are includable in a Minnesota residents gross income. The fairest resolution of this conflict is to allow these taxpayers to exclude their contributions. Under the standard rule of statutory construction, a statute is to be constructed where reasonably possible, so as to avoid irreconcilable differences and conflict with another statute. The Court feels that unless a taxpayer is allowed to apply Minn. Stat. § 290.08, subd. 4(d) to his public pension at the time they first become includable in Minnesota Gross Income, this conflict will exist and to eliminate this conflict the Court herein allows this exclusion.

The decision is also based on the Court's interpretation of the legislative intent at the time the legislature enacted L. 1978, c.

721, art. VI. Based on the transcripts of testimony before the tax committee which were put into evidence and the testimony of the commissioner's representative, the Court believes the intent of the legislature was to allow this exclusion. It is clear that there was no intent to eliminate the exclusion of a taxpayer's contribution to a public pension when this contribution is recovered in years after January 1, 1978. If this would have been the intent of the legislature, it would have repealed Minn. Stat. § 290.08, subd. 4 (d). The Court also believes that it was not the intent of the legislature to treat a taxpayer who, for the first time, is required to include his public pension in his Minnesota Gross Income on a different basis.

It is the contention of the commissioner that the first phrase of Minn. Stat. § 290, subd. 20(b)(6) prevents this interpretation. This phrase, which states:

"To the extent included in Federal Adjusted Gross Income, notwithstanding any other laws to the contrary, . . ."

was intended to prevent application of Minn. Stat. § 290.08, subd. 4(d) from being applicable to such taxpayers. It is the Court's reading of this statute that this language is applicable to the taxable income covered by the statute, specifically the income received by a taxpayer which represents an employer's share of a public pension. It appears that the legislature was addressing a specific item of income in Minn. Stat. § 290.01, subd. 20(d)(6), that being the employer's share of a public pension and it did not anticipate that there would be this discrepancy between taxpayers who receive return of their contribution prior to January 1, 1978 and those taxpayers who receive return of their contribution after January 1, 1978.

The Court also believes that this opinion will result in the most equitable treatment of taxpayers who are similarly situated. If the Court were to adopt the commissioner's interpretation of these statutes, we would create a situation where the taxpayer who receives for the first time a public pension after January 1, 1978 would be allowed to exclude his contribution and the taxpayer who had received this refund prior to January 1, 1978 would not. The commissioner has argued that this is not a proper application of this equitable consideration since the income received as a public pension prior to January 1, 1978 was excluded entirely from the taxpayer's Minnesota Gross Income. However, this was true as to any person receiving a public pension whether he had contributed or not to the pension plan. In adopting the commissioner's interpretation, the subject taxpayers will be penalized either in comparison to the taxpayer who commences to receive his public pension after January 1, 1978 or in the alternative, to the taxpayer who had received this public pension but had not contributed to his pension plan.

This inequitable treatment was not intended by the legislature. Prior to 1978 public pensions were not includable in Minnesota Gross Income. Since after January 1, 1978 they are now includable, the portion of said public pensions which represent the taxpayer's own contribution is excludable pursuant to Minn. Stat. § 290.08, subd. 4(d).

Jack Fena, Judge

SUPREME COURT

Decisions Filed Friday, January 30, 1981

Compiled by John McCarthy, Clerk

50381/351, 50382/352, 50383/353, 49445/354 The Commissioner of Revenue 50381 v. John L. Richardson, *et al.*, Relators, The Commissioner of Revenue 50382 v. Nathan Lipson, *et al.*, Relators, The Commissioner of Revenue 50383 v. Kenneth M. Anderson, *et al.*, Relators, and Conrad J. Carr, *et al.*, Relators, 49445 v. The Commissioner of Revenue. Tax Court.

In 1974, Minnesota individual income tax laws limited the maximum deduction for contributions to self-employment retirement plans to $2,500, even though the maximum deduction for federal income tax purposes was $7,500.

Since contributions to all self-employment retirement plans received the same tax treatment under Minnesota law in 1974, no violation of uniformity and equal protection exists.

Relators will not be subject to double taxation because relators' contributions to self-employment retirement plans which could not be deducted in 1974 will escape taxation when received as retirement income.

Affirmed. Todd, J.

49602/348 (1979) Beverly Roepke, *et al.*, v. Western National Mutual Insurance Company, Appellant. Rice County.

Under the peculiar facts of this case, where decedent was the president and sole shareholder of the named insured corporation and the vehicles insured were used as family vehicles and neither decedent nor his household owned any other vehicles, we conclude that the corporate veil should be pierced and stacking of the insurance coverages allowed.

Affirmed. Scott, J.

50862/346 Catherine C. Weiss, Appellant, v. Farmers Insurance Group. St. Louis County.

Where a pedestrian is struck by an insured automobile which is one of two separately-insured vehicles owned by the driver, stacking of the basic economic loss coverage of the non-involved vehicle will not be permitted under the Minnesota No-Fault Automobile Insurance Act.

Affirmed. Scott, J.

50328/Sp. State of Minnesota v. Raymond O. Posten, Appellant. Hennepin County.

Evidence of defendant's guilt of criminal sexual conduct in the first degree was sufficient.

Trial court did not err in denying a request by the prosecution to sequester witnesses while the complainant testified.

Trial court did not commit prejudicial error in admitting hospital records which defense counsel did not have an opportunity to see before trial.

Trial court did not abuse its discretion in admitting, pursuant to R. 804(b)(5), Minn. R. Evid., testimony concerning statement made by complainant while she was having a bad dream.

Trial court's erroneous exclusion of evidence offered by defendant concerning his character with respect to children was nonprejudicial.

Affirmed. Scott, J. Concurring specially, Wahl and Simonett, JJ.

50861/Sp. James Michael Gordon as trustee for the next of kin of Chad Gordon, Appellant, v. Ervin Hoffman *et al.*, Michael Paul Kluthe. Ramsey County.

Affirmed. Scott, J. Dissenting, Otis, J. Took no part, Simonett, J.

51150/380 William T. Kealy, Jr., v. St. Paul Housing & Redevelopment Authority, *et al.*, Relators. Workers' Compensation Court of Appeals.

It is not for this court to rewrite a statute that is not ambiguous. When the words of a statute are clear and free from all ambiguity, the letter of the law may not be disregarded under the pretext of implementing the legislature's intent. We call this case to the legislature's attention should this opinion not reflect the results intended by the 1976 amendment to Minn. Stat. § 176.061(6)(c).

Reversed and remanded with instructions. Scott, J.

51002/Sp. State of Minnesota v. Bill C. Kinyon, Appellant. Olmsted County.

Evidence of defendant's guilt of sale of a controlled substance was sufficient.

The trial court did not prejudicially err in denying a defense motion to prohibit the prosecutor from cross-examining defendant, if he testified concerning a prior conviction for felonious possession of marijuana.

The trial court did not abuse its discretion in granting a jury request for the rereading of the testimony of the state's key witness.

Affirmed. Wahl, J.

51577/373 In the Matter of the Application for the Discipline of Dennis F. Peck, an Attorney at Law of the State of Minnesota and for the Appointment of a Trustee. Supreme Court.

Indefinite suspension from practice of law. Per Curiam.

Decision Filed Tuesday, January 27, 1981

51982/Sp. State of Minnesota, Plaintiff, v. Kevin Mitchell Stankey. Scott County.

When a driver's license is revoked because of driving while under the influence, it continues to be revoked within the meaning of the aggravated driving while under the influence statute. Minn. Stat. § 169.129 (1978), until a new license is issued, regardless of the specific reason the driver is prevented from obtaining a reinstated license.

Reversed and remanded. Sheran, C. J.

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 Commerce
Office of Consumer Services
Residential Utility Consumer Unit

Notice of Request for Proposals for Rate Design and Cost Studies for Northwestern Bell Telephone Company

Krista L. Sanda, Director of the Office of Consumer Services of the Minnesota Department of Commerce, is soliciting proposals from qualified consultants to perform an analysis of local exchange rate structures, measured service rates, coin phone rates, service charges and/or depreciation rates in connection with the petition of Northwestern Bell Telephone Company for authority to increase its rates by a total additional annual revenue of $102.5 million. Respondents may address one or more issues in this case. The petition is currently before the Minnesota Public Utilities Commission and a hearing will be held.

Final submission date: March 9, 1981

Estimated cost: $2,000-$25,000 depending upon scope of proposal.

Contact by phone at (612) 296-6172 or in writing to:

Diane Legatt Hunt, Case Manager
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
162 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Department of Transportation
Clearwater County Highway Department

Notice of Availability of Contract for Highway Detail Engineering

The Clearwater County Highway Department in cooperation with the Office of State Aid, Minnesota Department of Transportation requires the services of a qualified consultant to provide detail engineering for the construction of Clearwater CSAH 40 across the Mississippi River floodplain.

The services shall consist of in site sampling and testing of organic peat soils, laboratory testing and analysis, construction recommendations and preparation of detail plans. The construction of Clearwater CSAH 40 is in an environmentally sensitive area and the final design shall provide the least negative environmental impact.

Firms desiring consideration should submit their brochure and/or experience resume, such as the federal forms 254 and 255 within 21 days. This is not a request for proposal.

Please send your response to:

Arthur D. Tobkin, P.E.
Clearwater County Engineer
Box 310
Bagley, Minnesota 56621
Telephone (218) 694-6132

OFFICIAL NOTICES

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

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

Department of Commerce Banking Division

Bulletin No. 2336: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of February 1981

Notice is hereby given that pursuant to § 47.20, subd. 4a, Minnesota Statutes, the maximum lawful rate of interest for conventional home mortgages for the month of February, 1981, is fifteen (15.00) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended § 47.20, Minnesota Statutes, the maximum lawful rate of interest for contracts for deed for the month of February, 1981, is fifteen (15.00) percentage points.

January 22, 1981

Michael J. Pint
Commissioner of Banks

Department of Education Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules and Changes in Rules for Secondary Vocational Education

The Department of Education, Division of Vocational-Technical Education is drafting rules and changes in the Secondary Vocational Education Rules (Chapter Five-A, 5 MCAR § 1.00811 D.2.b.(2)(b); E.).

The Department invites interested persons or groups to provide information, comment and advice on these subjects in writing or orally to:

Dr. Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

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

All materials to be considered in the original draft should be submitted by March 4, 1981.

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Douglas County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in Commissioner's Room, Court House, Alexandria, Minnesota, on February 25, 1981, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Bernie Rachel, 1712 Liberty Road, Alexandria, Minnesota 56308, Department of Natural Resources representative Merlyn Wesloh, and Douglas Soil and Water Conservation District representative Wayne Holl, Route 1, Hoffman, Minnesota 56339.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is

whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

A. Public Waters

1. Basins

Number and Name	Section	Township	Range
21-51: Henry Lake	7,18	128	37
21-92: Lake Mary	Various	127; 128	38
21-305: Venus Lake	14,15,22	128	40
21-330: Unnamed	5,8	129	40

2. Watercourses

Name	Beginning in Section	Township	Range	Outletting in Section	Township	Range
Long Prairie Creek	16 (Basin 57)	129	37	24	129	36
Unnamed to Lake Osakis	15 (Basin 504)	127	36	25	128	36

B. Wetlands

Number and Name	Section	Township	Range
21-66: Unnamed	35	129	37
21-511: Unnamed	26,35	128	36
21-512: Unnamed	28	128	36
21-521: Unnamed	29	130	36
21-524: Unnamed	8	128	37

Within 60 days following completion of the hearing, the hearing unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, §§ 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subds. 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to:

David B. Milles,
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
Saint Paul, MN 55101
Telephone: 612/297-2835

January 28, 1981

Joseph N. Alexander, Commissioner

Department of Natural Resources
Soil and Water Conservation Board

Notice of Change of Meeting Date

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from March 10, 1981 to March 9, 1981.

The Minnesota Soil and Water Conservation Board has changed the meeting place of their March meeting from the 6th floor, Space Center Building, St. Paul, Minnesota, to the Radisson-Arrowwood, Alexandria, Minnesota. The board will resume their regular schedule on April 14, 1981.

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

ORDER FORM

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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.

Minnesota Reports—Old editions available at $8.25 each plus tax. These are Supreme Court decisions. Recent volumes are available at the Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155. Volumes available are 312 and previous numbers.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules of the Insurance Division Department of Commerce, Governing the Replacement of Group Insurance Coverage

FINDINGS OF FACT AND CONCLUSIONS

Issued and entered this 28th day of April, 1981 by Michael D. Markman, Commissioner of Insurance

The above-entitled rules were proposed to be adopted without a public hearing on February 9, 1981, after proper notice of intent to adopt these rules as required by Minn. Stat. § 15.0412 was served upon all 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 find the following:

FINDINGS OF FACT

1. Aetna Life and Casualty Company (hereinafter "Aetna") filed comments regarding these rules on February 17, 1981.

2. Aetna further suggested that the word "carrier" be used instead of "insurer" because that term "carrier" is more apppropriate.

3. Aetna commented that these rules may be interpreted to change the prior carrier's legal liability.

4. Aetna suggested that language referring to benefit extension be added to proposed rules 4 MCAR § 1.9252 C.2. in order to clarify the obligation of both the succeeding and prior carrier under Minnesota law.

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

CONCLUSIONS

1. That the word "insurer" should be deleted in every instance that it is mentioned in the proposed rules and replaced by the word "carrier".

2. That for the purpose of clarifying what is meant by the word "carrier" the following definition section should be added, and the existing § 1.9252 changed to § 1.9253:

> "4 MCAR § 1.9252. Definitions. For purposes of these rules "carrier" shall mean any insurance company as defined in Minn. Stat. § 60A.03, subd. 4; any service plan corporation as defined in Minn. Stat. § 62C.02, subd. 6; and any health maintenance organization as defined in Minn. Stat. § 62D.02, subd. 4."

added

3. Based on Finding No. 3 above, § 1.9252 B. should be modified so that it is clear that this section does not change the prior carrier's existing liability under its contract.

4. That the following language should be added to proposed rule 4 MCAR § 1.9252 B. after the word "benefits" so as to reflect the intent of this section as stated in the statement of need and reasonableness filed in this matter:

> "pursuant to their existing contractual liability at the time of replacement"

added

5. That the following language be added to proposed

rule 4 MCAR § 1.9252 C.2. after the words "such individual" so as to reflect benefit extension requirements as suggested by Aetna:

> "(including an individual who has exercised the option for extension of benefits pursuant to Minn. Stat. §§ 62A.148 and 62A.17)".

added

This change reflects the existing obligations of each carrier under Minn. Stat. Ch. 62A.

6. That the modifications made herein to the proposed rules do not constitute a substantial change from the rules as originally proposed.

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 Insurance Division of
the Department of Commerce
Governing Replacement of Group
Insurance Coverage

STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF NEED AND AUTHORITY

Minn. Stat. § 60A.082 (1980), Minn. Laws 1980, ch. 459, states that a person who is covered under a group life, group accidental death and dismemberment, group disability income or group medical expense insurance plan shall not be denied benefits to which he or she is otherwise entitled solely because of a change in the insurer writing the plan. The statute applies to plans written by insurance companies, nonprofit health service plan corporations such as Blue Cross/Blue Shield, and to health maintenance organizations. While the intent of section 60A.082 is clear, the legislature has left it to the Commissioner of Insurance (hereinafter "Commissioner") to define the exact mechanisms by which insureds would not be denied coverage solely because of a change in insurers. The statute specifically requires the Commissioner to promulgate rules to implement section 60A.082. Therefore, the Commissioner now proposes the above-captioned rules for adoption as permanent rules pursuant to the authority contained in Minn. Stat. § 60A.082.

HISTORY

The Commissioner published a Notice of Intent to Solicit Outside Information on Proposed Rules Governing Group Coverage Replacement on December 22, 1980, at 5 S.R. 1030. The purpose of the Notice of Intent was to gather information from interested parties for the Commissioner's consideration in the promulgation of regulations implementing Minn. Stat. § 60A.082. In response to the solicitation it was suggested that the Model Regulation for Group Coverage and Replacement, as adopted by the National Association of

Insurance Commissioners (hereinafter "NAIC") in 1972, be adopted to implement this law. After a review of the NAIC model regulation, the Commissioner proposed rules governing replacement of group insurance coverage on January 26, 1981, and published the proposed rules in the State Register on February 9, 1981.

In most respects, the proposed rules are substantively identical to section 7 of the NAIC model regulations on group coverage discontinuance and replacement. However, the wording of the NAIC regulations has been changed to make them more readable and to eliminate repetitious or ambiguous language. Some substantive changes were also necessary to conform to the last sentence of Minn. Stat. § 60A.082, which allows an employer, union or other association to reduce the level of benefits available under a group plan.

As more fully developed below, the proposed rules are intended to implement and make effective the provisions of Minn. Stat. § 60A.082, in accordance with legislative intent by more precisely delineating the requirements of the statute. The rules reasonably address the statutory end.

FACT ESTABLISHING REASONABLENESS

A citation to each proposed rule, together with a discussion of its effect, need and reasonableness follows:

Proposed rule 4 MCAR § 1.9251 sets forth the statutory authority and scope of the proposed rules. This section is intended to provide affected persons with a general statement of the scope and applicability of the proposed rules, and includes the types of insurers to whom the statute and rules apply.

Proposed rule 4 MCAR § 1.9252 is the substantive heart of the proposed rules. Its subdivisions state when and to what extent the prior and succeeding insurers are obligated to provide benefits. 4 MCAR § 1.9252 A. of this proposed rule is a concise statement of this basic purpose.

Proposed 4 MCAR § 1.9252 B. sets forth the liability of the prior insurer when its plan is replaced by another insurer's plan. This provision is reasonable in that it merely restates and codifies existing contract and insurance law to the effect that the prior insurer, when its plan terminates, is obligated to the extent of its accrued liability and any contractual extension of benefits under its existing policy. The precise extent and nature of the accrued liability and extension of benefits is determined by the prior insurer's contract and remains unaffected by the proposed rules.

Proposed 4 MCAR § 1.9252 C. sets forth the obligations of the succeeding insurer whose plan of benefits replaces an existing plan. Subdivision C contains six numbered subparagraphs which define the circumstances in which coverage might be lost and provide rules for cooperation between the insurers in cases where the succeeding insurer's liabilities hinge on facts known to the prior insurer. The overall effect of Subdivision C is to prevent any loss of coverage to group members solely because of a change in insurer. That effect is precisely what the legislature intended Minn. Stat. § 60A.082 to do.

Proposed 4 MCAR § 1.9252 C.1. merely states that all individuals who are eligible for coverage under the succeeding insurer's rules relating to class eligibility, activity at work and non-confinement, shall in fact be covered by the new plan when it takes effect. This provision is really a restatement of the obvious. However, it is necessary and reasonable because class eligibility, activity at work and non-confinement rules may exclude, on a technicality, certain individuals who are otherwise eligible for coverage. This paragraph, then, serves as a base or reference point for proposed 4 MCAR § 1.9252 C.2., which directs that the otherwise eligible group members not be denied coverage solely because of a change of insurer.

Proposed 4 MCAR § 1.9252 C.2 provides that the succeeding insurer must provide benefits to any person who was covered under the prior insurer's plan, and remains a member of an eligible class, but does not meet the technical requirements of the eligibility rules noted in 4 MCAR § 1.9252 C.1. This provision is designed to prevent a specific abuse which has come to the Commissioner's attention. In the past, some insurers have used the eligibility rules noted above to deny coverage to individuals who should fairly be covered. The classic example is a provision in a succeeding plan to the effect that all employees at work on January 2, the date the new policy becomes effective, are covered. "Employee X," who was validly covered under the expiring plan, had the day off on January 2, was injured on that day, and was denied coverage because he was not "at work" on January 2. This rule requires the succeeding insurer to cover "Employee X's" expenses at least to the extent they were covered under the prior plan, or the extent covered by the new plan. Proposed 4 MCAR § 1.9252 C.2.a. gives the new insurer the option to pay the lesser of the foregoing amounts because the statute allows the employer to obtain a new plan which provides a reduced level of benefits. However, nothing in the rule is intended to prevent the succeeding insurers from paying the greater of the two amounts. Proposed 4 MCAR § 1.9252 C.2.b. requires the succeeding insurer to provide this "lesser of two amounts" coverage until the group member becomes eligible for its normal coverage, or until the member's coverage would otherwise terminate, e.g., when he or she left the group.

Proposed 4 MCAR § 1.9252 C.3. provides that if the succeeding plan limits benefits available for any pre-existing condition, the succeeding insurer must nevertheless provide benefits to that individual for the pre-existing condition, provided that the particular condition was covered under the prior plan. The minimum level of benefits payable for pre-existing condition is, again, the lesser of the benefits available under the prior plan, or the benefits otherwise available under the succeeding plan, but for the

pre-existing condition limitation. Clearly a law requiring continuity of coverage would be meaningless if a succeeding insurer could avoid paying for conditions which existed at the date of the changeover, but were fully covered by the prior plan. The last sentence of Section 60A.082, however, does permit the employer, union or association to reduce the level of benefits payable. Therefore, the rules provide that the succeeding insurer may provide the lesser of benefits available under the old and new plans, so that the succeeding insurer is no more liable than the prior insurer. Again, nothing is intended to prevent the new insurer from paying the greater of the two amounts.

Proposed 4 MCAR § 1.9252 C.4. covers the final area where an individual may be denied benefits when there is a change in the insurer providing the coverage. This subparagraph requires the succeeding insurer to give the insured credit, under its plan of benefits, for the satisfaction of a similar deductible or waiting period provision in the prior insurer's plan of benefits. If, for example, the prior and succeeding plans both contain a calendar year deductible provision, and an insured group member has already paid one deductible in a calendar year, for the succeeding insurer to require the group member to pay another deductible amount in that same year would be to deny benefits solely because of the change of insurers. Thus, an insured, in the same example, who had already paid a required $100.00 deductible toward a particular hospitalization, would not be required to satisfy the new plan's deductible before the new insurer would begin to cover the same hospitalization.

The same logic applies to satisfaction of a waiting period. To impose an additional waiting period after one has already been satisfied would be to deny benefits solely because of a change of insurer.

Proposed 4 MCAR § 1.9252 C.5. of this subdivision requires the prior insurer to provide sufficient information to the succeeding insurer to enable the latter to determine what benefits

the prior plan would provide. This information is necessary in the numerous cases where the succeeding insurer's obligations hinge on benefits available, benefits due and payable, or provisions already satisfied under the prior insurer's plan. Requiring a prior insurer to provide the information is probably the only reasonable way to solve the problem of need for information. It should also be noted that any burden this requirement imposes on the prior insurer would likely be offset by a corresponding benefit, since in a competitive marketplace a given insurer is probably replacing coverage as well as having its coverage replaced.

Proposed 4 MCAR § 1.9252 C.6. merely states that where benfits of the prior plan are relevant, as in the previous paragraph, the level of benefits of the prior plan must be determined in light of that plan's definitions and other provisions. To do otherwise would be logically inconsistent and could result in denial of benefits if the succeeding plan's definitions or other provisions are less inclusive.

CONCLUSION

For the reasons stated above, the Commissioner believes that each of the proposed rules is needed to effectively protect individuals who are covered under group contracts when there has been a change in the insurer providing the coverage. The Commissioner further believes that the proposed rules, 4 MCAR §§ 1.9251 and 1.9252, reasonably effectuate the purpose and intent of Minn. Stat. § 60A.082.

Date: February 2ND, 1981

Thomas L. O'Malley

THOMAS L. O'MALLEY
Assistant Commissioner of Insurance

In the Matter of the Proposed Adoption of Rules of the Insurance Division of the Department of Commerce, Governing Replacement of Group Insurance Coverage.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Thomas F. Pursell, do hereby declare that I have examined the proposed rules and all related documents and that, based on 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. Any exceptions are noted below.

Dated: April 29, 1981

Thomas F. Pursell

Thomas F. Pursell
Special Assistant
Attorney General