

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 714

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7/29
DATE FOR REVIEW 8/6
DATE DUE 8/12

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

Approved ____ Disapproved 8/7 Returned to Agency ____

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

Date filed w/Secretary of State ____

✓ Rule as Adopted

✓ Rule as Proposed see S.R.

✓ Order Adopting 7.9.81

N/A Notice of Intent to Solicit Outside Opinion

? Order for rulemaking
____ Date of Hearing See my comment.

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency See my comment.

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

✓ Mailing list Certificate

✓ Publication in State Register
5.18.81 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 See my comment.

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A 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

✓ Revisor's Endorsement

See my comment.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JACK G. YOUNG, Commissioner
Minnesota Department of Corrections

DATE: August 7, 1981

ATTN : John McLagan, Director
Standards Development Unit

FROM : H. Theodore Grindal
Special Assistant
Attorney General
by Judith V. Nelson

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Rules Governing Programs and Services for Battered Women

The above-captioned rules have been rejected for the following reasons:

1. The Notice of Intent to Adopt Rules Without Public Hearing appears to be defective and fails to comply with Attorney General rule 1 MCAR § 1.203 G.2., 7., 8., and 10. The statement that the rules are non-controversial, the procedure to be followed if a hearing is required, the notice of submission to the Attorney General and a summary as to the nature and effect of the rules are not present. The last statement would not be necessary if a copy of the rules had been attached to the notice as mailed.

2. In 11 MCAR § 2.230 F. states that funds will be retained by the department for purposes of working with "violent partners." This retention of funds seems outside the scope of the statutory authority of the rules found at Minn. Stat. § 241.63, subd. (h). The statute does not provide funding for the similar type program for men.

3. The deletions and changes found at 11 MCAR § 2.240 A.3.e.; B.3.e.; C.; and 11 MCAR § 2.245 B. may be substantive rather than just changes as to form. These changes could arguably go beyond the authority of the Revisor of Statutes or the agency without additional rationale.

4. The Affidavit and Notice of Submission to the Attorney General is not part of the document submittal and is required as set forth in Attorney General rule 1 MCAR § 1.203 P.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Please be advised that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the revisor of statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

HTG:rjg

Enc.

cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed Adoption of Rules of the State Department of Corrections Governing Programs and Services for Battered Women

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 Monday, May 18, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on May 18, 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 11 MCAR §§ 2.201, 2.202, 2.210, 2.220, 2.230, 2.240 and 2.245 are adopted this 9th day of July, 1981 pursuant to authority vested in my by Minnesota Statutes section 241.63(g).

STATE OF MINNESOTA

COMMISSIONER OF CORRECTIONS

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED RULES GOVERNING PROGRAMS AND SERVICES FOR BATTERED WOMEN

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

The above-captioned rules are new rules of the Department of Corrections.

The rules are needed to comply with Minn. Stat. § 241.63 (1978).

All parties are advised that they have 30 days in which to submit comments on the proposed rules. No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. Persons objecting to the lack of a public hearing or individuals wishing to comment on the proposed rules may do so by writing no later than June 19, 1981 to: John McLagan, Director of Standards Development, 430 Metro Square Building, St. Paul, Minnesota 55101. The rules may be modified if changes are adequately supported by data and reason.

Jack G. Young, Commissioner
Minnesota Department of Corrections

Date: May 1, 1981

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Programs and Services for Battered Women

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 1st day of May, 1981 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Corrections for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF CORRECTIONS

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED
RULES GOVERNING PROGRAMS AND
SERVICES FOR BATTERED WOMEN

AFFIDAVIT OF MAILING

Carina R. Rollins, being first duly sworn, deposes and says:

That on the 18th day of May, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, to all persons maintained on a list who have registered with the Department of Corrections for the purpose of receiving a notice of rule hearings.

Carina R. Rollins

Subscribed and sworn to before me of this
18th day of May, 1981.

Linda H. Fried
Signature of Notary

LINDA H. FRIED
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 25, 1987

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE MINNESOTA DEPARTMENT OF
CORRECTIONS GOVERNING PROGRAMS AND
SERVICES FOR BATTERED WOMEN

CERTIFICATE
OF MAILING

I hereby certify that the mailing list used for the above-titled matter constituted the accurate and complete list of persons, associations and other interested groups who, as of 9:00 a.m. this 18th day of May, 1981, have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with the Minnesota Department of Corrections for the purpose of receiving notice of the proposed adopted rules by the Department of Corrections.

Ruth A Kraemer

Date: 5-18-81

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Programs and Services for Battered Women

FINDINGS OF FACT

NOTICE of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on Monday, May 18, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on May 18, 1981. After affording interested and affected persons an opportunity to submit comments for thirty days after Notice, receiving fewer than seven written requests for a public hearing within the thirty-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules, and after submitting these rules to the Revisor of Statutes' office in accordance with 15.0412 and after making minor substantive changes and several grammatical and clarifying changes,

NOW, THEREFORE, I find that the amendments made in these rules constitute no substantial modification and the minor substantive and grammatical changes improve and clarify these rules.

STATE OF MINNESOTA

August 3, 1981
Date

COMMISSIONER OF CORRECTIONS

STATEMENT OF NEED AND REASONABLENESS

FOR

PROGRAMS AND SERVICES FOR BATTERED WOMEN

May 18, 1981

II MCAR §2.202 Definitions.

rationale: Definitions are needed to define the terms used in the proposed rules. Adoption of the proposed rules will affect emergency shelter services and service providers as defined in the proposed rules. Consequently it is imperative that all concerned individuals, agencies, and units of government have a clear understanding of terms used in the proposed rules and are in agreement with the terms defined in the proposed rules.

evidence: Testimony from evidence witnesses may be presented in support of definitions.

Minnesota Statutes 241.61, Subds. 2, 3, 4, 5
Minnesota Department of Finance Object Codes
Minnesota Office of Contract Management; Rules and Regulations
Minnesota Statutes 15.162, Subd. 9

II MCAR §2.210 Establishment of an Advisory Task Force.

rationale: A. A task force must be established to conform with legislative mandate. The task force provides information, technical assistance, and professional opinion to the department by acting as an advisory body to the Commissioner.

evidence: Minnesota Statutes 241.63 C
Minnesota Statutes 241.64, Subd. 1
Minnesota Statutes 15.059

rationale: B. Establishment of a review committee is necessary to ensure that minority organizations and those people affected by the program, as coordinated by the department, participate in the selection of the task force.

Minnesota Law states that "persons appointed shall be knowledgeable in the fields of health, law enforcement, social services,

or the law. Five members of the advisory task force shall be representatives of community or governmental organizations which provide services to battered women, and four members of the advisory task force shall be public members."

Other criteria cited ensure that the task force will be composed of persons with 1) knowledge about the problems facing battered women, 2) understanding of both rural and urban problems in developing services, and 3) the special needs of minority women who are physically abused.

evidence: Minnesota Statutes 241.64, Subd. 1

rationale: C. This stipulation is necessary because policy decisions can better be made with the input of persons who have personally experienced battering.

It is anticipated that a great number of applicants will apply for positions on the advisory task force. In filling the task force complement as required by law, many individuals may have similar qualifications. This being the case, preference will be given to individuals who have experienced abuse in their relationships.

evidence: Grassroots Services for Battered Women: A Model for Longterm Change, by Lisa Leghorn, January 1978.

11 MCAR §2.220 Relationship between Department and Advisory Task Force.

rationale: A. Duties of the project coordinator include serving as a liaison between the advisory task force and the Commissioner. As coordinator, he/she has knowledge of advisory task force

actions, discussion and rationale for decisions. Likewise, he/she is aware of department policy, procedures and philosophy. To maintain a working relationship between the department and advisory task force, the project coordinator must attend advisory task force meetings enabling exchange of information between the two bodies.

evidence: Minnesota Statutes 241.63, Subd. d

rationale: B. Procedure for the selection of project coordinator is governed by Minnesota Laws.

evidence: Minnesota Statutes 241.64, Subd. 3 a

rationale: C. This rule ensures that the Commissioner has full knowledge of the rationale used by the advisory task force in making a recommendation, and conversely this ensures that the advisory task force can receive an explanation as to why the Commissioner is taking a particular action. Further, this rule ensures a strong working relationship based on open communication and trust.

evidence: Minnesota Statutes 241.63 c
Minnesota Statutes 241.65, Subd. 3 c and d

II MCAR §2.230 Awarding Grants and Contracts.

rationale: A. This rule ensures a broad based participation in state funded programs by service providers. By encouraging competitive proposals, the department will potentially receive better quality proposals due to wider participation in the program.

Establishing uniform procedures for reviewing proposals will minimize bias and maintain objectivity during the screening process. This procedure should ensure funding of quality programs.

evidence: Minnesota Office of Contract Management; Rules and Regulations
Minnesota Statutes 241.65

rationale: B. A plan of affirmative outreach provides an equal opportunity for applicants to receive adequate notice and information about the program by utilizing extensive advertising in a broad range of media.

evidence: A-95 Review
Minnesota Department of Corrections Affirmative Action Plan
Federal Government A-95 Review process

rationale: C. Award criteria will be developed with advisory task force participation (prior to proposal submission) to standardize the method of proposal review, and to minimize potential bias by adopting criteria favorable to a particular applicant. Applicants must have access to criteria prior to submission of their proposals so they can develop their program in accordance with requirements.

evidence: Minnesota Statutes 241.63 f
Minnesota Statutes 241.64, Subd. 3

rationale: D. This rule is necessary to define the responsibilities of the advisory task force in advising the Commissioner with regard to grant applications.

evidence: Minnesota Statutes 241.65, Subd. 3 c

rationale: E. A specified amount of funds were allocated by the Minnesota Legislature for establishment of emergency shelter programs and facility rehabilitation. Rule 2.230 E. clarifies the department function as administrator of these funds and not a direct service provider. The rule further ensures that funds are distributed for the purposes for which they were intended.

evidence: Minnesota Statutes 241.63
Minnesota Department of Corrections Budget 1980-81
Victim Services Division

rationale: F. This rule conforms with Minnesota Law which states that "education grant monies may be used by the Commissioner to produce educational and promotional materials to encourage the development and utilization of emergency shelter services."

In many instances educational materials can be produced more economically by the state agency utilizing state resources. Materials to be distributed statewide can be accomplished efficiently through the department.

As the citizen organization providing input to the department on program funding, it is important to obtain recommendations from the advisory task force when expending these funds. Their ideas and discussion will enhance the quality of educational materials produced and distributed by the department.

evidence: Minnesota Statutes 241.62, Subd. 4

rationale: G. People knowledgeable about the issues of battering must participate in the stated functions to provide a broad base of

opinions, ideas, and discussions to ensure that fair and equitable recommendations are forwarded to the Commissioner.

evidence: Minnesota Statutes 241.64, Subd. 1

II MCAR §2.240 Responsibilities - Service Providers.

Overall, §2.240.A ensures uniformity of information submitted by applicants to simplify proposal review.

rationale: 1. This rule is needed to identify and locate organizations for the purpose of contacting applicants, as well as for contract purposes if funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: 2. Organization location must be stated for task force and Commissioner's information so they may assess the service area and accessibility to persons needing services. It is important to know the location of the program in relationship to the location of the contracted corporation if the organization is funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: 3. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined,

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: 4. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined,

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: 5. This rule provides the task force and Commissioner with information about the proposed staffing patterns for shelter operation. It is important to know the levels of decision-making authority in the program, the number of staff positions servicing women and children, and the responsibilities of person(s) handling fiscal matters. The program scope can be assessed from the content of job descriptions.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: 6. Many women who have experienced violence in their relationships have had direct contact with law enforcement officials, medical personnel, social service providers, court personnel and other representatives of the helping system. Many women have also been housed in shelters. It is important for development of programs and provision of ongoing support, to have input from women who are familiar with problems in the helping system, who know what kind of services battered women need and who will present a perspective that only someone who has experienced the problem can provide.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: 7. Battered women must rely on numerous helping systems to obtain assistance in stopping abusive behavior or in establishing a home if they choose to leave the situation. Helping systems called on most frequently are law enforcement, judicial, social services, medical and human service agencies. Since representatives of these systems are in frequent contact with battered women, it is necessary to solicit their input and support when developing programs for abused women. Representatives from these systems can also define needs in their own agencies that battered women programs could address.

evidence: Minnesota Statutes 241.62, Subd. d

rationale: 8. This rule is needed by Commissioner and task force to determine if proposed programs have realistic time lines for accomplishing goals and objectives, and to later assess if grantees are accomplishing their goals and objectives as specified in their time line.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: 9. It is necessary to have information about services to be provided by program applicants to:

1) determine if applicants are responding to needs of people requiring services,

2) determine if services to be provided can be accomplished with funds in the proposed budget,

3) serve as a measure for evaluation upon completion of the program.

evidence: Minnesota Statutes 241.62, Subd. a

rationale: 10. Since many programs receive only partial funding from the Department of Corrections, it is important to know how each service will be provided and by whom. If programs do not have adequate funds to employ a sufficient number of staff members, services must be provided by volunteer workers. If a program plans to utilize volunteers, it is important to have information regarding the types and numbers of volunteers needed, methods of volunteer recruitment, volunteer training and other information pertaining to volunteers.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: 11. The department may require some form of program evaluation at any time in a given contract period. It is necessary to obtain a statement of compliance with program evaluation requirements to ensure that grantees agree to cooperate with department requirements.

evidence: Minnesota Statutes 241.62, Subd. c

rationale: 12. The department is responsible for issuing numerous grants for battered women's programs. To determine if an applicant is providing services to populations that are targeted by the task force and Commissioner, applicants must describe the population receiving their proposed services.

A description of the targeted population provides further information to the task force and Commissioner as they assess services to be delivered and their potential impact on the target group.

evidence: Minnesota Statutes 241.62, Subd. e

Overall, §2.240, B ensures uniformity of information submitted by applicants to simplify proposal review.

rationale: B.1. This rule is needed to identify and locate organizations for the purpose of contacting applicants, as well as for contract purposes if funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: B.2. Organization location must be stated for task force and Commissioner's information so they may assess the service area and accessibility to persons needing services. It is important to know the location of the program in relationship to the location of the contracted corporation if the organization is funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: B.3. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined.

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: B.5. This rule provides the task force and Commissioner with information about the proposed staffing patterns for shelter operation. It is important to know the levels of decision-making authority in the program, the number of staff positions

servicing women and children, and the responsibilities of person(s) handling fiscal matters. The program scope can be assessed from the content of job descriptions.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: C. By requiring that contractors and grantees comply with state affirmative action and equal employment opportunity guidelines, the department ensures that established guidelines are followed and that discrimination by funded programs does not occur.

Further, by requiring service providers to conform to other state and local laws, any practices undertaken by contractors or grantees are dictated by established statutes.

evidence: Minnesota Department of Corrections Affirmative Action Plan
Minnesota Office of Contract Management; Rules and Regulations

rationale: D.1. Objective information in the form of descriptive data is a useful evaluative tool for the Commissioner and advisory task force. Descriptive data can further be of use as an educational tool when discussing battered women services. By limiting data reporting requirements to descriptive data, the confidentiality of persons seeking assistance from funded agencies is protected.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: D.2. It is necessary to require that funding agencies submit reports as another means to substantiate that goals are being met. Reports provide written records of activities of funded programs for a given period.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: D.3. To ensure that funded programs adhere to their proposed budget and that all financial transactions are recorded, it is necessary to require the implementation of a fiscal policy.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: E. This rule ensures that shelter facilities are adequately maintained to provide for the safety of its occupants. In addition, this rule provides a cost efficient method of inspecting shelters by utilizing existing fire, health and building inspectors from the local communities.

evidence: Minnesota Building Code 1978, Building Code Division
Local Health Officers and Communicable Diseases, Minnesota Health Department 1 and 2
Minnesota Health Department Plumbing Code 1979
Minnesota Public Safety Department Fire Marshal, Fire Code 1975

11 MCAR §2.245 Submission of Data - Mandatory.

rationale: 1. This rule is mandated by Minnesota Laws.

evidence: Minnesota Statutes 241.66, Subd. 1

rationale: 2. This rule assures that the data collected under this law is useful while not invading the privacy of Minnesota citizens. The collation of data to determine characteristics of batterers and victims, in addition to number of incidents, is essential in the development of public policy to meet the needs of persons abused by their partners.

evidence: Minnesota Statutes 241.66, Subd. 1

In the Matter of the Proposed Adoption of Rules of the State Department of Corrections Governing Programs and Services For Battered Women

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

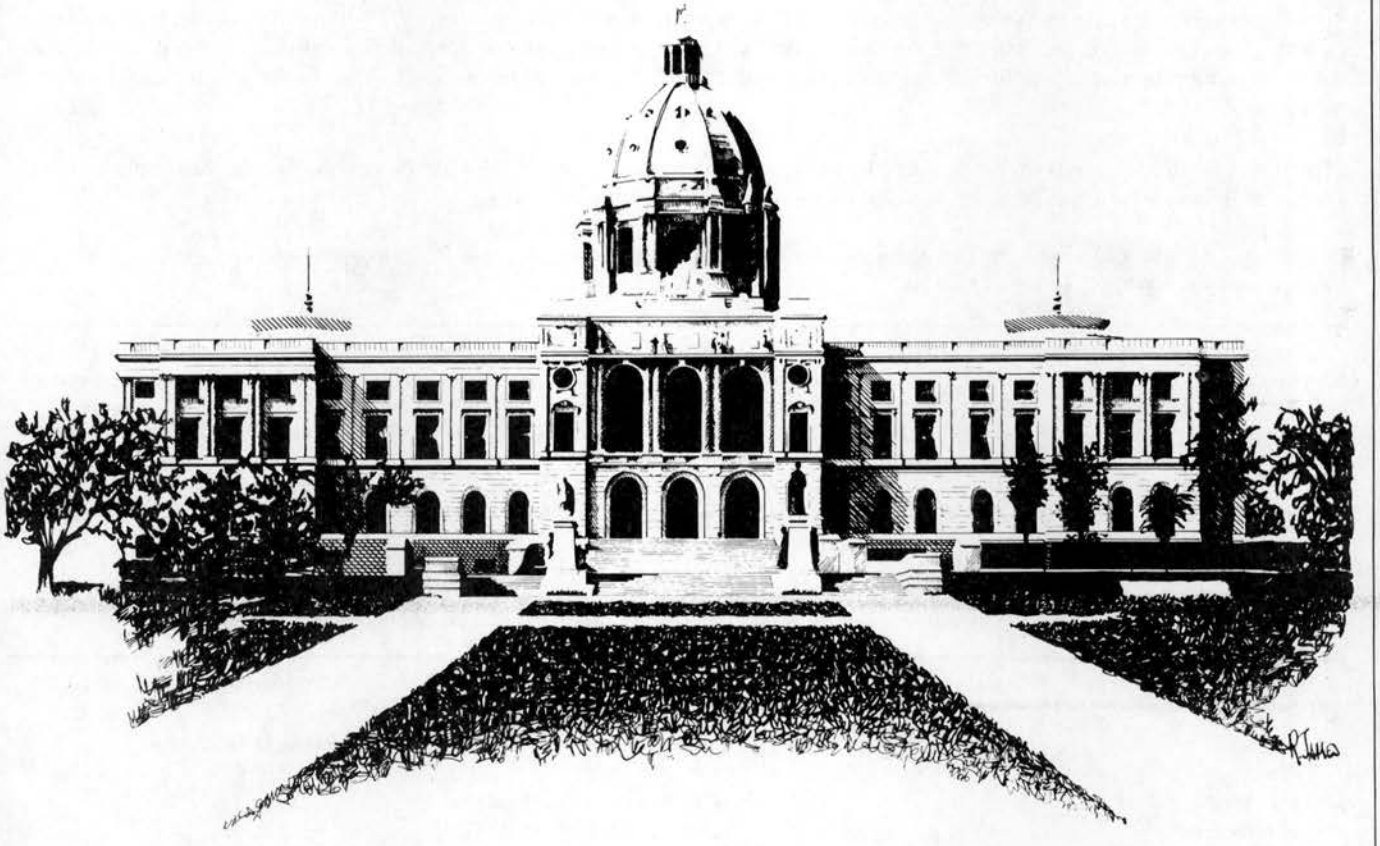
I, [Assistant Attorney General] James N. Bradford, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

James N. Bradford
[Assistant Attorney General]

Dated: JUL 7 1981

STATE REGISTER

STATE OF MINNESOTA



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May 18, 1981

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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		
47	Monday May 11	Monday May 18	Monday May 25
48	Monday May 18	Friday May 22	Monday June 1
49	Friday May 22	Monday June 1	Monday June 8
50	Monday June 1	Monday June 8	Monday June 15

*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.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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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*.

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

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State Register and
Public Documents Division

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Public Notice Regarding Changes in Minnesota's Medical Assistance Program 1875

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

The listings are arranged in the same order as the table of contents of the MCAR.

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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.

Board of Teaching

Proposed New Rules and Amendments to Rules Governing Procedures for the Revocation or Suspension of Minnesota Teaching Licenses, Letters of Approval for A Teacher to Teach Subjects or Fields for Which Current Valid Minnesota Licensure Is Not Held, the Licensure of Teachers of Adult Basic/Continuing Education, Continuing Education/Relicensure

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Minnesota Board of Teaching proposes to adopt and/or amend the above-entitled rules without a public hearing. The board 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, subdivision 4h (1980).

Proposed rule 5 MCAR § 3.004 establishes procedures for the revocation or suspension of Minnesota teaching licenses. This rule is authorized by Minn. Stat. § 15.0412, subd. 3 (1978) and Minn. Stat. § 125.185, subd. 4 (1978).

Proposed rule 5 MCAR § 3.006 provides for variance to the rules of the Minnesota Board of Teaching, 5 MCAR §§ 3.050-3.113. This rule provides for the issuance of letters of approval. This rule is authorized by Minn. Stat. § 15.0412, subd. 1a (1978), Minn. Stat. § 125.05, subd. 1 (1978), and Minn. Stat. § 125.185, subd. 4 (1978).

Proposed rule 5 MCAR § 3.087 establishes standards for teachers who desire to be licensed as teachers of adult basic/continuing education. This rule is authorized by Minn. Stat. § 125.05, subd. 1 (1978) and Minn. Stat. § 125.185, subd. 4 (1978).

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

The proposed amendments to 5 MCAR § 3.005, the rule governing continuing education/relicensure, clarify certain provisions of the existing rule governing continuing education/relicensure. These proposed amendments are authorized by Minn. Stat. § 125.185, subd. 4 (1978) and Minn. Stat. § 214.12 (1978).

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 any one or all of the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required for any one or all of the proposed rules, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing on a particular rule or rules should submit such comments or request(s) to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-2415

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 Kenneth L. Peatross upon request.

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

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

Copies of this notice and the proposed rules are available and may be obtained by contacting Kenneth L. Peatross.

April 30, 1981

Kenneth L. Peatross, Executive Secretary
Board of Teaching

Rules as Proposed (all new material)

5 MCAR § 3.004 Procedures for the revocation or suspension of Minnesota teaching licenses.

A. Licenses shall be revoked or suspended pursuant to the provisions of Minn. Stat. §§ 125.09, 125.185, or 5 MCAR § 3.130.

B. Revocation. Revocation shall include the cancellation or repeal of a teaching license and/or renewal privilege. Revocation shall disqualify a person from teaching, or performing any other function, which is permitted on the basis of holding a license issued pursuant to the rules of the Board of Teaching. Revocation shall be final, except that a person whose license has been revoked may petition the Board of Teaching for a license pursuant to paragraph E.1. of this rule.

C. Suspension. Suspension shall include the temporary withdrawal of a teaching license and/or renewal privilege. Suspension shall disqualify a person from teaching, or performing any other function, which is permitted on the basis of holding a license issued pursuant to the rules of the Board of Teaching. The length of each suspension and any terms and conditions attached thereto shall be determined by the Board of Teaching upon the consideration of the following factors:

1. The activity of the individual which led to the license suspension, and
2. Any relevant mitigating factors which the individual may interpose on his or her behalf, and
3. The prior teaching record of the individual, and
4. Other similar factors.

D. Unless otherwise provided by the Board of Teaching, a revocation or suspension applies to each license or renewal privilege held by the individual at the time final action is taken by the Board of Teaching. A person whose license or renewal privilege has been suspended or revoked shall be ineligible to be issued any other license by the Board of Teaching during the pendency of the suspension or revocation.

E. Issuance or reinstatement of a license after a revocation or suspension.

1. A person whose teaching license or renewal privilege has been revoked by the Board of Teaching may apply for and shall be granted an entrance license upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled, and upon meeting current licensure standards.

2. A person whose teaching license or renewal privilege has been suspended by the Board of Teaching may apply for reinstatement of that license in one of the following manners:

a. If the suspended license was an entrance license which has lapsed during the suspension, that license will be reinstated upon proper application after the period of suspension has expired and upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled, provided that the applicant has had less than one year of teaching experience while holding the entrance license. If the applicant has gained a year or more of teaching experience on the entrance license prior to the suspension and the license has lapsed during the suspension, a five-year continuing license shall be granted after all other conditions stated in this provision have been met.

b. If the suspended license was an entrance license which has not lapsed during the suspension, the person may resume teaching for whatever period of time remains on that license after the period of the suspension has expired and upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled.

c. If the suspended license was a continuing license which has not lapsed during the period of the suspension, the person may resume teaching for whatever period of time remains on the continuing license after the suspension has expired and upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled.

d. If the suspended license was a continuing license which lapsed during the period of the suspension, the person may apply for another continuing license which shall be granted provided that the suspension has expired and upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled, and further provided that current continuing education requirements have been completed.

e. If the suspended license was a life license, the person may resume teaching after the period of the suspension has expired and upon presentation of competent evidence that all terms and conditions which the Board may have imposed have been fulfilled.

5 MCAR § 3.006 Letters of approval for a teacher to teach subjects or fields for which current valid Minnesota licensure is not held.

A. The Minnesota Board of Teaching hereby authorizes the issuance of letters of approval which permit a teacher to teach in related subjects or fields for which such teacher is not currently licensed. The superintendent of schools of a local school district may request the Manager of the Personnel Licensing Section of the Minnesota Department of Education to issue a letter of approval which permits a teacher to teach subjects or fields for which that teacher is not currently licensed.

B. Letters of approval authorized by provision A. of this rule shall be issued to superintendents of schools if the Board of Teaching finds that the following conditions are met:

1. The superintendent of schools requests a letter of approval in accordance with the provisions of this rule, and

2. The superintendent of schools verifies that:

a. A fully licensed teacher is not available for the position, and

b. No teacher holding a teaching license in the subject or field for which the letter of approval is requested has been placed on unrequested leave by the school district who wishes to resume teaching in that subject or field, and

3. The teacher for whom the request is made holds a current valid Minnesota license granted by the Minnesota Board of Teaching.

C. Duration of letters of approval.

1. A letter of approval shall be valid for a period not to exceed one school year.

2. Letters of approval shall be renewed for a period not to exceed one school year provided that:

a. The teacher for whom the request is made has completed at least six quarter hours of college credit since the last

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letter of approval was granted in an approved licensure program in the subject or field for which the approval letter was issued, and

b. The superintendent of schools requests a letter of approval in accordance with provision B. of this rule.

D. The Manager of the Personnel Licensing Section of the Minnesota Department of Education shall state in writing to the superintendent of schools the reasons for granting or denying the letter of approval requested pursuant to the provisions of this rule.

5 MCAR § 3.087 Adult basic/continuing education.

A. For the purpose of this rule, adult basic/continuing education shall consist of programs, other than vocational, to provide educational opportunities for adults who have educational needs below the twelfth grade completion level.

B. Nothing in this rule shall prohibit a local school board from hiring teachers who hold valid Minnesota classroom teaching licenses and who are not licensed as teachers of adult basic/continuing education to serve as teachers of adult basic/continuing education under the direction of the superintendent of schools. Except, in the case of high school diploma programs for adults, criteria established by the State Board of Education rules for granting high school credits, as set forth in Edu 46 or successor rule, shall be applied.

C. All candidates recommended for licensure as teachers of adult basic/continuing education shall:

1. Hold a baccalaureate degree, and

2. Hold a valid Minnesota teaching license, and

3. Satisfactorily complete a program approved by the Minnesota Board of Teaching leading to the licensure of teachers of adult basic/continuing education, consisting of a minimum of 15 quarter hours or the equivalent. Such program shall include, but is not limited to, the following areas:

a. The application of current research, learning theory, and practice consistent with current definitions of functional literacy.

b. Classroom methods, materials, and practices necessary to assist adults in achieving personal goals, acquiring skills needed to function in society, continuing education to high school completion level, securing training to become more employable, acquiring health information, and acquiring independence.

c. Curriculum development in the basic skills necessary to function in society:

(1) Academic: reading, writing, computing.

(2) Coping: problem solving, decision making, self responsibility.

(3) Adapting: intra-personal, inter-personal, group membership, group leadership.

D. An institution applying to the Board of Teaching for approval of its preparation program leading to the licensure of teachers of adult basic/continuing education shall meet the provisions of 5 MCAR § 3.141.

E. Persons holding a valid Minnesota teaching license and who have at least two years of part-time or full-time, or 500 hours, of paid employment as a teacher of adult basic/continuing education prior to July 1, 1983, verified by an employing official, upon application shall be issued a license to teach adult basic/continuing education.

F. Continuing licensure. The continuing license shall be issued and renewed according to rules of the Board of Teaching pertaining to continuing education/relicensure.

G. This rule is effective July 1, 1983, for all applicants for licensure as teachers of adult basic/continuing education.

Rules as Amended

5 MCAR § 3.005 Continuing education/relicensure.

A. The provisions of this rule apply only to persons licensed by the Board of Teaching.

B. An applicant who is not eligible for a continuing license or an applicant whose continuing license has lapsed shall meet the provisions of 5 MCAR § 3.001 for issuance of a license.

C. ~~B.~~ A continuing license, valid for five years, shall be issued to an applicant who holds a valid entrance license and who has met the requirements for the issuance of the continuing license as set forth in rules of the Board of Teaching. ~~A continuing license is required for those subjects and grades where life licensure has not been granted.~~

D. ~~C.~~ Pursuant to procedures specified in this rule, a valid continuing license shall be renewed for a subsequent period of five years when an applicant presents evidence of having been granted 120 renewal units during the five year period immediately preceding the date on which the required renewal is to be made effective.

~~D. Applicants who do not qualify for a continuing license.~~

~~1. An applicant having teaching experience who transfers from another state and who does not hold a valid Minnesota license must obtain an entrance license.~~

~~2. An applicant holding a continuing or life license in one education area and who wishes to engage in another education area for which the applicant is not presently licensed shall be issued a continuing license for the additional area upon meeting the requirements for that license.~~

E. Renewal units. The renewal unit is based on the college credit. Ten hours of classroom instruction are equivalent to one quarter hour of college credit and 10 renewal units. Therefore, one renewal unit is equal to one hour of college classroom instruction and the work and expectations associated with the classroom. One hour of college instruction usually carries with it two additional hours of related work. The allocation of one renewal unit per college credit "hour" is based, then, on the assumption of this investment of three hours of actual time.

This equation of three hours of actual time for one renewal unit may be used by the local committee for determination of the allocation of renewal units in all categories. Except as provided in E.2. of this rule, the local committee may make exceptions to this ratio. The local committee, in making such exceptions, shall consider such criteria as the quality of the professional growth experiences and the relationship of such experiences to maintaining and improving general, academic, or professional qualifications. Decisions shall not be based solely on the number of hours involved.

~~1. Experiences for which renewal units may be granted are listed below. Renewal units must be earned in two or more of the following categories.~~

1. Categories for which renewal units shall be allocated by the local committee, and for which renewal units may be granted to applicants, are listed below. Verification of completion of experiences must be submitted by the applicant to the local committee. Renewal units must be earned in two or more of the following categories.

a. College courses and related work.

b. Supervision of clinical experiences.

c. Attendance at professional meetings, workshops, conferences, and seminars.

d. Attendance at lectures by persons with expertise in the areas for which licensure is requested.

e. Systematic, purposeful observation during visits to schools and to related business and industry.

f. Volunteer work in professional organizations or situations related to the areas for which licensure is requested.

g. Development of demonstrations or curriculum innovations for use with student teachers or in-service programs.

h. Creative endeavor (art, music, writing) related to the individual's licensure.

i. Publication of professional articles in a professional journal in an appropriate field.

j. Travel related to the professional licensure areas. Prior approval of this experience shall be obtained.

k. Maintenance and evaluation of an annotated log or record of activities with a class or group.

l. Exchange situations to gain experience with students at another age, ability, culture, socio-economic level or in another subject for which the teacher is qualified.

m. Attendance at and participation in in-service meetings with opportunity for staff members in various roles (college faculty, community persons) to work together.

n. Participation in in-service meetings to include active staff planning and involvement (demonstrations with student exhibits, explanation of special or new techniques).

o. Direct involvement, individually or within a group, to research, plan, and implement innovative educational practices.

p. Planning and production of television or other special programs for use in the schools.

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q. Leadership experiences, which involve the exercise and/or development of new or broader skills and sensitivities to the school, community, and profession.

r. Membership on national, state, and local committees involved with licensure, teacher education, or professional standards, and participation in national, regional, or state accreditation.

s. Additional kinds of experiences may be approved. These experiences shall be experiences especially appropriate for a particular school district or a particular education area.

2. The local committee shall grant renewal units and allow accumulation of renewal units according to the provisions of this rule. Maximum renewal unit allocations for specific experiences identified below are to be used as a guide for allocating renewal units for other experiences.

a. One quarter credit (when related to professional growth) equals ten renewal units.

b. One semester credit (when related to professional growth) equals fifteen renewal units.

c. Supervision of the clinical experiences of a college student for one quarter or one semester equals ten renewal units, provided that no more than thirty such renewal units may be granted in any five-year period.

d. One week of approved travel equals ten renewal units, provided that no more than thirty such renewal units may be granted in any five-year period.

e. A one-day workshop, seminar, or conference equals up to five renewal units based on type of experience, involvement, and outcome product.

3. Experiences for renewal unit credit must aid the applicant in maintaining and improving general, academic, or professional qualifications. Except for provision E.1.1., teaching experiences for which licensure is required shall not qualify for renewal unit credit.

4. An applicant requesting renewal of a license to teach must earn a minimum of 120 renewal units during each five-year licensure period from July 1 of the year of issuance to June 30 of the year of expiration. An applicant may not bank renewal units for purposes of relicensure.

5. In cases where local school board policies require further education on a periodic basis, such education shall be evaluated in the same manner as other experiences and may apply as renewal units.

6. An applicant who seeks renewal of a continuing license for two or more areas ~~shall~~ should allocate at least 30 renewal units to each of the licensure areas for a total of no fewer than 120 units, with priority given to work in areas where the candidate is employed during the licensure period. Those candidates possessing administrative licensure may allocate units for the renewal of teaching licensure in this same manner.

F. Local committees for continuing education/relicensure.

1. A local committee as authorized by Minn. Stat. § 125.185, subd. 4 shall be established in each Minnesota public school district with membership as follows:

a. Five persons licensed by the Board of Teaching who hold at least a baccalaureate degree, to be elected by the licensed teaching faculty. Nominations may be by building, grade level, or other appropriate categories, provided that all eligible persons have a fair and equitable chance for ~~selection~~ nomination. Proportionate representation is encouraged.

b. One licensed person who holds an administrator's license, representing the elementary and secondary administration, to be elected by the licensed practicing administrators employed by the district.

c. One resident of the district who is not an employee of the district, to be designated by the local school board. School board members are not considered to be employees of the district.

2. All members of an appropriate voting group shall be notified of the ~~meeting at which the elections are to be held~~ date of the election at least five days prior to the ~~meeting~~ election. The ~~meeting~~ election shall be held at a convenient time and place and ~~elections~~ shall be by secret ballot.

3. In districts where either teachers or administrators with the specified qualifications are not available for service on the local committee, the superintendent will report the situation to the Board of Teaching who shall make special provisions for establishing a continuing education committee.

4. Members of the local committee shall be elected in May of each year for terms to begin no later than the following September 1. The term of office of members of the local committee shall be two years.

5. The local committee shall hold its organizational meeting no later than September of each year. At the organizational meeting the local committee shall elect a chairman and secretary whose duties shall be established by the local committee.

a. Up to three days per month may be provided by the local school district to each local committee member to attend local committee meetings.

b. Clerical assistance and supplies as requested by the local committee may be provided by the local school district in sufficient amount to enable the local committee to comply with the record keeping and reporting required by the rule.

6. A quorum shall be more than fifty percent of the total voting membership of the committee. A majority vote of those voting members present shall be sufficient to take action. Meetings may be called by the chairman of the committee or by written request of three or more of the members. Notice of meetings shall be provided to each member of the committee at least five days prior to the date of the meeting, and shall be posted or otherwise advertised in such a manner as to provide reasonable notice to those teachers subject to the actions of the committee.

7. The duties of the local committee are as follows:

~~a. Set rules for its own operation and establish such written guidelines as may be necessary to implement those duties outlined in this section. These rules and guidelines shall not be in conflict with law or other provisions of this rule.~~

~~b. Determine the number of renewal units to be granted for experiences, in accordance with the maximum renewal unit allocations identified in this rule.~~

~~c. Act, within a reasonable time, upon requests for recommendation for renewal of the continuing license by determining whether the applicant has met the requirements of this rule.~~

~~d. Endorse the application for renewal of the continuing license of each qualified applicant and return the endorsed application to the applicant, who will forward it to the director of licensing.~~

~~e. Provide supporting evidence to the board of teaching when an appeal is taken from a decision of the local committee.~~

~~f. Provide recommendations to appropriate personnel concerning the in-service needs of the district.~~

~~g. Evaluate procedures and criteria for granting renewal units and make recommendations for modifications to the director of licensing during February of each year.~~

~~h. Forward to the director of licensing verification of the membership of the local committee on an annual basis by November 1 of each year.~~

~~i. Forward to the director of licensing a copy of the local committee guidelines. Guidelines shall be forwarded at least every five years, and whenever substantial changes are made.~~

~~j. Verify one year of successful teaching experience for individuals on an entrance license. Successful teaching shall be determined by satisfying one or more of the following three criteria:~~

~~(1) A teacher receives an offer of a contract for the ensuing year.~~

~~(2) A teacher gains tenure or acquires a continuing contract.~~

~~(3) Supportive evidence is presented from supervisory personnel, professional colleagues, and/or administrators.~~

~~k. Hold an open hearing annually to allow the teachers in each district to review the guidelines established by the local committee.~~

~~l. Provide those services and reports that may be required from time to time by the board of teaching.~~

a. Set procedures for its own operation:

(1) Establish written guidelines which:

(a) Set time, place, and procedure for local committee meetings.

(b) Set procedures for local committee operations,

(c) Determine renewal units to be allocated for each category enumerated in provision E.1. in accordance with the maximum renewal unit allocations stipulated in this rule.

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(2) Make the guidelines available to persons interested in or affected by decisions of the local committee, together with a list of the current local committee membership.

(3) Hold a hearing annually to allow the teachers in the district to review proposed or revised guidelines established by the local committee. It is recommended that this hearing be held in the fall.

(a) A working draft of local guidelines and proposed revisions shall be made available prior to the local hearing.

(b) The local committee shall schedule the hearing at a time and place which is convenient for those interested in or affected by the guidelines to be able to attend.

(c) Adequate and proper notice shall be given to all such persons within the district,

(d) All local committee members shall be present at the hearing.

(e) The hearing shall continue until all persons who wish to speak have had an opportunity to do so.

(f) Although input received at the hearing is not binding, the local committee is encouraged to modify its guidelines, insofar as modifications are consistent with this rule, if the information received during the hearing indicates that changes are necessary or desirable.

b. Provide recommendations to the Board of Teaching for the renewal of teaching licenses as provided in Minn. Stat. § 125.185, subd. 4:

(1) Make recommendations regarding the issuance of the first continuing license by verifying one year of successful teaching experience for individuals on an entrance license. Successful teaching shall be determined by satisfying one or more of the following three criteria:

(a) A teacher receives an offer of a contract for the ensuing year.

(b) A teacher gains tenure or acquires a continuing contract.

(c) Supportive evidence is presented from supervisory personnel, professional colleagues, and/or administrators.

This experience shall be verified by the local committee chairman or designee, whose name shall be on file with the manager of licensing.

(2) Act, within a reasonable time, upon requests for recommendation for renewal of the continuing license by determining whether the applicant has met the requirements of this rule.

(3) Endorse the application for renewal of the continuing license of each qualified applicant. The applicant shall assume the responsibility for forwarding the endorsed application to the manager of licensing.

(4) Provide supporting evidence to the Board of Teaching when an appeal is taken from a decision of the local committee.

c. Forward to the Board of Teaching the following information in accordance with due dates set forth in this rule:

(1) Prior to November 1 of each year, verification of the current membership of the local committee.

(2) Prior to November 1, 1980, and every five years thereafter, a copy of the published local committee guidelines. At such time that substantial changes are made in local guidelines, a revised copy of these guidelines shall be forwarded to the Board of Teaching.

(3) During February of each year, any recommendations for modifications in this rule, based upon an evaluation of procedures and criteria for granting renewal units.

d. Provide those services and reports that may be required from time to time by the Board of Teaching.

e. Provide recommendations to appropriate personnel concerning the in-service needs of the district.

8. It shall be the responsibility of the person seeking the renewal of a continuing license to submit the application, appropriate verification, and other supporting materials to the local committee of the employing school district, in accordance with procedures and due dates established by that committee.

9. If a licensed person employed by one school district becomes employed by a different district during a renewal period, units already earned and granted during that renewal period shall forthwith be transferred to the local committee for the new district. Such units shall be accepted by that committee.

10. Renewal units ~~will~~ shall be granted by the committee of the district where the applicant was employed at the time that the experience was completed. ~~In the case of a person who has not been employed by a school district for a period of time, renewal units will be granted by the committee of the district where the applicant was once employed; or where the applicant currently resides if accepted by the local committee. Persons who have never been employed on a continuing basis by a school district shall affiliate with the local committee in the district in which they reside.~~

a. Persons who have not been employed by a school district for a period of time will be granted renewal units in either of the following ways:

(1) The local committee of the district where the applicant was last employed, or

(2) The local committee of the district where the applicant currently resides, if accepted by the local committee.

b. Persons who have never been employed on a continuing basis by a school district in Minnesota shall affiliate with the local committee in the district in which they reside.

c. Persons residing out of the state of Minnesota who wish to maintain continuing Minnesota licensure may make application for renewal to the Board of Teaching in accordance with provisions of this rule.

11. Each local committee shall be provided with current information regarding changes in Board of Teaching rules which pertain to licensure in education by the director of licensing.

12. Option for formation of joint local committees.

a. Two or more districts situated in close proximity to each other shall have the option of joining together to establish a joint local committee.

b. A plan for two or more districts to formulate a joint local committee shall be drawn up by a committee consisting of two teachers, one administrator, and one school board member or a designee, from each participating district, and be ratified by at least seventy percent of the licensed personnel employed by each participating district. The plan shall provide for fair representation of all licensed personnel and insofar as possible, shall be consistent with F.1. and other provisions of this rule.

c. The ratified plan shall be submitted by the superintendent of the district employing the largest number of licensed personnel to the ~~director of licensing~~ Board of Teaching.

d. The joint local committees shall be treated as any local committee and shall comply with all provisions of this rule.

13. Nonpublic schools.

a. Licensed personnel in a nonpublic school may establish a local committee for the same purpose as local committees established by public school districts. Licensed personnel in two or more nonpublic schools may combine to form a local committee upon the agreement of seventy percent of the licensed personnel in each school. The chairman of the committee shall submit to the director of licensing, on an annual basis no later than November 1 of each year, verification of the membership of the committee and verification of the school or schools whose personnel have established the committee.

b. Licensed personnel in one or more nonpublic schools may join with an appropriate public school district in the establishment of a local committee, provided that seventy percent of the licensed personnel from each nonpublic school and seventy percent of the licensed personnel employed by the public school district agree to such a committee. The superintendent of the district shall submit to the director of licensing, verification of the membership of the committee and verification of the nonpublic schools whose personnel has joined in the establishment of the committee.

c. Insofar as possible, the committees authorized in a. and b., above, shall be established and shall function in the same manner as provided in this rule for committees of public school districts and in such way as to provide fair representation for all licensed personnel and objective evaluation of requests for renewal of licenses.

~~14. Vocational teachers.~~

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~~a. The criteria for licensure renewal contained in the Minnesota state plan for vocational-technical education or successor rules shall replace the provisions of E.1.~~

~~b. Vocational teachers shall be subject to the continuing education structure as outlined in the Minnesota state plan for vocational-technical education or successor rules. Such licensure shall be recommended by the local vocational relicensure committee. Vocational teachers employed in school districts or state board approved vocational or cooperative centers currently employing a combination of individuals with standard and vocational licenses shall select one of the options listed below. The selection of alternatives shall be made by a vote of these teachers currently using vocational licensure, and such election shall originally be supervised by the chairman of the local continuing education committee.~~

~~(1) Vocational teachers may be subject to the local committee, except that five vocationally licensed vocational teachers currently teaching full-time on a valid vocational license, as elected in secret ballot by the district or state board approved vocational or cooperative center vocationally licensed teachers, shall be the teaching faculty members on the committee whenever issues of vocational licensure arise.~~

~~(2) A separate local vocational committee may be formed by the election of five vocationally licensed teachers currently teaching full-time on a valid vocational license, along with representation from the public and administration. This option shall be limited to those school districts or state board approved vocational or cooperative centers utilizing twenty-five (25) or more vocational licensees.~~

~~(3) Vocational teachers in two or more districts or state board approved vocational or cooperative centers situated in close proximity may establish a joint local committee, and may select either option (1) or (2).~~

~~(4) Vocational teachers may be subject to the local continuing education/relicensure committee as currently established, when such teachers teach in a district which employs less than five vocational teachers or which is geographically located so it cannot feasibly cooperate with another district.~~

14. Vocationally licensed teachers. The criteria for licensure renewal of vocationally licensed teachers are set forth in the Board of Education rule 5 MCAR § 1.0786 Continuing Education Requirements for Relicensure of Vocational Instructional and Supportive Personnel.

~~G. Colleges or universities which prepare teachers for licensure in education may, if at least twenty of its faculty members apply for teacher licensure, either form a local committee or combine with other colleges or universities to form joint committees.~~

G. A college or university which is approved to prepare teachers for licensure in education may form a local committee or combine with other approved colleges or universities to form joint committees. Licensed personnel in approved colleges or universities may, in accordance with F.10. of this rule, affiliate with a local committee established in a local school district or nonpublic school.

H. Right of appeal.

1. When an applicant has not been granted the requested number of renewal units by a local continuing education/relicensure committee, an appeal may be made to the local committee. An application must appeal to the local committee within ~~thirty days~~ twenty working days after notification of the decision of the local committee. Failure to file a written request with the local committee for an appeal within ~~thirty days~~ twenty working days constitutes a waiver of the individual's right to appeal.

2. Decisions by a local committee for continuing education/relicensure denying the appeal may be appealed to the Board of Teaching by the applicant according to the provisions of 5 MCAR § 3.020.

3. In cases where the applicant has not been granted the required number of renewal units for relicensure, local committees shall not endorse the application for renewal of the continuing license.

4. In the event that the renewal units under appeal result in loss of licensure, it shall be the responsibility of the appellant to inform the ~~director~~ manager of licensing of such loss of licensure. The ~~director~~ manager of licensing shall extend the previous continuing license until all avenues of administrative appeal have been exhausted.

I. Evaluation. The functions of the local committees shall be evaluated by the Board of Teaching during each calendar year which is divisible by five.

Department of Corrections

Proposed Rules Governing Programs and Services for Battered Women

Notice of Intent to Adopt Rules without A Public Hearing

The above-captioned rules are new rules of the Department of Corrections.

The rules are needed to comply with Minn. Stat. § 241.63 (1978).

All parties are advised that they have 30 days in which to submit comments on the proposed rules. No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. Persons objecting to the lack of a public hearing or individuals wishing to comment on the proposed rules may do so by writing no later than June 19, 1981 to: John McLagan, Director of Standards Development, 430 Metro Square Building, St. Paul, Minnesota 55101. The rules may be modified if changes are adequately supported by data and reason.

May 1, 1981

Rules as Proposed (all new material)

11 MCAR § 2.201 Introduction. Minn. Stat. § 241.63, clause (g), requires that the Commissioner of Corrections promulgate all rules necessary to implement the provisions of §§ 241.61-241.66 and 256D.05, subd. 3, including emergency rules.

11 MCAR § 2.202 Definitions.

A. Service providers. Any public agency or private nonprofit corporation which plans, designs, and implements either emergency shelter programs and support services for battered women or education programs designed to promote public and professional awareness of the problems of battered women.

B. Purchase of Service Agreement. A contract or grant agreement between the state department and service provider which specifies services to be provided, the method of delivering services, the responsibilities of the staff, the budget and a commitment to assist in the necessary data collection and evaluation research to be completed on the program.

C. Department. The Minnesota Department of Corrections (DOC).

D. Emergency shelter services. Housing facilities which regularly provide food, secure lodging, and a crisis phone line with 24-hour accessibility, primarily for women and children seeking safety from assault by a spouse, male relative, or male with whom they are residing or have resided in the past.

E. Support services. Advocacy, emotional support and/or counseling, legal information, medical referral, transportation, child care, information and referral services and such other services as needed by battered persons and their families.

F. Public education programs. Programs designed to promote public and professional awareness of the problem of battering.

G. Commissioner. Commissioner of Department of Corrections.

H. Data. Summary data according to Minn. Stat. § 15.162, subd. 9.

I. Law enforcement agencies. Police and sheriff's departments operating in Minnesota.

J. Request for proposals. Method to solicit applications in a uniform format for distribution of funds allocated by the Legislature for programs and services for battered women.

11 MCAR § 2.210 Establishment of an advisory task force.

A. The commissioner shall appoint an advisory task force consistent with the procedures established by the Secretary of State's office in accordance with Minnesota laws.

B. Prior to the appointment of any new task force member, the task force shall choose no more than five (5) organizations, one of which shall be the Department of Corrections, to send representatives to a review committee which shall rate applicants based on the following:

1. Criteria mandated in Minn. Stat. §§ 241.64-241.66.
2. Applicant's understanding of problems facing battered women.

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3. Representatives from both metro and non-metro areas of the state.

4. Representation from at least three (3) minority groups.

C. If other qualifications are equal, priority in appointments shall be given to persons who have personally experienced abuse in their relationship.

11 MCAR § 2.220 Relationship between department and advisory task force.

A. The project coordinator shall be available to attend all meetings of the task force or its subcommittees.

B. The advisory task force shall screen applicants for the position of project coordinator and shall recommend to the commissioner names of five (5) applicants. In appointing the project coordinator, the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force.

C. In the event the commissioner takes action contrary to the recommendation of the task force, the commissioner or his designee shall meet with the task force or with representatives of the task force, appointed by its chair, to discuss the rationale for his decision.

11 MCAR § 2.230 Awarding grants and contracts.

A. The department shall advertise and shall issue Requests for Proposals from service providers. The task force shall utilize uniform procedures and criteria in considering all proposals which comply with the Request for Proposal outline.

B. The department shall implement a plan of affirmative outreach to facilitate the submission of proposals from interested public and private nonprofit organizations, women's organizations, and diverse cultural groups in the state.

C. Award criteria and procedures shall be established with the participation of the advisory task force prior to any request and review. Such criteria and procedures shall be available upon request.

D. The advisory task force shall review grant applicants and shall recommend to the commissioner names of applicants recommended to receive funds and the amount of funds recommended.

E. The department shall, in accordance with applicable statutes, disburse funds appropriated for the battered women's projects.

F. A portion of the funds appropriated by the Legislature for the purposes of working with violent partners and implementing public education programs shall be retained by the department to conduct such programming. Such funds shall be retained by the department only when the commissioner determines that the department can utilize such funds for their designated purpose more effectively than by purchase of service or grants. The advisory task force shall provide input to the department for the utilization of such funds.

G. All planning, development, narrative reports, data collection, funding and evaluation of programs and services for battered women shall be conducted with the advice of the advisory task force.

11 MCAR § 2.240 Responsibilities—service providers.

A. In order to be eligible for initial funding consideration from the department for the establishment and operation of programs, service providers shall submit a program proposal which addresses, at a minimum:

1. The full name and address of the organization.

2. The proposed location of the program.

3. A fiscal year budget on forms provided by the department which itemizes such major categories as:

   a. personnel

   b. travel

   c. equipment and supplies

   d. contracted services

   e. construction/renovation

   f. printing

   g. communications

   h. other program costs

   i. costs for assistance to individuals including emergency loan funds for residents, rent deposits, legal fees, moving costs

j. costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant

k. evaluation

4. A narrative for each line item on the budget request.

5. A description of the duties and responsibilities of each staff position.

6. A statement of the extent to which battered women in the community have been involved and participated in the program proposal.

7. A statement of the ways in which potential service providers have solicited support and cooperation from potentially interested or relevant community agencies or groups such as law enforcement agencies, courts, social service agencies, and local boards or departments of health.

8. A timetable for program operation.

9. A description of the types of services to be available.

10. A description of the role to be played by volunteers, if any, in the operation of the shelter program.

11. A statement of compliance with program evaluation requirements as established by the commissioner with the consultation of the advisory task force.

12. Definition of the target group expected to be served by the program.

B. In order to be eligible for renewed funding consideration from the department for continued operation of programs, service providers must submit a program report which addresses, at a minimum, the following information:

1. The full name of the organization.

2. Fiscal year budget for past year and for year funding is requested on forms provided by the department. Itemized categories shall include:

a. personnel

b. travel

c. equipment and supplies

d. contracted services

e. construction/renovation

f. printing

g. communications

h. other program costs

i. costs for assistance to individuals including emergency loan funds for shelter residents, rent deposits, legal fees, moving costs

j. costs related to rent, maintenance, or purchase of the facility operated by or occupied by the applicant

k. evaluation

3. A narrative for each line item on the budget for funds requested.

4. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period when funds are requested.

5. A statement of compliance with program evaluation requirements.

C. All contracts or grant agreements between the department and service providers which result from submitted proposals shall conform with state affirmative action and equal employment opportunity programs and other applicable federal, state and local laws.

D. Contracts or grant agreements shall provide for the following:

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1. The collection, recording and reporting of descriptive data on persons served and the services provided (on a quarterly basis) as requested by the commissioner.

2. Complete reports requested by the commissioner.

3. Implementation of a fiscal policy.

E. Any emergency shelter program operated on the basis of this appropriation shall be in compliance with relevant local or state building, fire, and health regulations.

11 MCAR § 2.245 Submission of data—mandatory.

A. Reports shall be submitted monthly in accordance with Minn. Stat. § 241.66.

B. Reports shall, at a minimum, include summary data which discloses the date of occurrence, location, frequency and characteristics of battering. Such characteristics shall include the victim's age, number of children, occupation, race and relationship to the assailant.

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.

State Board of Education
Department of Education
School Management Services Division

Department of Public Safety

Adopted Rules of the State Board of Education and the Rules of the Department Public Safety Governing the Physical Examination of School Bus Drivers, 5 MCAR § 1.0222 B. (EDU 222) and 11 MCAR § 1.0082 B.

The rules proposed and published at *State Register*, Volume 5, Number 36, pp. 1363-1365, March 9, 1981 (5 S.R. 1363) are now adopted as proposed.

State Board of Education
Department of Education
Special Services Division

Adopted Rules Governing the Licensure of Supervisory and Support Personnel (5 MCAR §§ 1.0523-1.05361)

The rules proposed and published at *State Register*, Volume 5, Number 33, pp. 1235-1252, February 16, 1981 (5 S.R. 1235) are now adopted with the following amendments:

Rules as Adopted

Chapter Twenty-Seven-A: Licensure of Supervisory and Support Personnel: Issuance, Suspension and Revocation

5 MCAR § 1.0527 B. Notwithstanding ~~the rule~~ 5 MCAR § 1.0528 governing human relations, persons who have been prepared for licensure in states other than Minnesota shall be granted a Minnesota entrance license based upon the provisions of this rule.

5 MCAR § 1.0532 School nurse. The provisions of this rule shall apply only to persons who are required to be licensed by the Minnesota Board of Nursing to perform those services being rendered or which shall be rendered by them in a Minnesota public school.

A health service nurse holding a vocational license according to ~~the state plan for vocational education~~ licensure rules of the Board of Education and practicing at the post-secondary level is exempt from the provisions of this rule.

Department of Health
Environmental Health Division

Adopted Amendments to Rules Relating to Plastic Water Well Casing

The amendments to rules proposed and published at *State Register*, Vol. 5, pp. 269-271, August 25, 1980 (5 SR 269) are adopted with the following amendments:

Amendments as Adopted

7 MCAR § 1.224 E.3.a. The installer shall fill the annular space between the drill hole wall and the casing pipe with grout as prescribed in 7 MCAR § 1.220 C. or F. to assure equal loading around the casing in order to prevent collapse or deformation of the casing and to prevent any contamination from entering the well. Native sand may be used in non-artesian wells drilled in outwash material having no clay lense or lenses (a geological stratum composed of clay). The upper 30 feet in any type of well shall be grouted with neat cement grout (defined in 7 MCAR § 1.220 C.3.) using a tremie pipe. A tremie pipe is one which is small enough to fit in the annular space and which carries the grout to the bottom of a hole. The grout shall be fed under pressure from the bottom to the top in one continuous operation.

6. Plastic water well casing shall not be used as outside casing in wells cased and cement grouted through cavernous rock formations. However, in such formations, plastic casing may be used as an inner casing pursuant to the requirements of 7 MCAR § 1.220 A.7., if surrounded by an outer casing ~~which meets the requirement of 7 MCAR § 1.220 A.7~~.

Department of Revenue

Adopted Rules Governing Individual Housing Accounts (13 MCAR § 1.6016)

The rules proposed and published at *State Register*, Volume 5, Number 35, pp. 1319-1332, March 2, 1981 (5 S.R. 1319) are now adopted as proposed. There were no amendments.

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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.

State of Minnesota

Tax Court

Seymour B. Schonwetter and
Janice Schonwetter,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order Notice dated August 24, 1979, Relating to the Income Tax of Seymour and Janice Schonwetter for each of the calendar years 1973, 74, 75 and 77 (Account Nos. 3,280,533; 6,997,569; 5,115,863; and 3,277,694.

Docket No. 2993

Order Dated May 1, 1981.

The above entitled matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the hearing room of the Tax Court on the fifth floor of the Space Center at 444 Lafayette Road, St. Paul, Minnesota, on May 21 and 22, 1980.

William R. Busch, Esq., 803 Degree of Honor Building, St. Paul, Minnesota, appeared on behalf of the Appellants. James W. Neher, Esq., Special Assistant Attorney General, appeared for Appellee.

The issue is whether or not that portion of the income of the Appellants received by them as profits from two sub-chapter S corporations which operated within and without Minnesota is assignable to this state as compensation for personal services or from a business consisting principally of the performance of personal or professional services under the provisions of Minn. Statutes § 290.17(1). The Appellants contend that said income should be apportioned as income from business carried on partly within and partly without Minnesota, according to the provisions of Minn. Statutes § 290.19, subd. 1.

Decision

That part of the Appellants' distributable shares of the net income of their two electing small business corporations which is allocable to the out-of-state business operations of the small business corporations is taxable to the Appellants as income from a business consisting principally of the performance of personal or professional services, under Minn. Statute § 290.17(1).

From the evidence adduced at the trial and from the files and records herein, the Court makes the following:

Findings of Fact

1. Appellants, husband and wife, are cash basis taxpayers residing in Minneapolis, Minnesota.

2. Throughout the calendar years at issue in this case (1973, 1974, 1975 and 1977), Appellants were officers of Weight Watchers of the Upper Midwest, Inc. (''Upper Midwest''), and Weight Watchers of Southern Minnesota, Inc. (''Southern Minnesota''). Both Upper Midwest and Southern Minnesota are Minnesota corporations.

3. Both corporations are, and were during the years at issue, electing small business corporations for federal and state purposes.

4. During the years in issue, Appellants were the sole shareholders of stock issued by Upper Midwest, each owning 50%. During that same period of time, Appellants were the majority shareholders of stock issued by Southern Minnesota, each owning 27.5%, with the balance being owned by Appellants' children.

5. Both Upper Midwest and Southern Minnesota are operated pursuant to an exclusive franchise granted by Weight Watchers International, Inc. (''International''). In accordance with the franchise agreements, Upper Midwest operates in parts of Minnesota, North Dakota, South Dakota and Wisconsin, while Southern Minnesota operates in the southern part of Minnesota and parts of Wisconsin. Neither Upper Midwest nor Southern Minnesota owns any real estate, either within or outside Minnesota.

6. The business conducted by both Upper Midwest and Southern Minnesota (''the sub S companies'') is to assist members of the general public in losing excess weight and maintaining a ''goal weight'' thereafter. The so-called ''members'' have no interest in the corporations, and are simply customers or clients interested in weight loss.

7. In order to operate the business of the sub S companies, Appellants underwent an in-depth training program conducted by International.

8. The Weight Watchers program is comprised of four basic segments: (1) diet, (2) behavior modification, (3) group interaction, and (4) exercise.

9. The information that is disseminated by the two sub chapter S corporations is not formulated by the Appellants themselves. It is formulated by professionals employed by International. This is quite different from the personal service information rendered by a doctor, dentist, lawyer, accountant, architect or engineer, but it is personal service.

10. Participants in the Weight Watchers program (known as "members") attend weekly classes conducted by Weight Watchers personnel who are employed by the sub S companies. The format of the classes is according to a formula directed by International.

11. Upper Midwest purchased its Weight Watchers franchise from International in 1972 for $10,300. Southern Minnesota purchased its Weight Watchers franchise from International in 1972 for $7,000.

12. Under the terms of the franchise held by each of the two sub S companies from International, there was an active and continuing contractual control by International over—(i) the methods and procedures used by each sub S company in hiring, training and supervising its class lecturer personnel and its area supervisors; (ii) the advertising and public relations methods and materials used by each sub S in its franchise operations; (iii) the methods and the text used by each of the sub S companies in disseminating the International program; and (iv) the franchise operation accounting methods used by the sub S companies.

13. In connection with this contractual control that International had over the franchise operations of the two sub S companies, International furnished each of the companies on an ongoing and updating basis—(i) the training manual used by each sub S company's supervisors in training its lecturer staff; (ii) the handbook prescribing the methods to be used by the lecturing staff in disseminating the weight control program; (iii) the system to be used by the supervisors of each of the sub S companies in evaluating the lecturer personnel; (iv) advertising manuals, promotional campaign materials, and the format and text of newspaper advertisements; and (v) the booklets, recipes and other material to be handed out to the customers (lecture class members) at each weight control session.

14. Throughout the years in issue, International was a publicly held corporation engaged, internationally, in franchising its weight control program. International recently sold its weight control operations to H. J. Heinz Company for in excess of $70,000,000.

15. During the years in issue, the total number of employees of Upper Midwest ranged from a low of 256 employees in the first quarter of 1973 to a high of 719 employees in the third quarter of 1975. During the years in issue, the number of employees of Southern Minnesota ranged from a low of 146 employees in the first quarter of 1973 to a high of 259 employees in the third quarter of 1975.

16. In addition to these direct employees of each of the sub S companies, they had a central office servicing arrangement with Weight Watchers of Twin Cities, Inc., a Minneapolis based corporation that was also owned by Appellants. The staff of this central office consisted of—(i) two employees who worked on public relations and advertising matters; (ii) three to five field supervisors; (iii) two shipping clerks; (iv) three to six clerical workers; (v) an office manager; (vi) a receptionist; and (vii) an executive secretary.

17. During the years in issue, the number of separate locations maintained by Upper Midwest throughout its franchise territory for the weekly lecture classes ranged from a low of 37 locations at the end of 1972 to a high of 112 locations at the end of August, 1975.

18. During the years in issue, the number of separate locations maintained by Southern Minnesota throughout its franchise territory for the weekly lecture classes ranged from a low of 20 locations at the end of September, 1972, to a high of 40 locations at the end of May of each of the years 1974 and 1975.

19. The number of lecture class sessions conducted throughout its franchise territory by Upper Midwest was in excess of 4,200 for its fiscal year 1973, more than 6,600 for its fiscal year 1974, and more than 7,300 for each of its fiscal years 1975 and 1977.

20. The number of lecture class sessions conducted throughout its franchise territory by Southern Minnesota was in excess of 2,100 for its fiscal year 1973, more than 2,900 for its fiscal year 1974, and more than 3,000 for 1975 and more than 2,400 for 1977.

21. Each lecture class session of each of the two sub S's was staffed by a lecturer as well as, depending on the number of people attending the class, by one or more clerks and by one or more weighers. The lecturer was the manager or supervisor of each session and had responsibility for—(i) the hiring, training, supervision and termination of the clerks and the weighers, and (ii) the locating and the negotiating for the rental of the meeting room space in each location in which the lecturer conducted sessions.

22. During the years in issue, the recruitment, training, evaluation and supervision of the lecturers of each sub S company was the responsibility of its field supervisors.

23. During the years in issue, the field supervisors of the sub S companies were under the supervision of a chief supervisor who, in turn, reported to and was under the executive supervision of Appellant Janice Schonwetter.

24. During the years in issue, the work time of Appellants was divided proportionately among their three Weight Watchers franchise companies (the two sub S companies and Weight Watchers of Twin Cities).

25. Throughout the years in issue, the executive supervision of the administrative functions of the two sub S companies constituted about 85% of the work duties and responsibility of Appellant Seymour Schonwetter as to these companies. These administrative functions under his executive supervision included the collection of funds, the handling of accounts payable and payroll, purchases, the shipment of materials to the lecturers, and the preparation and filing of the substantial volume of corporate reports and tax returns of each company. The remaining 15% of Appellant Seymour Schonwetter's work on behalf of the sub S companies involved the review and executive supervision (with Janice Schonwetter) of advertising and promotion programs and in attending regional and national Weight Watchers franchise association meetings and seminars.

26. Throughout the years here involved, the bulk (about 80%) of the work duties and responsibilities of Appellant Janice Schonwetter on behalf of the two sub S companies involved her review and integration of the ongoing flow of weight control information and materials issued by International and the pass through discussion of this material with the chief supervisor and the area supervisors of the companies. The remaining work time of Appellant Janice Schonwetter on behalf of the two sub S companies was divided, about equally, between the executive supervision (with Seymour Schonwetter) of advertising and promotional matters, and in participating in regional and national Weight Watchers franchise meetings and seminars.

27. At no time during any of the years in issue, did either of the Appellants serve as a lecturer or other staff member at any of the lecture class sessions. Not more than eight or ten times a year, Appellant Janice Schonwetter appeared at a lecture class session to present an achievement pin to someone who had achieved a great weight loss or, very occasionally, to cross check a new supervisor's evaluation of a given lecturer. During the years here involved, Appellant Janice Schonwetter's supervisory work on behalf of the two sub S companies was done almost exclusively at the central office in Minneapolis, and she actually visited only about 1% or 2% of the lecture class locations of the companies.

28. For each of the years in issue, Appellants were compensated on a regular salary basis for their services for and on behalf of the two sub-S companies and Weight Watchers of Twin Cities. The executive salaries thus received by Appellants from these three companies totalled $150,276.00 for 1973; $174,000 for 1974; $178,666 for 1975; and $180,891 for 1977.

29. All the income of each of the sub-S companies during each of the years in issue was produced by lecture class sessions that were conducted entirely by non-stockholder employees.

Conclusions of Law

1. The business engaged in by the Appellants through their sub-S corporations is an occupation consisting principally of the performance of personal or professional services as contemplated by Minn. Stat. § 290.17(1).

2. The Order of the Commissioner of Revenue must be affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Minnesota Tax Court
John Knapp, Chief Judge

Memorandum

The issue is whether the portion of the business income of the two sub-chapter S corporations that was produced by their business operations outside of the State of Minnesota can be treated by the Commissioner as being personal or professional service income under Minn. Stat. § 290.17(1) so as to make it fully taxable to the Appellants as Minnesota income.

During the years here in issue, the pertinent part of Minn. Stat. § 290.17, read as follows:

"290.17 GROSS INCOME, ALLOCATION TO STATE. Items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from *a business consisting principally of the performance of personal or professional services*, shall be assigned to this state, and the income of nonresident taxpayers from such sources shall be assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state;

(2) [Not here applicable]

(3) [Not here applicable]

(4) *When a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business*, including income from intangible property employed in such business and including, in the case of a business owned by natural persons, the income imputable to the owner for his services and the use of his property therein, *shall be governed*, except as otherwise provided in sections 290.35 and 290.36, *by the provisions* of section 290.19, notwithstanding any provisions of this section to the contrary. This shall not apply to business income subject to the provisions of clause (1). . . ." (Emphasis supplied)

In 1977, the Legislature completely revamped Minn. Stat. § 290.17 so that, effective for taxable years beginning after December 31, 1977, the entire gross income of Minnesota resident individual taxpayers is includable for Minnesota purposes irrespective of whether it is produced within or without this state. (Minn. Laws 1977, Chapter 423, Article I, Sections 11 and 16).

From the time the statute was first enacted in 1933 to its ultimate repeal in 1977 both the Tax Court and the Minnesota Supreme Court have had numerous occasions to interpret the statute as it applies to various fact situations.

In *Bechert v. Commissioner*, 221 Minn. 65, 21 N.W. 2d 101, the Minnesota Supreme Court affirmed the decision of the Tax Court. It held that the entire share of the accountant-taxpayer in a national accounting partnership's income was personal or professional service income for Minnesota purposes. In that case the Minnesota Supreme Court said:

". . . The statute plainly states that the entire income of a resident taxpayer of this state derived from such a source shall be assigned to this state. An accounting business, a law firm, a medical or dental clinic, or an architectural or engineering firm each falls clearly within the group of businesses which are engaged in the rendering of personal or professional services. Relator's distributable share was a distribution of income to him from a business consisting principally of the performance of personal or professional services . . ."

In *Bolier v. Commissioner*, 233 Minn. 72, 45 N.W. 2d 802, it was held that the income of a Minnesota contractor derived from a cost-plus contract in the construction of a highway in Canada was not personal or professional service income. In affirming the Tax Court the Minnesota Supreme Court said:

". . . The sole test set forth by the legislature is the character of the business performed. The determinative question under § 290.17(1) is whether the particular business was engaged primarily in business activities which are generally recognized and accepted as rendering services of a personal or professional character. If so, the entire income therefrom is assignable to this state. If it is not such a business, then it falls within the provisions of either § 290.17(3) or § 290.17(4), and the income derived therefrom is assignable or allocable, as the case may be, in accordance with the provisions thereof.[4] The statutory language is plain and unambiguous. There was no room for construction. . ."

In *Charles W. Sexton Co. v. Hatfield*, 263 Minn. 187, 116 N.W. 2d 574, the taxpayer corporation was engaged in a general insurance agency business, with principal offices in Minnesota and with branch offices in Portland, Oregon, and New York City. The Commissioner contended that the business of the taxpayer consisted principally of the performances of personal or professional services, but the Minnesota Supreme Court held that the taxpayer's business did not consist principally of the performance of personal or professional services so that only that portion arising from its Minnesota operations was held to be taxable. In that case the court said:

". . . We have not undertaken to define the term 'personal or professional services' as used in section 290.17(1). We may assume that the legislature intended the statute to apply to wages or salaries earned by that portion of the resident population whose income in part or in whole is derived from out-of-state employment. It is also apparent that it was intended, as in the Bechert case, to reach income of Minnesota residents engaged in professional occupations earning part of their income in other states. . ."

In the case of *Ness v. Commissioner of Taxation*, 217 N.W. 2d 258, the Minnesota Supreme Court said:

"From the above decisions, two conditions must be met before a taxpayer's income can be deemed personal-or-professional-service income. First, the income-producing activity itself must be the rendition of personal or professional services; and, second, the taxpayer must personally render such services; it is not enough to employ others to render them." [The decisions referred to by the Court are Bechert, Bolier and Sexton.]

In addition to Bolier, Bechert, and Ness, the Minnesota Tax Court has interpreted Minn. Stat. § 290.17(1) in several other cases. In *Wright v. Commissioner*, Minnesota Tax Court Dkt. No. 2466 (1978), the Court stated that with respect to an individual's distributable share of income from an accounting partnership:

"There is no doubt that the partnership, as an enterprise engaged in the practice of public accounting, is a business consisting entirely of the performance of personal or professional services within the meaning of [Sec. 290.17(1)].

In the case of *Dutton v. Commissioner*, Minnesota Tax Court Dkt. No. 1526 (1970), the Court held that the appellant's out-of-state income from personal service business was taxable notwithstanding that the appellant, owner of the business, had employees who actually performed the personal services.

In *Toltz, King and Day v. Commissioner*, Dkt. No. 458, October 29, 1953, the Minnesota Tax Court held that an architectural firm was engaged in a personal service business and that therefore the entire income was taxable to residents of Minnesota.

If this Court were to look at only the *Ness* case the Court would necessarily come to the conclusion that the second condition set out above has not been met and that therefore the income received by the Appellants from the sub-S corporations is apportionable, however, a reading of the other cases decided by the Minnesota Supreme Court leads to the conclusion that the second condition set out in *Ness* is not essential.

In the instant case the Appellants are individual residents of Minnesota. The sub-S companies, are not impersonal corporate entities as in the *Sexton* case, but are small business corporations which have elected to be taxed as partnerships. The business of the sub-S companies consists entirely of the performance of personal services. The Appellants, as officers and controlling shareholders of the sub-S companies, have elected to be taxed individually in the same manner as members of a partnership. The income at issue herein has its source in the sub-S companies and is a distribution of income from a business consisting entirely of the performance of personal services within the meaning of Minn. Stat. § 290.17(1).

The Appellants are engaged in and closely supervise the daily income-producing activities of the sub-S companies. Their responsibilities include supervision of all aspects of the companies' financial affairs, planning, advertising and public relation campaigns, implementing and supervising training, classroom and personal evaluation programs, and personally appearing in media advertising to promote the benefits of their services to the general public. These facts are clearly distinguishable from the facts in *Sexton*. In the instant case the Appellants are regularly engaged in the active conduct of the affairs of a personal-service business and they constitute the motivating force underlying the production of the personal-service income at issue.

In view of the fact that the Appellants have elected to be taxed as a small business corporation and have therefore been afforded the tax benefits of a partnership it is not improper for the Court to disregard the corporate structure for the purpose of determining whether or not the income should be taxed as Minnesota income. This seems to be the implication of the language in *Sexton*, as follows:

"We are accordingly led to the conclusion that by use of the term 'personal services' the legislature had in mind the application of that term to income of taxpayers who actively participate in producing the income upon which the tax must be paid. If the record had established that those who own and control the corporation conducted its operation in a manner analogous to that of a partnership, we could agree that the service was personal and the income assessable. On the contrary, however, the record establishes that the plaintiff corporation is managed in the same way as any other large corporate business and cannot be characterized as a business consisting principally of the performance of personal or professional services."

The services rendered by the sub-S corporations are both educational and therapeutic in the sense that they assist overweight persons in their efforts to lose excess weight, and thereafter maintain a predetermined weight level. This service is no less personal or professional than if it were conducted in person by a staff of nutritionists, medical doctors and psychologists. In the opinion of the Court, it falls within the type of businesses declared by the Minnesota Supreme Court to be personal or professional services.

The facts of this case present a very close legal question as to whether or not the business conducted by the sub-S corporations consists principally of the performance of personal or professional services as contemplated by the legislature when it enacted Minn. Stat. § 290.17(1). The Appellants are not professionals as the word is usually employed—doctors, dentists, lawyers, accountants, architects, engineers, etc, but the service rendered is a very personal service. It consists of counseling people with obesity problems. On balance, it would appear to be the type of service intended to be included by the legislature.

SUPREME COURT

Decisions Filed Friday, May 8, 1981

Compiled by John McCarthy, Clerk

51171/388 (1980) The United States Jaycees, Appellants, v. Marilyn E. McClure, Warren Spannaus, and George A. Beck. United States District Court.

Certified question from the United States District Court for the District of Minnesota: "Is the United States Jaycees 'a place of public accommodation' within the meaning of Minn. Stat. § 363.01, Subdivision 18?" Answer, affirmative.

Otis, J. Dissenting, Sheran, C. J., Peterson, J. and Todd, J.

51017/Sp. William Charles Nesheim, *et al.*, v. Iowa Mutual Insurance Company, Appellant. Hennepin County.

When concurrent insurance policies contain similar "other insurance" provisions, each insurer is liable for a pro rata share of the loss.

Affirmed. Otis, J.

51154/Sp. State of Minnesota v. Patricia Estelle Kemp a/k/a Patricia Estelle McBride, Appellant. Ramsey County.

Trial court properly ruled that affidavit in support of the search warrant application was adequate to justify issuance of a warrant.

Although we may in future similar cases decline to decide any issue concerning the applicability of either Minn. Stat. § 609.035 or § 609.04 (1978) unless the issue has first been presented to the trial court for decision, we hold in this case that section 609.04 requires the vacation of four of defendant's five drug convictions, which the trial court determined were all based on the same behavioral incident.

Trial court has the authority to order that a sentence run consecutively to a previously imposed but unexecuted sentence.

Conviction for possession with intent to sell affirmed; other convictions vacated. Peterson, J.

51084/Sp. Anoka-Hennepin Education Association, Minnesota Education Association and Robert Marcotte v. Anoka-Hennepin Independent School District No. 11 and Anoka-Hennepin Federation of Teachers, Appellants. Hennepin County.

Absent a contractual provision permitting check off for minority associations, a school district lacks authority to permit dues check off for a minority employee association when a certified exclusive representative exists.

Affirmed. Todd, J. Dissenting, Yetka and Scott, JJ.

50722/28 State of Minnesota v. Sherman Bothne Gibbons, Appellant. Crow Wing County.

A conviction of second-degree murder cannot be affirmed when there is insufficient evidence of a defendant's intent to kill. Minn. Stat. § 609.19 (1980).

The evidence presented at trial and appellant's own testimony are sufficient to justify his conviction for manslaughter in the second degree. Minn. Stat. § 609.205(1) (1980).

Reversed and remanded for resentencing. Yetka, J.

51360/Sp. Jerry W. Nord, *et al.*, Appellants, v. James R. Herreid, *et al.* Rice County.

In this case several genuine issues of material fact need resolution. It was therefore inappropriate for the trial court to enter summary judgment.

Parol evidence is admissible to determine whether a condition precedent exists and to show a subsequent change in a contract. Furthermore, the parol evidence rule has no application to documents that are ambiguous. The trial court erred as a matter of law when, under the facts and circumstances of this case, it held that no parol evidence was admissible.

Reversed and remanded for trial on the merits. Scott, J.

51673/Sp. State of Minnesota v. Dale Anthony Bellcourt, Appellant. Beltrami County.

Evidence on the issue of identification was sufficient.

Trial court did not commit prejudicial error in (a) admitting police identification photograph of defendant or (b) refusing to bar state from using any of defendant's prior convictions to impeach defendant if he testified; issue of propriety of trial court's instruction on expert testimony is deemed forfeited.

Affirmed. Scott, J.

50926/Sp. Van Diest Supply Company v. Adrian State Bank, Appellant. Nobles County.

When a creditor assigns a debt and the security interest from which the debt may be satisfied but does not assign other debts also secured by that interest, the assignee holds the collateral which is the subject of the security interest for the benefit of the assignor to the extent it is not required to satisfy the assigned debt.

Affirmed in part, reversed in part, and remanded. Amdahl, J.

50948/Sp. Dianne Leigh Johnson, by Harold R. Johnson, guardian. Appellant, v. St. Paul Insurance Companies, *et al.* Ramsey County.

In the absence of a showing of any inequitable conduct on the part of the party opposing the vacation of a settlement, our subsequent decision on the "stacking" issue does not justify vacating the otherwise valid settlement entered into by the parties prior to that decision.

Affirmed. Amdahl, J. Took no part, Otis, J.

51434/Sp. Susan K. Carlson v. Flour City Brush Company and American Mutual Insurance Company; Flour City Brush Company and Aetna Insurance Company, Relators. Workers' Compensation Court of Appeals.

The evidence does not support equitable apportionment of liability between successive insurers for compensation awarded an employee who had sustained personal injuries to her lumbar back, one due to a specific incident and the other due to the cumulative effect of daily aggravations of a pre-existing degenerative process.

Reversed in part, affirmed in part. Amdahl, J.

48827/111 (1979) Clover Leaf Creamery Company, *et al.*, v. State of Minnesota, Appellant. Ramsey County.

Reversed with directions. Per Curiam.

50823/Sp. In re the Marriage of Sally Jane Figge Baril v. Kenneth John Figge, Appellant. Ramsey County.

Affirmed. Per Curiam.

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 Administration
Real Estate Management Division

Establishment of Real Estate Appraisers List

The State of Minnesota is establishing a list of qualified real estate appraisers to do contract appraisals for the Departments of Administration, Natural Resources, and Transportation for the period ending June 30, 1982. In developing the list of qualified appraisers, the state invites submittal of resumes from all persons meeting one or more of the following qualifications no later than May 30, 1981.

I. APPRAISAL DESIGNATIONS: The following designations are seen as evidence of substantial training in the field of Real Estate Appraising. Candidates, Associate members, and non-designated appraisers must show further evidence of experience and proficiency as noted in paragraph II below.

a. Member of the American Institute (MAI)

b. Senior Residential Appraiser (SRA), Senior Real Property Appraiser (SPRA), or Senior Real Estate Analyst (SREA).

c. Accredited Rural Appraiser (ARA)

d. American Society of Appraisers (ASA)

e. Other designations with satisfactory evidence of a substantial coursework curriculum in Real Estate Appraising.

II. NON-DESIGNATED APPRAISERS:

a. EXPERIENCE

Non-designated appraisers with at least two years experience in Real Estate Appraising. Resume should relate the type of appraisal experience along with a listing of clientele.

b. TRAINING

Non-designated appraisers should have successfully completed one or more of the following courses.

1. AIREA—Course IA-1, IA-2 and IA-3

2. SRA—Course 101, Course 201

3. American Society of Farm Managers and Rural Appraisers—Course B-1

c. SAMPLE APPRAISAL

Any appraiser who has not submitted any appraisals to any Minnesota agencies within the past two years will be required to submit a sample appraisal done for a client. The sample appraisal is to be examined for compliance with generally recognized appraisal procedures.

III. Certification to a state list of qualified appraisers is not a guarantee of subsequent assignments. The State of Minnesota reserves the right to assign appraisers at the discretion of the assigning agency, dependent on the qualifications of the appraisers, geographic location, and fee requirements.

NOTE: Appraisers will be entitled to reject any assignment offered.

The Department of Administration, Real Estate Management Division, has been designated as the coordinating agency for developing the certified list which will be used by all agencies. A list of the basic standards may be obtained upon written request to the address below.

All resumes and other material or requests should be directed to:

Department of Administration
Real Estate Management Division
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone: (612) 296-6674

Minnesota Balance of State Private Industry Council, Inc.

Notice of Request for Proposals for Conducting Targeted Jobs Tax Credit Seminars in Balance of State

The Minnesota Balance Of State Private Industry Council wishes to annouce the solicitation of proposals to conduct practical seminars to help employers in rural Minnesota use the federal Targeted Jobs Tax Credit.

The contact person is:

Patrick J. Cruit
PIC Coordinator
Minnesota Department Of Economic Security
690 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101
(612) 296-1045

The last date that proposals will be accepted is Tuesday, June 2, 1981.

The estimated cost for the seminars is $15,000.

Department of Corrections
Minnesota Correctional Facility—Sauk Centre

Notice of Request for Proposals for CPE Protestant Chaplain

The Minnesota Correctional Facility—Sauk Centre requests bids and proposals for CPE Protestant Chaplain to provide religious services.

Duties are as follows:

1) Share with other religious staff the responsibility for weekly ecumenical worship services.

2) Be available for religious counseling of students.

3) Provide a Protestant presence for non-Catholic students.

4) In general, function as team member with other religious staff with the task of providing a meaningful and beneficial religious program for all students.

Services are to be provided at the institution. Approximately 20 to 24 hours per week will be required to provide the required level of service.

Contact Dennis Rykken, Group Living Supervisor, for questions regarding the contract, at (612) 352-2296, by May 29, 1981.

Notice of Request for Proposals for Chemical Dependency Services

The Minnesota Correctional Facility—Sauk Centre requests bids and proposal for Qualified Chemical Dependency Services.

Duties are as follows:

1) Perform chemical dependency evaluations by a qualified chemical dependency counselor, as required.
2) Conduct weekly chemical dependency orientation meetings for juveniles each week.
3) Coordinate and direct participation of institution juvenile students at an community AA meetings.
4) Provide individual chemical dependency counseling sessions to juvenile residents, as required.
5) Provide staff consultation and case planning assistance regarding chemical dependency for residents.
6) Conduct chemical dependency in-service training sessions for staff, as required.

Services are to be provided at the institution. Approximately 17 hours per week are required to provide the required level of services.

Contact Dennis Rykken, Group Living Supervisor, for questions regarding the contract at (612) 352-2296, by May 29, 1981.

Notice of Request for Proposals for Licensed Psychological Services

The Minnesota Correctional Facility—Sauk Centre requests bids and proposals for licensed psychological services.

Duties are as follows:

1) Interview incoming residents (350-450 per year), interpret test data, and complete psychological evaluations.
2) Complete supplemental evaluations on residents from the general population on request.
3) Consult with institution staff on problem cases, including development of treatment plans, if necessary.
4) Provide direct service to selected residents when requested as part of an individual treatment plan.

Services are to be provided at the institution. Approximately 65-80 work days per year are required to provide the required level of service.

Contact Dennis Rykken, Group Living Supervisor, for questions regarding the contract, at (612) 352-2296, by May 29, 1981.

Department of Economic Development Development Resources Division

Notice of Request for Proposals for a Feasibility Study of a Direct Reduction Facility

Proposals are being accepted from qualified firms to assess the feasibility of establishing a direct reduction facility (DRI) in Minnesota.

The study will investigate the technical and financial feasibility of the development of such a plant. The study will be done in two phases. The first phase will assess the technical feasibility of DRI processes and their appropriateness for Minnesota. The second phase will analyze the economic feasibility of operating a DRI facility in Northeast Minnesota. The study will end after phase one if the results of that phase are negative.

Proposals must be submitted no later than 4:00 p.m., Monday, June 8, 1981. A complete RFP is available by calling Ms. Dana Weber Young, Director, Development Resources Division, at: 612/296-3976; or writing: Department of Economic Development, 480 Cedar Street, St. Paul, MN 55101.

Minnesota Waste Management Board

Notice of Request for Proposals for Sites to be Included in an Inventory of Preferred Sites for Commercial Hazardous Waste Processing Facilities

The Minnesota Waste Management Board is compiling an inventory of preferred sites for commercial hazardous waste processing facilities as required by Chapter 564, Minnesota Laws 1980. In compiling the inventory the board wishes to consider sites of existing hazardous waste processing facilities, sites of existing facilities which could be converted to use as hazardous waste processing facilities, and sites at which a hazardous waste processing facility is proposed to be constructed. Such facilities might include, but would not be limited to, incinerators, wastewater treatment facilities, solvent recycling facilities, and transfer and storage facilities.

The board will consider proposals from firms, local governments and state agencies. Submission of such proposals will in no way constitute an obligation to convert existing facilities to hazardous waste processing use. All proposals received will be on the public record. Consideration of a proposal will not obligate the board to include the site proposed in its preferred inventory.

Written proposals must be received at the board's Crystal offices by July 1, 1981. Proposals should include data demonstrating that the proposed site meets the criteria developed by the board to evaluate sites or should give reasons why the proposed site should be exempted from meeting some of the criteria. Proposals should be addressed to:

Minnesota Waste Management Board
ATTN: Sharon Decker
Thorson Building
7323 58th Avenue North
Crystal, MN 55428
Telephone: (612) 536-0816

Interested parties may obtain further information from Sharon Decker at the above telephone number.

May 7, 1981.

Robert G. Dunn
Chairman

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 Agriculture
Agronomy Services Division

Notice of Special Local Need Registration for Brominal Herbicide

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on May 7, 1981 issued a Special Local Need Registration for Brominal herbicide manufactured by Union Carbide Corp., Ambler, PA 19002.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to be tank mixed with Hoelon EC to control weeds in wheat and barley.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 81-0014) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8312

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Ectiban WP and Ectiban EC

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on May 7, 1981 issued Special Local Need Registrations for Ectiban WP and Ectiban EC manufactured by ICI Americas, Inc., Goldsboro, NC 27530.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products for premise fly control in beef, dairy, horse, poultry and swine barns.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN # MN 81-0015 and MN 81-0016) are on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8312

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner
Department of Agriculture

Department of Commerce Insurance Division

Petition by the Workers' Compensation Insurers' Rating Association of Minnesota for Changes in the Basic Manual for Workers' Compensation and Employers' Liability Insurance

Amended Notice of and Order for Hearing

On April 29, 1981, the Workers' Compensation Insurers Rating Association of Minnesota requested that the petition filed in the above-entitled matter be amended. The substance of the amendment would be to eliminate the classification for pickle manufacturing code #2110, in Minnesota. Under this proposal all such operations classified as pickle manufacturing would be assigned to the cannery classification, code #2111.

Therefore, it is hereby ordered that the Notice of and Order for Hearing in this matter issued on April 28, 1981, be amended to include the amendment to the petition filed on April 29, 1981.

Michael D. Markman
Commissioner of Insurance

Minnesota Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is extending the deadline from January 15, 1981 to May 22, 1981 for the submission of statements and comments from sources outside the agency regarding the amending of rules governing the contents of the annual report and forecast submitted by electric utilities.

The original Notice to Solicit Outside Opinion was published in the September 22, 1980 issue of the *State Register* at 5 S.R. 471.

May 4, 1981

Dan Quillin
Energy Specialist Intermediate

Minnesota State Retirement System

Special Meeting, Board of Directors

A special meeting of the Board of Directors of the Minnesota State Retirement System will be held on Friday, May 29, 1981 at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to hear actuarial proposals and any other matters that may properly come before the board.

Pollution Control Agency

Notice of Public Meeting Regarding Revisions to Minnesota's State Implementation Plan

On May 26, 1981, the Minnesota Pollution Control Agency (hereinafter referred to as "agency") will hold a regularly scheduled agency meeting in the Agency Board Room, located at 1935 West County Road B-2, Roseville, Minnesota, 55113. The agency is currently scheduled to consider at this meeting, among other things, the proposed adoption of Minn. Rule APC 4.0041, [proposed at 5 S.R. 1603 (April 13, 1981) and hereinafter sometimes referred to as "the rule" or "the proposed rule"] and the proposed adoption of amendments to Minn. Rule APC 4.0033 [proposed at 5 S.R. 1608 (April 13, 1981) and hereinafter sometimes referred to as "the amendments" or "the proposed amendments"].

If the agency adopts Minn. Rule APC 4.0041 and the amendments to Minn. Rule APC 4.0033, it will then wish to consider revising its State Implementation Plan (hereinafter referred to as "SIP") to include that rule and those amendments as finally adopted by the agency. The agency intends to consider these proposed revisions during its June 23, 1981, meeting. The purpose of this notice is to inform the public of the agency's possible consideration of these proposed revisions to its SIP.

Notice is therefore hereby given that, if the agency adopts the rule and/or amendments at its May 26, 1981, meeting, then during its June 23, 1981, meeting, the agency will consider revising its SIP to include the adopted rule and/or amendments. Notice is hereby further given that the public is invited to attend the agency meeting on June 23, 1981, and to comment orally at that meeting on the proposed revisions. Written comments on the inclusion of the rule and amendments in the SIP may be submitted prior to the meeting and should be addressed to Douglas M. Benson, Division of Air Quality, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, 55113, [(612) 296-7740].

The June 23, 1981, agency meeting will be held in the Agency Board Room, at the address noted above and will begin at 9:00 a.m. An agenda for the meeting will be available by June 12, 1981. Persons who have questions regarding the proposed revisions

or the specific time during the June 23, 1981, meeting when the proposed revisions will be considered should contact Douglas M. Benson, at the address and phone number noted above. (In addition, persons wishing to know whether the proposed amendments and rule were adopted by the Agency at its May 26, 1981, meeting should also contact Douglas M. Benson, at the address and phone number noted above. As stated previously, if the agency does not adopt the proposed rule or the proposed amendments at its May 26, 1981, meeting, it will not consider revising its SIP at its June 23, 1981, meeting to include either the proposed rule or the proposed amendments.)

In general, the purpose of revising the SIP to include the rule and the amendments is to satisfy the requirements of the Clean Air Act, 42 U.S.C. §§ 7410 and 7502 and to ensure that air quality in the State of Minnesota meets the national ambient air quality standards. The specific purposes of the rule and amendment are as follows:

1. Minn. Rule APC 4.0041: The proposed rule would establish permit conditions for proposed new or expanded subject emission facilities in areas of the state identified as nonattainment areas. The permit conditions set out in the rule are intended to ensure that a subject emission facility is constructed or expanded in a manner that results in an improvement in air quality in the nonattainment area in which that new or expanded facility would be located.

2. Minn. Rule APC 4.0033: The proposed amendments to Minn. Rule APC 4.0033 would clarify the standards of performance for enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth.

Copies of the proposed revisions to the SIP regarding Minn. Rule APC 4.0041 are available for public review during regular business hours at the following locations:

PCA Region 1
314 West Superior Street
1015 Torrey Building
Duluth, MN. 55802

PCA Region 2
304 East River Road
Suite 3
Brainerd, MN. 56401

PCA Region 3
116 East Front Street
Detroit Lakes, MN. 56501

PCA Region 4
Box 286
1104 East College Drive
Marshall, MN. 56258

PCA Region 5
1200 South Broadway
Suite 140
Rochester, MN. 55901

Pollution Control Agency
Division of Air Quality
1935 West County Rd. B-2
Roseville, MN. 55113

Copies of the proposed revisions to the SIP regarding the amendments to Minn. Rule APC 4.0033 are available for public review during regular business hours at the following locations:

PCA Region 1
314 West Superior Street
1015 Torrey Building
Duluth, MN. 55802

Pollution Control Agency
Division of Air Quality
1935 West County Rd. B-2
Roseville, MN. 55113

In addition, a copy of these revisions may be obtained by contacting Jayne Stilwell, Division of Air Quality, at the address noted above, [(612) 296-7280].

Dated this 7th day of May, 1981.

Louis J. Breimhurst, Executive Director
Minnesota Pollution Control Agency

Department of Public Welfare
Bureau of Social Services

Notice of Publication of the Proposed State Biennial Community Social Services Plan

The Proposed State Biennial Community Social Services Plan for the period of July 1, 1981 to June 30, 1983 is available for public review and comment. Comment will be accepted by the Department until June 10, 1981 and not June 1 as indicated in the plan. Requests for a copy of the plan should be addressed to: Minnesota Department of Public Welfare, Bureau of Social Services, Office of Planning and Coordination, Centennial Office Building, St. Paul, MN 55155 or by calling (612) 296-7635.

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Approval of Mental Health Centers and Clinics for Insurance Reimbursement

Notice is hereby given that the Minnesota Department of Public Welfare is considering Permanent Rule 29, governing standards for approval of mental health centers and clinics for insurance reimbursement.

This rule, authorized by Minn. Stat. § 245.69 (amended, 1980), governs the conditions under which the commissioner will approve mental health centers and clinics for insurance reimbursement pursuant to Minn. Stat. § 62A.152.

The proposed rule will set forth the minimum requirements to qualify for approval such as staffing, treatment standards, and quality assurance measures.

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

Trudy Dunham
Mental Illness Program Division
Fourth Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-4503.

All statements of information and comment must be received by June 23, 1981. Any written material received by the Department shall become part of the hearing record.

Department of Public Welfare
Income Maintenance Bureau

Public Notice Regarding Changes in Minnesota's Medical Assistance Program

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance, and to the public, of changes to be made in the statewide methods and levels of reimbursement for Medical Assistance services. These changes are set forth in House File 1446 and Senate File 1391, passed by the respective houses of the Minnesota State Legislature during the 1981 session. The provisions set forth in this notice are subject to change. The effective date of the changes will be July 20, 1981. If any standard in the final version is *more restrictive* than set forth in this notice, a separate notice will be published later, reflecting the changes. Also, recipients of Medical Assistance will receive individual notice of any cut-backs in service and should assume that coverage continues until receiving such notice.

This notice presents a summary of the changes. The full text of the final enactment will constitute the official version of any changes.

Applicable sections of House File 1446 and Senate File 1391 may be reviewed at your county welfare or social services department.

Written comments on the changes and suggestions for implementation may be sent to:

Health Care Program Policy Section
P.O. Box 43170
St. Paul, Minnesota 55164

Comments and suggestions received from the public may be reviewed during normal business hours at:

Health Care Program Policy Section
First Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota

These changes are being published pursuant to federal regulations which govern administration of the Medical Assistance Program, 42 C.F.R. § 447.205 (1980).

1. Limit on Payment to All Providers.

The House and Senate versions each establish limits on the overall increase in expenditures.

House version: The annual increase in cost per service unit paid to providers in fiscal years 1982 and 1983 shall not be more than 8 per cent greater than the cost per service unit paid in the previous fiscal year. Estimated savings for fiscal year 1982: $37,603,000.

Payments for physician services, dental care, vision care, podiatric services, chiropractic care, mental health services, psychologists, public health clinics and independent laboratory and x-ray services shall be limited to the 50th percentile of usual and customary fees billed during calendar year 1979. Estimated savings for fiscal year 1982: $2,303,000.

Senate version: For rate years beginning in fiscal years 1982 and 1983, rates for hospital services, and skilled and intermediate care facilities including boarding care and supervised living facilities, shall not be more than 10 percent greater than the rates paid for the previous rate year. The investment allowance paid to the skilled and intermediate care facilities will not be increased during the biennium. Under current law the investment allowance may be raised each year. Estimated savings for fiscal year 1982: $13,041,000.

Payments for physician services, dental care, vision care, podiatric services, chiropractic care, physical therapists, occupational therapists, speech pathologists, audiologists, mental health services, psychologists, public health clinics and independent laboratory and x-ray services will be the lowest of: (a) the 50th percentile of the usual and customary fees for that group of practitioners based upon the billings during calendar year 1980; (b) the actual charge billed for the service; (c) the median of the charges billed by that practitioner for a given service during calendar year 1980; or (d) the amount permitted under federal law. Estimated increased costs for fiscal year 1982: $1,774,000.

The purpose of these limits is to slow the rate of increase in payments while at the same time allowing controlled increase in payment for the providers. A compromise between the two versions will be made during conference committee.

At the present time the limits for physician services are based upon the lowest of: (a) the submitted charge; (b) the provider's own usual and customary charge based upon billings received during calendar year 1978; or (c) the 75th percentile of all charges billed to Medicare for a specific procedure during calendar year 1978. Where no Medicare 75th percentile has been established, the Department of Public Welfare calculated the 75th percentile of all charges billed for a specific procedure by all providers during calendar year 1978.

The limits for dental services and several other services are based upon the lowest of: (a) the submitted charge; (b) the provider's own usual and customary charge based upon billings received during calendar year 1978; or (c) the 75th percentile of all charges billed to the department for a specific procedure by all providers during calendar year 1978.

The changes will allow some increase in rates and are not expected to have any adverse effect on recipients. Some providers may not continue to participate in the program which would reduce the number of providers available to the recipients.

2. Chemical Dependency

Upon the House version, payment for treatment of alcoholism, chemical dependency or drug addiction in a hospital or nursing home will be limited to 10 days per admission, unless need for extended care is certified by the attending physician. At the present time, payment is limited to 30 days per calendar year.

The purpose of this change is to have closer control over the expenditure of funds for this type of service. The estimated savings from this change cannot be projected at this time.

3. Inpatient Hospital Care.

At the present time there are no limits on payments for inpatient hospital care, except as set forth in DPW Rule 47 (12 MCAR § 2.047). Under the House bill, future payment for hospital emergency room treatment will be restricted to six visits per year per recipient.

No payment will be made for hospital admissions between noon on Friday and noon on Sunday of each week except when a physician certifies that loss of life or impairment of limb function is threatened, or in cases of pregnancy.

When the patient remains in the hospital awaiting placement in a nursing home, the hospital will be reimbursed at the average metropolitan per diem rate for skilled nursing homes, as established by the commissioner of public welfare.

Estimated savings for fiscal year 1982: $1,096,000.

The reasons for the changes are to encourage recipients to seek more appropriate and less costly settings to receive care, and to discourage non-emergency hospital admissions during time periods when only custodial care is likely to be provided. Also, the limit placed on payment for persons awaiting nursing home admission assures that Medical Assistance does not pay for a higher level of care than the patient needs.

4. Nursing Home Care.

At the present time, the Department of Public Welfare has informal limits on the number of "reserved bed days," days for which the nursing home is paid, even though the patient is absent and not receiving care. The current limits are: 18 days for hospital leave, 14 days for camp leave, 36 days for therapeutic leave except for the mentally retarded who are allowed unlimited therapeutic leave.

Under the House version, the number of days will be restricted to 9 days per year for hospital care, 18 days per year for therapeutic leave and 7 days per year for camp leave. Any additional absences will not be covered by Medical Assistance. The Senate version does not include limits on reserved bed days.

The reason for the restriction is to decrease payments for care which is not actually received, and to limit duplicate payments to the nursing home during periods of hospitalization. The program is not required to pay for any reserved bed days, but has done so to ensure continuity of care. Estimated savings for fiscal year 1982: $1,706,000.

5. Dental Services.

At the present time, under DPW Rule 47 (12 MCAR § 2.047), the cost of cast metal restorations is covered when the provider documents that the procedure is medically necessary and the Department of Public Welfare gives prior authorization. The House version incorporates this limit into the statute, but would not change present practice. Other, less expensive, alternatives are often acceptable, and will be covered by the program.

Under the Senate version, cast metal restorations would be covered only for persons with cerebral palsy, epilepsy, or other physical problems requiring such restorations. The prior authorization requirement of DPW Rule 47 would still apply.

Estimated savings for fiscal year 1982: $612,000.

6. Therapy.

At the present time, limits on reimbursement of therapy are set forth in DPW Rule 47 (12 MCAR § 2.047). The House changes eliminate direct payment to physical therapists, occupational therapists, speech pathologists and audiologists. For patients in nursing homes, boarding care homes or supervised living facilities, costs of providing physician prescribed maintenance therapy and restorative therapy may be included in the historical costs calculated into the facility's per diem rate. Certain defined nursing services will not be considered as maintenance therapy.

Payments to medicare-certified rehabilitation agencies will be limited to payments for physician services and prescribed restorative therapy provided by physical therapists, occupational therapists, speech pathologists and audiologists. No changes were passed by the Senate.

The purpose of the changes is to reimburse actual costs for therapy, to indicate that certain maintenance procedures shall be provided as a part of nursing care, and to eliminate payment for psychosocial services. The House version establishes that nurses shall provide certain maintenance therapy, the cost of which is to be included in the facility's per diem rate.

Estimated savings for fiscal year 1982: $2,203,000.

7. Drugs.

Under the House version, payments for prescribed drugs shall be limited as follows: (a) one prescription fee per maintenance drug per month; and (b) three prescription fees per month per recipient. The purpose of this change is to encourage physicians and pharmacists to reduce the number of prescription refills by consolidating prescription quantities. This will reduce the number of drug purchases submitted for processing and the dispensing fees paid.

Under both the House and Senate proposals, a drug formulary will be established to limit the drugs covered by Medical Assistance. This list of approved drugs will be compiled with the assistance of a drug formulary committee which will include health care professionals from outside the Department of Public Welfare. The House version specifies that the formulary will not include (a) drugs lacking FDA approval for safety and efficacy; (b) over-the-counter drugs, except for antacids, acetaminophen, family planning products, aspirin, insulin, prenatal vitamins, and vitamins for children under age 7; (c) nutritional products; (d) anorectics; (e) drugs for which medical value has not been established. The purpose of this change is to limit payment for drugs of questionable efficacy. Providers will receive separate notice of the establishment of the formulary.

Estimated savings for fiscal year 1982: $5,163,000.

8. Personal Care Attendants.

Under the Senate version, personal care attendants' monthly payment would increase from $800 to $1000, with subsequent annual adjustments. Under the House version, increases would be limited as they are for all other providers. See Section 1 above. Payments to these providers have remained the same since the inception of the personal care program. The estimated cost of the Senate proposal would be: $731,000.

9. Outpatient Hospital Care.

Participating hospital outpatient departments will be converted to payment as clinic vendors for all services except emergency services and services not normally available in clinics or physicians' offices. Outpatient hospitals will retain their present separate vendor status for services covered by the exceptions.

Estimated savings for fiscal year 1982: $5,000,000.

This change is not required by law. It reflects an administrative decision to alter the standard of payment to the lower clinic rate. If the same service is available at a clinic or physician's office, Medical Assistance will restrict payment to a limit consistent with the treatment received rather than covering costs associated with the more expensive setting.

REMINDER: No cutback in service to recipients will be implemented without a minimum of 10 days notice. This notice was prepared on May 11, 1981, and is subject to change.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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

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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.

Department of Corrections

Adopted Rules Governing Programs and Services for Battered Women

Rules as Adopted

11 MCAR S 2.201 Introduction. Minn. Stat. S 241.63, clause (g), requires that the Commissioner of Corrections promulgate all rules necessary to implement the provisions of Minn. Stat. SS 241.61-241.66 and 256D.05, subd. 3, including emergency rules.

11 MCAR S 2.202 Definitions. For the purpose of this rule and 11 MCAR SS 2.210, 2.220, 2.230, 2.240, and 2.245, the terms defined in this rule have the meanings given them.

A. "Service ~~providers.~~ provider" means any public agency or private nonprofit corporation which plans, designs, and implements ~~either~~ any of the following:

1. Emergency shelter ~~programs~~ services and support services for battered women ~~or~~;

2. Support services for battered women;

3. Public education programs designed to promote public and professional awareness of the problems of battered women; or

4. Programs for violent partners.

B. "Purchase of service agreement~~.~~" means a contract or grant agreement between the ~~state~~ department and service provider which specifies the programs or services to be

provided, the method of delivering the programs or services, the responsibilities of the staff, the budget, and a commitment to assist in the necessary data collection and evaluation research to be completed on the program or service.

C. "Department." means the ~~Minnesota~~ Department of Corrections ~~(DOC)~~.

D. "Emergency shelter services." means housing facilities which regularly provide food, secure lodging, and a crisis phone line with 24-hour accessibility, primarily for women and children seeking safety from assault by a spouse, male relative, or male with whom they are residing or have resided in the past.

E. "Support services." means any of the following: advocacy, emotional support ~~and/or~~, counseling, legal information, medical referral, transportation, child care, information and referral services, and ~~such~~ other services ~~as~~ needed by battered persons and their families.

F. "Public education programs." means programs designed to promote public and professional awareness of the ~~problem~~ problems of ~~battering~~ battered persons.

G. "Commissioner." means the Commissioner of the Department of Corrections.

H. "Data." means summary data ~~according to~~ as defined in Minn. Stat. S 15.162, subd. 9.

I. "Law enforcement agencies." means police and sheriff's departments operating in Minnesota.

J. "Request for proposals." ~~Method to solicit~~ means solicitation of applications in a uniform format for distribution of funds allocated by the Legislature for programs and services for battered women.

11 MCAR S 2.210 Establishment of an advisory task force.

A. The commissioner shall appoint ~~an~~ a nine member advisory task force ~~consistent with the procedures established by the Secretary of State's office in accordance with Minnesota laws~~ to advise him on implementation of Minn. Stat. SS 241.61-241.66. The provisions of Minn. Stat. S 15.059, subd. 6 shall govern the

terms, compensation and removal of members of the advisory task force.

B. Prior to the appointment of any new task force member, the existing task force shall choose no more than five ~~(5)~~ organizations, one of which shall be the Department of Corrections, to send representatives to a review committee which shall ~~rate~~ recommend a slate of applicants based on the following:

1. Criteria mandated in Minn. Stat. ~~§§ 241.64-241.66.~~ S 241.64, subd. 2;

2. Applicant's understanding of problems facing battered women~~.~~;

3. Representatives from both metro and non-metro areas of the state~~.~~;

4. Representation from at least three ~~(3)~~ minority groups.

C. If other qualifications are equal, priority in appointments shall be given to persons who have personally experienced partner abuse ~~in their relationship~~.

11 MCAR S 2.220 ~~Relationship between department and advisory task force~~ Project coordinator.

A. ~~The project coordinator shall be available to attend all meetings of the task force or its subcommittees.~~

~~B.~~ The advisory task force shall screen applicants for the position of project coordinator and shall recommend to the commissioner the names of five ~~(5)~~ applicants. In appointing the project coordinator, the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force.

~~C. In the event~~ B. If the commissioner takes action contrary to the recommendation of the advisory task force, the commissioner or his designee shall meet with the task force or with representatives of the task force, appointed by its chair, to discuss the rationale for his decision.

C. The project coordinator shall be available to attend all meetings of the advisory task force or its subcommittees.

11 MCAR S 2.230 Awarding grants and contracts.

A. The department shall ~~advertise and shall~~ issue ~~Requests~~ a request for proposals from service providers. The advisory task force shall ~~utilize~~ use uniform procedures and criteria in considering all proposals which comply with the request for proposal outline.

B. The department shall ~~implement a plan of affirmative outreach to facilitate the submission of~~ solicit proposals from interested public and private nonprofit organizations, women's organizations, and diverse cultural groups in the state.

C. The department shall establish award criteria and procedures ~~shall be established~~ with the participation of the advisory task force prior to any request ~~and review~~ for proposals. ~~Such~~ The criteria and procedures shall be available to the public upon request.

D. The advisory task force shall review grant ~~applicants~~ applications and ~~shall~~ recommend to the commissioner names of applicants recommended to receive funds and the amount of funds recommended for each applicant.

E. The department shall~~, in accordance with applicable statutes,~~ disburse funds appropriated for the battered women's projects.

F. A portion of the funds appropriated by the Legislature shall be retained by the department for the purposes of working with violent partners and implementing public education programs ~~shall be retained by the department to conduct such programming. Such funds shall be retained by the department only when~~ if the commissioner determines that the department can ~~utilize such~~ use the funds for their designated purpose more effectively than by purchase of service ~~or grants~~ agreements. The advisory task force shall ~~provide input to~~ advise the department ~~for the utilization of such~~ on the use of retained funds.

G. All planning, development, narrative reports, data collection, funding and evaluation of programs and services for

battered women which are funded under 11 MCAR SS 2.201, 2.202, 2.210, 2.220, 2.230, 2.240, and 2.245 shall be conducted with the advice of the advisory task force.

11 MCAR S 2.240 Responsibilities of service providers.

A. ~~In order~~ To be eligible for initial funding consideration from the department for the establishment and operation of programs and services for battered women, service providers shall submit a ~~program~~ proposal which ~~addresses~~ includes, at a minimum, the following information:

1. The full name and address of the ~~organization.~~ service provider;

2. The proposed location of the program~~.~~ or service;

3. A ~~fiscal year~~ budget on forms provided by the department which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. ~~Construction/renovation~~

~~f.~~ Printing;

~~g~~f. Communications;

~~h~~g. Other program or service costs;

~~i~~h. Costs for assistance to individuals, including emergency loan funds for residents, rent deposits, legal fees, and moving costs;

~~j~~i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

~~k~~j. Evaluation;

4. A narrative for each line item on the budget request~~.~~;

5. A description of the duties ~~and responsibilities~~ of each staff position~~.~~;

6. A statement of the extent to which battered women in the community have been involved and participated in the ~~program~~ proposal~~.~~;

7. A statement of the ways in which potential service providers have solicited support and cooperation from potentially interested or relevant community agencies or groups such as law enforcement agencies, courts, social service agencies, and local boards or departments of health~~.~~;

8. A timetable for ~~program~~ operation~~.~~;

9. A description of the types of programs or services to be available~~.~~;

10. A description of the role to be played by volunteers, if any, in the operation of the emergency shelter service or public education program~~.~~;

11. A statement of compliance with program or service evaluation requirements as established by the commissioner with the consultation of the advisory task force~~.~~; and

12. Definition of the target group expected to be served ~~by the program~~.

B. ~~In order~~ To be eligible for renewed funding consideration from the department for continued operation of services and programs for battered women, service providers ~~must~~ shall submit a ~~program~~ report which ~~addresses~~ includes, at a minimum, the following information:

1. The full name of the ~~organization.~~ service provider;

2. ~~fiscal year~~ A budget ~~for past year and~~ for the year funding is requested, on forms provided by the department~~.~~ ~~Itemized~~, which itemizes such major categories ~~shall include~~ as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. ~~Construction/renovation~~

~~f.~~ Printing;

~~g~~f. Communications;

~~h~~g. Other program or service costs;

~~i~~h. Costs for assistance to individuals, including emergency loan funds for shelter residents, rent deposits, legal fees, and moving costs;

~~j~~i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

~~k~~j. Evaluation;

3. A narrative for each line item on the budget for funds requested~~.~~;

4. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period when funds are requested~~.~~; and

5. A statement of compliance with program or service evaluation requirements.

~~C. All contracts or grant agreements between the department and service providers which result from submitted proposals shall conform with state affirmative action and equal employment opportunity programs and other applicable federal, state and local laws.~~

~~D. Contracts or grant~~ C. Purchase of service agreements shall provide for the following:

1. The collection, recording and reporting of descriptive data on persons served and the services provided ~~(on a quarterly basis)~~ as requested by the commissioner~~.~~;

2. Complete reports requested by the commissioner~~.~~; and

3. Implementation of a fiscal policy.

~~E.~~ D. Any emergency shelter program operated on the basis of this appropriation shall ~~be in compliance with relevant local or state building, fire, and health regulations~~ show evidence that it is licensed by the Department of Health or the Joint Commission on Hospital Accreditation and has passed local fire inspection.

11 MCAR S 2.245 Submission of data--mandatory.

A. Reports on battered women shall be submitted monthly to the department in accordance with Minn. Stat. S 241.66.

B. Reports shall, at a minimum, include summary data which

discloses the date of occurrence, location, ~~frequency~~ and characteristics of battering. ~~Such characteristics shall include the victim's age, number of children, occupation, race and relationship to the assailant.~~

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Corrections

Rule Numbers: 11 MCAR SS 2.201; 2.202; 2.210; 2.220; 2.230; 2.240; 2.245

Rule Title: Adopted Rules Governing Programs and Services for Battered Women

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

Minn. Stat. SS 15.059, subd. 6
15.162, subd. 9
241.64, subd. 2
241.66

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor for Rules

Phone: 296.1536

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Assistant Attorney General
Department of Administration

DATE: June 29, 1981

FROM : John McLagan, Director
Standards Development Unit

PHONE:

SUBJECT: Rules Governing Programs and Services for Battered Women

There were no comments received by this office regarding these rules during or since the comment period.