

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1234

RULE REVIEW CHECKLIST

05.0009.0455

DATE RULE RECEIVED 12-27-85
DATE FOR REVIEW 1-6-86
DATE DUE 1-10-86

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

Approved 1/10/86 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 1-10-86 Revisor approved 1.2.86 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

? Order Adopting 12.27.85 Date cites APA, 14.26 as authority - should be 116M.07 subd 7

✓ Notice of Intent to Solicit Outside Opinion SR. 8.19.85

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency contains miscitations to relevant portions of Ch. 14 and minore noncompliance with 14.22 (1) - no encouragement of comment!

✓ Affidavit of Mailing Notice or rulemaking
11-13 and 14-85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

? Publication in State Register same minor problems as noted above
11.25.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

↓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

↓ Certificate of Board's Resolution Adopting Rules

↓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes statement of non-applicability of 14.115

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

↓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : SISTER MARY MADONNA ASHTON
Commissioner of Health

DATE: 1/10/86

ATTN: JOHN A. BREVIU
Special Assistant Attorney General

FROM : J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Health Governing the Health Care Equipment Loan Program

The above-referenced rule has been approved as to its legality by the Attorney General on January 10, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1239

AG copy

Department of Health

Adopted Rules Relating to Health Care Equipment Loan Program

Rules as Adopted

4647.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4647.0100 to 4647.0400, the following terms have the meanings given to them.

Subp. 2. **Applicant.** "Applicant" means a hospital as defined in subpart 12.

Subp. 3. **Approvable application.** "Approvable application" means an application for health care equipment loan program funds that meets the criteria listed in Minnesota Statutes, section 116M.07, subdivision 7c, as implemented by parts 4647.0100 to 4647.0400. An application may contain more than one project and, within an application, a project may be approvable or nonapprovable.

Subp. 4. **Approved application.** "Approved application" means an approvable application, or a project within an application, for which there are sufficient funds available in the review period.

Subp. 5. **Authority.** "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health.

Subp. 7. **Cost of project.** "Cost of project" means the costs associated with the acquisition and installation of all functionally related eligible equipment, and all associated costs, including application preparation costs paid to third parties; bond issuance costs; underwriting costs; placement fees; trustee fees; bond insurance; fee of guarantor, insurer, or financial institution, other than the authority, which provides letters of credit; surety bonds or equivalent security; authority fees, including application fees as defined in part 8300.3201, subpart 2; interest costs during construction; legal

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fees, including those of the authority's bond counsel; and debt service reserve fund.

Subp. 8. **Eligible equipment.** "Eligible equipment" means depreciable assets used to provide essential health care services, including machinery, tangible personal property, fixtures, and all construction, renovation, or remodeling to buildings or other real property necessary for the installation, use, or operation of the machinery, property, or fixtures.

Subp. 9. **Essential health care service.** "Essential health care service" means a service delivered directly to hospital patients in the course of obstetrical and/or neonatal care, or diagnosis, treatment, or prevention of illness, medical condition or disease, or a service necessary for the efficient delivery thereof. Essential health care services does not include experimental health care services as defined for purposes of federal reimbursement of hospitals under title 18 of the Social Security Act.

Subp. 10. **Funds.** "Funds" means proceeds from the sale of bonds or notes issued pursuant to Minnesota Statutes, section 116M.07, subdivision 7b, and funds that are available for loan during a review period.

Subp. 11. **HELP.** "HELP" means the Health Care Equipment Loan Program as established by Minnesota Statutes, section 116M.07, subdivisions 7a to 7c, and parts 4647.0100 to 4647.0400.

Subp. 12. **Hospital.** "Hospital" means an institution as defined by Minnesota Statutes, section 144.50, subdivision 2, and one that is certified to participate in the federal Medicare program in accordance with the provisions of section 1861(e) of the Social Security Act, as amended.

Subp. 13. **Nonapprovable application.** "Nonapprovable application" means an application that lacks additional information requested under part 4647.0200, subpart 4, or an application that does not meet the criteria listed in part 4647.0200, subpart 3.

Subp. 14. **Project.** "Project" means all functionally related eligible equipment.

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Subp. 15. **Review period.** "Review period" means the period beginning with the most recent application deadline provided in part 8300.3204, subpart 1, and ending with the transmittal of the notice of approved applications to the commissioner of energy and economic development, which period of time shall be ten weeks.

Subp. 16. **Suitable financing.** "Suitable financing" means financing at a comparable or lesser total cost, in the same or approximately the same dollar amount, with the same or comparable maturity and with comparable or more favorable conditions.

4647.0200 REVIEW OF APPLICATIONS.

Subpart 1. **Review of applications by commissioner of health.** All applications for HELP loans received from the commissioner of energy and economic development shall be reviewed by the commissioner of health to determine whether they meet the criteria provided in subpart 3.

Subp. 2. **Time frame for commissioner's review.** The commissioner has five weeks from the beginning of the review period in which to request additional information from applicants who have submitted applications. An applicant must submit additional information, if required, within seven weeks of the beginning of the review period for the application to be further considered by the commissioner during the review period. Within nine weeks of the beginning of the review period, the commissioner shall conclude review of applications under consideration in that review period, determine approvable applications, and determine if funds available for the review period are sufficient.

If the allocation is insufficient to fund all approvable applications, the commissioner shall rank approvable applications, and determine approved applications in the manner provided in part 4647.0300, subpart 2.

Within ten weeks of the beginning of the review period, the commissioner shall notify the commissioner of energy and

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economic development of approved applications.

Applications received by the commissioner after the application deadline for a review period which can reasonably be reviewed for approvability by the commissioner shall be placed in category C, as described in part 4647.0300, subpart 2, item C, if the applications are determined to be approvable applications. Applications that cannot reasonably be reviewed in the review period shall be retained and reviewed in the subsequent review period.

Subp. 3. **Commissioner's review criteria.** The applicant shall provide documentation with the application, demonstrating satisfaction of the following criteria:

A. That the facility is a hospital licensed by the Minnesota Department of Health under Minnesota Statutes, sections 144.50 to 144.58, and is owned and operated by a county, district, municipality, or a nonprofit corporation. The applicant shall include its hospital license number on its application and indicate the number of licensed hospital beds.

B. That the loan will not be used to refinance existing debt:

(1) The applicant shall certify that the HELP loan will not be so used.

(2) A loan to the hospital for cash outlays made by the hospital for eligible equipment purchased, ordered, or installed after the effective date of parts 4647.0100 to 4647.0400 shall be allowed, provided that the hospital applies to the authority, or to the private insurer which issues the letter of credit or bond insurance for the authority's bonds, within 90 days of the earlier of the date of purchase, order, or installation of the eligible equipment. The applicant must provide evidence of the date of purchase, order, or installation of the eligible equipment.

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C. That the hospital was unable to obtain suitable financing from other sources. The applicant shall certify that it was unable to obtain suitable financing from other sources.

D. That the loan is necessary to establish or

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maintain patient access to an essential health care service that would not otherwise be available within a reasonable distance from the hospital. To address this criterion, the applicant shall include in brief narrative form the following information for each project in the loan application:

(1) a description of the equipment being replaced or new equipment being purchased and a description of associated construction or renovation;

(2) a statement of whether and how the project relates to current services, including data about the use of the services affected by the project;

(3) a description and geographic identification of the hospital's service area in terms of standard political subdivisions; and

(4) a description of the need for the project, including anticipated patient need and use and a description of how the project is related to the provision of an essential health care service. The applicant shall also include an explanation of how the project relates to the most recent state health plan and the most recent health systems agency plan for the hospital's health service area, developed pursuant to Public Law Number 92-641.

E. That the project to be financed by the loan is cost-effective and efficient. To demonstrate satisfaction of this requirement, the applicant shall, in brief narrative form, address the following subjects for each project in the loan application;

(1) How the expected benefits to the patients to be served by the project and to the hospital justify the costs of the project. These benefits shall be discussed by the applicant in terms of the number of patients, the time of use, and the time and dollars saved. In estimating costs, the applicant shall include the costs of the project, operating costs, and any anticipated increases or decreases in patient charges.

(2) The availability and adequacy of other

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alternatives or substitutes for all or any part of the project, including an evaluation of their costs and benefits or effectiveness as compared to the project. The applicant shall include a description of the costs associated with continuing to provide patient services without the project.

(3) If there are other hospitals in the service area, a description of the anticipated effect the proposed project will have on existing facilities and services. The applicant shall also include an explanation of how the project relates to the most recent state health plan and the most recent health systems agency plan for the hospital's health service area, developed pursuant to Public Law Number 92-641.

Subp. 4. **Additional information.** To make a determination whether the application is an approvable application, the commissioner may request the submission of additional information relating to subpart 3. The commissioner shall delay approval of an application for failure of the applicant to timely submit requested information. Additional information requested by the commissioner must be received by 4:30 p.m. on Friday of the seventh week following the beginning of the review period in which the application is being reviewed. Applications for which additional information was requested and not received by this deadline shall be retained for consideration in the next review period or returned to the applicant, as the applicant directs. Applications returned to the applicant may be resubmitted.

4647.0300 DETERMINATION OF APPROVED APPLICATIONS.

Subpart 1. **Determination upon sufficient funding.** The commissioner shall determine whether the funds available for the review period are sufficient to fund all approvable applications for that review period. If the funds are sufficient, the commissioner shall approve all approvable applications.

Subp. 2. **Determination upon insufficient funding.** If the commissioner determines that the total amount of funds requested in approvable applications during that review period exceed the

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amount of funds available, approvable applications shall be categorized and approved as follows:

A. All approvable applications, except for approvable applications carried over from a previous review period, shall be placed in category A unless, if within the two years prior to the applicable review period application deadline, the applicant has received the proceeds of debt, the interest thereon which was exempt from federal taxation, which was used for the purchase of hospital or health-care equipment, in which case the applications of such applicants shall be placed in category B.

B. In category A, approvable applications will be approved in reverse order of their ranking by hospital size, as determined by number of licensed beds, excluding infant bassinets, of the hospital submitting the application.

C. If the funds available for the review period are insufficient to fund all the approvable applications in category A, the commissioner may approve, with the consent of the applicant, projects within approvable applications so as to distribute all available funds. The commissioner will not approve parts of projects. The applicant shall determine those approvable projects within an approvable application to which available funds shall be applied. Projects within an approvable application not approved in the review period, and other approvable applications not approved in that period, shall be carried over to the next review period.

D. After all approvable applications in category A have been approved, remaining funds shall be applied to category B. Applications in category B will be approved in the same order of priority applied to approvable applications in category A. Category B applications not approved in the review period shall be carried over to the next review period.

E. After all approvable applications in category B have been approved, remaining funds shall be applied to category C. Applications in category C will be funded in the same order of priority applied to approvable applications in category A. Category C applications not approved in the review period shall

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be carried over to the next review period.

F. At the beginning of a review period, the commissioner shall consider all approvable applications carried over from previous review periods. Approvable applications containing projects not approved because of insufficient funds in the previous review period shall be placed in the same category in the subsequent review period and approved in the manner provided in item B or D. All other approvable applications shall be placed in either category A or category B according to the procedure provided in item A.

4647.0400 NOTICE.

The commissioner shall notify applicants by mail if their applications are not approvable or not approved during the review period for which they applied for HELP funds.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

1/10 1986

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 10 1986 9:45 A.M

Joan Anderson Growe
Secretary of State

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Department of Health Governing the
Health Care Equipment Loan Program

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 November 25, 1985, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1, on November 13 and 14, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five 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 the Proposed Rules Relating to the Health Care Equipment Loan Program are adopted this 27th day of December, 1985, pursuant to authority vested in me by Minnesota Statutes, section 14.26.

STATE OF MINNESOTA

for Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner of Health

In lieu of these disclosure requirements, the committee shall identify and report contributions by assigning a separate number of each contributor, in correlation with each contributor, instead of listing the name, address, and employer of each contributor.

Except as specially provided in this exemption, said committee shall in all respects comply with the provisions of Laws of 1980, Ch. 362.

August 9, 1985

Mary Ann McCoy, Executive Director

Department of Health
Office of Health Systems Development

Outside Opinion Sought Concerning Development of Rules Relating to Review of Health Care Equipment Loan Applications

Notice is hereby given that the Minnesota Department of Health is seeking information and opinions from sources outside the agency in preparing to promulgate permanent rules governing Department of Health review of applications for health care equipment loans.

Minnesota Laws 1985, First Special Sess., Chapter 14, Art. 8, Section 5 authorizes the Minnesota Energy and Economic Development Authority to make or participate in health care equipment loans. Approval of a loan application by the commissioner of health is a necessary prerequisite to approval of a loan by the authority. Specific criteria which must be satisfied in order for a loan application to receive Minnesota Department of Health approval are listed in the statute.

Permanent rules will be developed by the Department pertaining to procedural and informational requirements relating to Department of Health review. Promulgation of permanent rules is authorized by Minnesota Laws 1985, First Special Sess., Chapter 14, Art. 8, Section 7.

Any written material received by the Minnesota Department of Health shall become part of the rulemaking record in the event that the rules are adopted. Written statements should be addressed to:

Marianne Miller
Office of Health Systems Development
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440

Department of Human Services

Outside Opinion Sought Concerning Definition of "Related Condition"

Rules Governing Eligibility of Persons With Related Conditions For Services Provided To Persons With Mental Retardation

Notice is hereby given that the Minnesota Department of Human Services is considering language for a permanent rule establishing standards and procedures for determining if a person has a condition related to mental retardation as defined in Minnesota Statutes, section 252.27, subdivision 1 and is therefore eligible to receive services established for persons with mental retardation.

This rule is authorized by Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2; 245.825; 252.24, subdivision 2; 252.275, subdivision 6; 252.291, subdivision 5; 252.30; 256.01, subdivision 5; 256B.092, subdivision 6; and 256.501, subdivisions 2 and 10.

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

Shirley Schue
Mental Retardation Division
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/297-4784.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the
Proposed Rules Governing
Commissioner of Health's
Review and Approval of
Health Care Equipment Loan Program
Applications.

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

IT IS HEREBY ORDERED that Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Health for that purpose and that said notice and the proposed rules be published in the State Register.

Dated: 11/7, 1985

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

Sr. Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner

DEPARTMENT OF HEALTH

Proposed Rules Relating to Health Care Equipment Loan Program

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Health proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Health has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21. The proposed rules set forth the criteria, timeframe and procedure the Commissioner of Health will use to review health care equipment loan applications and notify the Commissioner of Energy and Economic Development of approved applications.

? repealed cite - should be 14.22-14.27

Persons interested in these rules shall have 30 days to submit comments in support of or opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. 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.

no encouragement !

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.41, subd. 1.

? misciteation - should be 14.14

Persons who wish to submit comments or a written request for a public hearing should submit them to Tom Hiendlmayr, Health Economics Program, Office of Health Systems Development, Department of Health, 717 Delaware St. SE, Minneapolis, Minnesota 55414, 612/623-5185. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minn. Laws 1985, 1st Spec. Sess., Ch. 14, Art. 8, Sec. 7(c). Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of 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 Tom Hiendlmayr, Health Economics Program, Office of Health Systems Development, Department of Health, 717 Delaware St. SE, Minneapolis, MN 55414, 612/623-5185.

A copy of the proposed rules is available and may be obtained by contacting Tom Hiendlmayr at the above address and phone number.

Sister Mary Madonna Ashton
Commissioner of Health

In the Matter of the Proposed
Adoption of Rules of the State
Department of Health Governing
Commissioner of Health's Review
and Approval of Health Care
Equipment Loan Program Applications.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

Kathryn Berndt, being first duly sworn deposes and says:

That on the 13th and 14th days of November, 1985, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without A Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of Minneapolis, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Health for the purpose of receiving notice of the proposed adoption of rules by this agency and on all persons indicated on the attached distribution list for the Minnesota Energy and Economic Development Authority Hospital Equipment Loan Program.

Kathryn Berndt

Subscribed and sworn to before me
this 14th day of November, 1985.

Evelyn I. Costello

EVELYN I. COSTELLO
NOTARY PUBLIC - MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES 1-21-87

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
HOSPITAL EQUIPMENT LOAN PROGRAM

~~DISTRIBUTION LIST~~ 11/13/85

Issuer

Minnesota Department of Energy & Economic Development
150 East Kellogg
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St. Paul, MN 55101

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DEBRA KULTALA 296-4337
~~Terence Brown~~ (612) ~~297-1981~~
Management Analyst

Loan Review

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Underwriter's Counsel

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J. Richard Delle Fave, Esq.	(212) 704-9660

Trustee

To be selected

Investment Agreement Bank

To be selected

Credit Enhancement

To be selected

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Moss and Barnett, P.A.
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200 South Sixth Street
Minneapolis, MN 55402

Alpha Homes, Inc.
P.O. Box 475
Spicer, MN 56288

American Water Well Drilling
West Route Box 42
Northome, MN 56661

Donna M. Anderson
Community Health Services Div.
1600 Highway 55
Hastings, MN 55033

Herbert Anderson
418 Eighth Street South
Virginia, MN 55792

James F. Andre, City Manager
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Anoka County Community Health
and Social Services Dept.
c/o Robert Hutchinson
Courthouse - Fourth Floor
Anoka, MN 55303

Joan Archer
MN Manufactured Housing Assoc.
222 Little Canada Road
Suite 222
St. Paul, MN 55117

Kathleen P. Burek, Director
Office of Health Systems
Development
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, MN 55440

Allyson Ashley
Southwestern Mental Health Ctr.
P.O. Box D
Luverne, MN 56156

Assisi Residences of Faribault
County, Inc.
218 South Linton
Blue Earth, MN 56013

Association for Retarded
Citizens of Olmsted County
903 West Center
Rochester, MN 55902

Walter A. Baldus
Woodvale Management
Services, Inc.
P.O. Box 1047
Austin, MN 55912

Charles Ball, Exec. Director
Ebenezer Center for Aging
2722 Park Avenue
Minneapolis, MN 55407

Bergerson - Caswell, Inc.
5115 Industrial Street
Maple Plain, MN 55359

James Biggar
205 West Center
Lake City, MN 55041

Cristine Boswell
Association for Retarded
Citizens of Hennepin County
Suite 370 - 2344 Nicollet Ave.
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St. Paul, MN 55106

Dave Bredenberg
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1507 Lowry Avenue Northeast
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Jennifer P. Bredenberg
Dept. of Community Development
Environmental Health Division
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Nancy Briggs
New Connection Programs
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St. Paul, MN 55102

John M. Broeker
Broeker, Hartfeldt, Hedges
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Minneapolis, MN 55420

Ray Bullick
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Mankato, MN 56001

Georgine L. Busch
Our House of Minnesota, Inc.
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Pamela Byers
Region IX Development Commission
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William R. Carter, III
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St. Paul, MN 55101

Thomas F. Catania, Jr.
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Milton Conrath
Wekton, Inc.
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St. Paul, MN 55104

Pat Coughlin/Betsy Christensen
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Richfield, MN 55423

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CERTIFICATE

In the Matter of the Proposed
Adoption of Rules of the State
Department of Health Governing the
Health Care Equipment Loan Program

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1, that their names be placed on file with and maintained by the State Department of Health for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 9:00 AM., this 14th day of November, 1985.

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8300.3204 PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. **Deadline for submission.** Applications for program funds will be processed on a quarterly basis. Applicants shall submit completed application forms by February 1, May 1, August 1, or November 1 to receive consideration or priority under part 4647.0300 in the respective quarter. If an application is received after the quarterly application deadline, it shall be forwarded to the commissioner of health.

Subp. 2. **Review by Department of Health.** When an application is received by the commissioner, a copy of the application will be sent to the commissioner of health for review. Upon receipt of the notification from the commissioner of health that the application or a project within an application has been approved, the commissioner will follow the procedure under subpart 3 or 4.

Subp. 3. **Review and approval.** The authority may not approve an application, or a project within an application, nor make a loan to an applicant unless the application or project within an application has been approved by the commissioner of health. If the commissioner of health has approved an application or project within an application, the authority shall pass a resolution approving the application or project and make the loan if sufficient program funds are available and bond insurance is issued by a private insurer.

Subp. 4. **Authority review and rejection.** If the commissioner of health has approved an application or project within an application, the authority shall pass a resolution rejecting the application or project, and notify the applicant of the rejection, only if the authority finds that there are insufficient program funds available or that bond insurance required to be issued by a private insurer is not available.

Subp. 5. **Loan agreement and disbursement.** Upon approval of an application or project within an application by the authority, the commissioner shall send a loan agreement to the applicant. The applicant shall have a duly authorized officer execute and return the executed loan agreement to the commissioner. The program funds approved by the authority for an applicant will be disbursed upon execution of and according to the terms of the loan agreement and the health care equipment program indenture.

Subp. 6. **Payment of application fee.** The application fee established pursuant to part 8300.3201, subpart 5, shall be paid by the trustee specified in the health care equipment loan indenture on a quarterly basis no later than at the time of disbursement.

Subp. 7. **Preparation of documents.** The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

Department of Health

Proposed Rules Relating to Health Care Equipment Loan Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Health proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Health has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21. The proposed rules set forth the criteria, timeframe and procedure the Commissioner of Health will use to review health care equipment loan applications and notify the Commissioner of Energy and Economic Development of approved applications.

Persons interested in these rules shall have 30 days to submit comments in support of or opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. 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.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.41, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Tom Hiendlmayr, Health Economics Program, Office of Health Systems Development, Department of Health, 717 Delaware St. SE, Minneapolis, Minnesota 55414, 612/623-5185. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minn. Laws 1985, 1st Spec. Sess., Ch. 14, Art. 8, Sec. 7(c). Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules, without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to

form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of 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 Tom Hiendlmayr, Health Economics Program, Office of Health Systems Development, Department of Health, 717 Delaware St. SE, Minneapolis, MN 55414, 612/623-5185.

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 Tom Hiendlmayr at the above address and phone number.

Sister Mary Madonna Ashton
Commissioner of Health

Rules as Proposed (all new material)

4647.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4647.0100 to 4647.0400, the following terms have the meanings given to them.

Subp. 2. **Applicant.** "Applicant" means a hospital as defined in subpart 12.

Subp. 3. **Approvable application.** "Approvable application" means an application for health care equipment loan program funds that meets the criteria listed in Minnesota Statutes, section 116M.07, subdivision 7c, as implemented by parts 4647.0100 to 4647.0400. An application may contain more than one project and, within an application, a project may be approvable or nonapprovable.

Subp. 4. **Approved application.** "Approved application" means an approvable application, or a project within an application, for which there are sufficient funds available in the review period.

Subp. 5. **Authority.** "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health.

Subp. 7. **Cost of project.** "Cost of project" means the costs associated with the acquisition and installation of all functionally related eligible equipment, and all associated costs, including application preparation costs paid to third parties; bond issuance costs; underwriting costs; placement fees; trustee fees; bond insurance; fee of guarantor, insurer, or financial institution, other than the authority, which provides letters of credit; surety bonds or equivalent security; authority fees, including application fees as defined in part 8300.3201, subpart 2; interest costs during construction; legal fees, including those of the authority's bond counsel; and debt service reserve fund.

Subp. 8. **Eligible equipment.** "Eligible equipment" means depreciable assets used to provide essential health care services, including machinery, tangible personal property, fixtures, and all construction, renovation, or remodeling to buildings or other real property necessary for the installation, use, or operation of the machinery, property, or fixtures.

Subp. 9. **Essential health care service.** "Essential health care service" means a service delivered directly to hospital patients in the course of obstetrical and/or neonatal care, or diagnosis, treatment, or prevention of illness, medical condition or disease, or a service necessary for the efficient delivery thereof. Essential health care services does not include experimental health care services as defined for purposes of federal reimbursement of hospitals under title 18 of the Social Security Act.

Subp. 10. **Funds.** "Funds" means proceeds from the sale of bonds or notes issued pursuant to Minnesota Statutes, section 116M.07, subdivision 7b, and funds that are available for loan during a review period.

Subp. 11. **HELP.** "HELP" means the Health Care Equipment Loan Program as established by Minnesota Statutes, section 116M.07, subdivisions 7a to 7c, and parts 4647.0100 to 4647.0400.

Subp. 12. **Hospital.** "Hospital" means an institution as defined by Minnesota Statutes, section 144.50, subdivision 2, and one that is certified to participate in the federal Medicare program in accordance with the provisions of section 1861(e) of the Social Security Act, as amended.

Subp. 13. **Nonapprovable application.** "Nonapprovable application" means an application that lacks additional information requested under part 4647.0200, subpart 4, or an application that does not meet the criteria listed in part 4647.0200, subpart 3.

Subp. 14. **Project.** "Project" means all functionally related eligible equipment.

Subp. 15. **Review period.** "Review period" means the period beginning with the most recent application deadline provided in

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part 8300.3204, subpart 1, and ending with the transmittal of the notice of approved applications to the commissioner of energy and economic development, which period of time shall be ten weeks.

Subp. 16. **Suitable financing.** "Suitable financing" means financing at a comparable or lesser total cost, in the same or approximately the same dollar amount, with the same or comparable maturity and with comparable or more favorable conditions.

4647.0200 REVIEW OF APPLICATIONS.

Subpart 1. **Review of applications by commissioner of health.** All applications for HELP loans received from the commissioner of energy and economic development shall be reviewed by the commissioner of health to determine whether they meet the criteria provided in subpart 3.

Subp. 2. **Time frame for commissioner's review.** The commissioner has five weeks from the beginning of the review period in which to request additional information from applicants who have submitted applications. An applicant must submit additional information, if required, within seven weeks of the beginning of the review period for the application to be further considered by the commissioner during the review period. Within nine weeks of the beginning of the review period, the commissioner shall conclude review of applications under consideration in that review period, determine approvable applications, and determine if funds available for the review period are sufficient.

If the allocation is insufficient to fund all approvable applications, the commissioner shall rank approvable applications, and determine approved applications in the manner provided in part 4647.0300, subpart 2.

Within ten weeks of the beginning of the review period, the commissioner shall notify the commissioner of energy and economic development of approved applications.

Applications received by the commissioner after the application deadline for a review period which can reasonably be reviewed for approvability by the commissioner shall be placed in category C, as described in part 4647.0300, subpart 2, item C, if the applications are determined to be approvable applications. Applications that cannot reasonably be reviewed in the review period shall be retained and reviewed in the subsequent review period.

Subp. 3. **Commissioner's review criteria.** The applicant shall provide documentation with the application, demonstrating satisfaction of the following criteria:

A. That the facility is a hospital licensed by the Minnesota Department of Health under Minnesota Statutes, sections 144.50 to 144.58, and is owned and operated by a county, district, municipality, or a nonprofit corporation. The applicant shall include its hospital license number on its application and indicate the number of licensed hospital beds.

B. That the loan will not be used to refinance existing debt:

(1) The applicant shall certify that the HELP loan will not be so used.

(2) A loan to the hospital for cash outlays made by the hospital for eligible equipment purchased, ordered, or installed after the effective date of parts 4647.0100 to 4647.0400 shall be allowed. The applicant must provide evidence of the date of purchase, order, or installation of the eligible equipment.

C. That the hospital was unable to obtain suitable financing from other sources. The applicant shall certify that it was unable to obtain suitable financing from other sources.

D. That the loan is necessary to establish or maintain patient access to an essential health care service that would not otherwise be available within a reasonable distance from the hospital. To address this criterion, the applicant shall include in brief narrative form the following information for each project in the loan application:

(1) a description of the equipment being replaced or new equipment being purchased and a description of associated construction or renovation;

(2) a statement of whether and how the project relates to current services, including data about the use of the services affected by the project;

(3) a description and geographic identification of the hospital's service area in terms of standard political subdivisions; and

(4) a description of the need for the project, including anticipated patient need and use and a description of how the project is related to the provision of an essential health care service. The applicant shall also include an explanation of how the project relates to the most recent state health plan and the most recent health systems agency plan for the hospital's health service area, developed pursuant to Public Law Number 92-641.

E. That the project to be financed by the loan is cost-effective and efficient. To demonstrate satisfaction of this requirement, the applicant shall, in brief narrative form, address the following subjects for each project in the loan application:

(1) How the expected benefits to the patients to be served by the project and to the hospital justify the costs of the project.

These benefits shall be discussed by the applicant in terms of the number of patients, the time of use, and the time and dollars saved. In estimating costs, the applicant shall include the costs of the project, operating costs, and any anticipated increases or decreases in patient charges.

(2) The availability and adequacy of other alternatives or substitutes for all or any part of the project, including an evaluation of their costs and benefits or effectiveness as compared to the project. The applicant shall include a description of the costs associated with continuing to provide patient services without the project.

(3) If there are other hospitals in the service area, a description of the anticipated effect the proposed project will have on existing facilities and services. The applicant shall also include an explanation of how the project relates to the most recent state health plan and the most recent health systems agency plan for the hospital's health service area, developed pursuant to Public Law Number 92-641.

Subp. 4. **Additional information.** To make a determination whether the application is an approvable application, the commissioner may request the submission of additional information relating to subpart 3. The commissioner shall delay approval of an application for failure of the applicant to timely submit requested information. Additional information requested by the commissioner must be received by 4:30 p.m. on Friday of the seventh week following the beginning of the review period in which the application is being reviewed. Applications for which additional information was requested and not received by this deadline shall be retained for consideration in the next review period or returned to the applicant, as the applicant directs. Applications returned to the applicant may be resubmitted.

4647.0300 DETERMINATION OF APPROVED APPLICATIONS.

Subpart 1. **Determination upon sufficient funding.** The commissioner shall determine whether the funds available for the review period are sufficient to fund all approvable applications for that review period. If the funds are sufficient, the commissioner shall approve all approvable applications.

Subp. 2. **Determination upon insufficient funding.** If the commissioner determines that the total amount of funds requested in approvable applications during that review period exceed the amount of funds available, approvable applications shall be categorized and approved as follows:

A. All approvable applications, except for approvable applications carried over from a previous review period, shall be placed in category A unless, if within the two years prior to the applicable review period application deadline, the applicant has received the proceeds of debt, the interest thereon which was exempt from federal taxation, which was used for the purchase of hospital or health-care equipment, in which case the applications of such applicants shall be placed in category B.

B. In category A, approvable applications will be approved in reverse order of their ranking by hospital size, as determined by number of licensed beds, excluding infant bassinets, of the hospital submitting the application.

C. If the funds available for the review period are insufficient to fund all the approvable applications in category A, the commissioner may approve, with the consent of the applicant, projects within approvable applications so as to distribute all available funds. The commissioner will not approve parts of projects. The applicant shall determine those approvable projects within an approvable application to which available funds shall be applied. Projects within an approvable application not approved in the review period, and other approvable applications not approved in that period, shall be carried over to the next review period.

D. After all approvable applications in category A have been approved, remaining funds shall be applied to category B. Applications in category B will be approved in the same order of priority applied to approvable applications in category A. Category B applications not approved in the review period shall be carried over to the next review period.

E. After all approvable applications in category B have been approved, remaining funds shall be applied to category C. Applications in category C will be funded in the same order of priority applied to approvable applications in category A. Category C applications not approved in the review period shall be carried over to the next review period.

F. At the beginning of a review period, the commissioner shall consider all approvable applications carried over from previous review periods. Approvable applications containing projects not approved because of insufficient funds in the previous review period shall be placed in the same category in the subsequent review period and approved in the manner provided in item B or D. All other approvable applications shall be placed in either category A or category B according to the procedure provided in item A.

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4647.0400 NOTICE.

The commissioner shall notify applicants by mail if their applications are not approvable or not approved during the review period for which they applied for HELP funds.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Energy and Economic Development

Adopted Rules Relating to Thermal Insulation Products

The rules proposed and published at *State Register*, Volume 9, Number 45, pages 2424-2437, May 6, 1985 (9 S.R. 2424) are adopted with the following modifications:

Rules as Adopted

RESIDENTIAL THERMAL INSULATION STANDARDS

4155.0100 AUTHORITY AND PURPOSE.

The commissioner is authorized by Minnesota Statutes, sections 325F.20, subdivision 1 and 325F.21, subdivisions 1 and ~~3~~ 2 to establish standards for the product quality, safety, installation, and labeling of thermal insulation products, and establish test programs and procedures to ensure that standards established by this chapter shall be met.

4155.0110 APPLICABILITY.

Subpart 1. **Residential products.** This chapter applies to the following thermal insulation materials:

Subp. 2. **Conduct.** This chapter applies to the manufacture, distribution, sale, and application of residential insulation material within Minnesota. For the purpose of this chapter the sale of a building or appliance that contains installed insulating material is not considered the manufacturing and distribution of the insulating material.

4155.0120 DEFINITIONS.

Subp. 14. **Insulation.** "Insulation" means thermal insulation, a material or assembly of materials designed to provide resistance to heat flow in residential building structures, including but not limited to mineral fibrous, mineral cellular, organic fibrous, organic and plastic cellular and reflective materials, whether in loose-fill, flexible, rigid, or semirigid form. Any material advertised for use in residential buildings as having a thermal resistance R-value, except windows and doors, shall be considered as insulation for purposes of this chapter.

4155.0130 INSULATION MATERIALS STANDARDS.

Subpart 1. **Scope.** This part sets forth standards for the product quality and safety of thermal insulation materials specified herein, as well as minimum procedures for the testing and reporting of insulation materials under these standards. Regulated thermal insulation materials that do not demonstrate by tests conformance to these standards shall not be sold, used, distributed, or installed in Minnesota by an industry member. Performance tests for insulation materials must meet or exceed the requirements of this part.

Subp. 2. **General testing and reporting requirements.** General testing and reporting requirements for regulated thermal insulation materials in this part are as follows:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Department of Health Governing the
Health Care Equipment Loan Program

FINDINGS OF FACT
AND CONCLUSIONS

Notice of Solicitation of Outside Opinion Concerning Development of Rules Relating to Review of Health Care Equipment Loan Applications was published in the State Register on August 19, 1985. Notice of the Commissioner's intent to adopt the above entitled rules without a public hearing was published in the state register on November 25, 1985, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1, on November 13 and 14, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice and having considered all information adduced, the Comissioner makes the following:

FINDINGS OF FACT

1. No written comments were received in response to the Solicitation of Outside Opinion Concerning Development of Rules Relating to Review of Health Care Equipment Loan Applications. During the development of the above entitled proposed rules, Department of Health staff met frequently with staff from the Department of Energy and Economic Development, Dain Bosworth Incorporated, Piper, Jaffray and Hopwood Incorporated and the Minnesota Hospital Association.

2. No written requests for a public hearing were received within the 30 day comment period.

3. Minnesota Statutes 116M.07 subd. 7b. authorizes the Minnesota Energy and Economic Development Authority [Authority] to issue tax exempt bonds to provide money to make health care equipment loans.

4. Minnesota Statutes section 116M.07, subdivision 7c, (a) (2) requires that hospitals not use a health care equipment loan to refinance existing debt.

5. Minnesota Statutes section 116M.07, subd. 7c authorizes the Commissioner of Health to adopt permanent rules to implement procedures to review and approve applications for health care equipment loans according to the criterion set forth in item 3, above.

6. The proposed rules, Part 4647.0200, subpart 3, B(2) provide for loans to hospitals for cash outlays made by the hospital for eligible equipment purchased, ordered, or installed after the effective date of the rules.

7. The proposed rules, Part 4647.0200, subpart 3, B(2) would permit a hospital to apply for a loan as much as two and-a-half years after purchase, order or installation of eligible equipment.

8. According to bond counsel for the Authority, the proposed rules, Part 4647.0200, subpart 3, B(2), could be construed as an inducement to refinance debt which is prohibited by the Federal Revenue Code for tax exempt securities.

9. Bond counsel for the Authority recommends insertion of clarifying language on page 4, line 24 of the proposed rules as follows: after the word "allowed" and before the period insert "provided that the hospital applies to the Authority or to the private insurer which issues the letter of credit or bond insurance for the Authority's bonds within 90 days of the earlier date of purchase, order or installation of the eligible equipment". p.4

10. Insertion of such language is needed to ensure eligibility of the bonds for tax exempt status, would clarify the use of loan proceeds for previously purchased eligible equipment in the proposed rules and would make them consistent with the statute which does not permit use of tax exempt loans to refinance existing debt.

11. Such a change is non-substantial because it does not affect a new class of persons different from those affected by the rules as originally proposed, does not deal with new subject matter, does not create a new right or extinguish an existing right, does not make a change so major as to not be covered by the original notice of intent to adopt a rule without a hearing or to avoid reaction or comment, and does not result in a rule fundamentally different from that contained in the notice of intent to adopt a rule without a public hearing.

Upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS

1. That the Department has the statutory authority to adopt the proposed rules.

2. That the Department gave proper notices concerning the solicitation of outside opinion regarding proposed adoption of rules without a public hearing and concerning the notice of intent to adopt rules without a hearing.

3. That modification to the proposed rules is needed to protect the tax exempt status of the health care equipment loans under federal law and to make the proposed rules consistent with the statute which prohibits use of loan proceeds for refinancing existing debt.

4. That the modification to the proposed rules does not constitute a substantial change.

5. That the Department has fulfilled all the requirements of statute and rule regarding the promulgation of administrative rules.

6. That any finding which might properly be termed a conclusion and any conclusion which might properly be termed a finding, are hereby adopted as such.

Date: 12-27-85

STATE OF MINNESOTA

Sr Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner of Health

STATEMENT OF NEED AND REASONABLENESS

Proposed Rules by the Minnesota Department of Health
Governing Review of Applications for Health Care Equipment Loans

BACKGROUND

The 1985 Minnesota Legislature enacted legislation to enable the Minnesota Energy and Economic Development Authority (the "Authority") to issue bonds and notes to provide money for the purposes of a health care equipment loan program. Minn. Laws 1985, 1st Sp. Sess., Ch. 14, Art. 8, Secs. 5-7 [the "Act"]. The Act requires the Commissioner of Health ("Commissioner") to review and approve loan applications before the Authority makes a commitment for a loan. Section 7 of the Act sets forth five criteria for the Commissioner's review. These criteria are: (cite statute)

(1) the hospital is owned and operated by a county, district, municipality or nonprofit corporation;
(2) the loan would not be used to refinance existing debt;
(3) the hospital was unable to obtain suitable financing from other sources;
(4) the loan is necessary to establish or maintain patient access to an essential health care service that would not otherwise be available within a reasonable distance from that facility; and

(5) the project to be financed by the loan is cost effective and efficient.

The Act further directs the Commissioner to rank applications according to the last two criteria in the event that there is insufficient money to fund all approvable loan applications. The Commissioner is empowered to adopt rules to implement these review criteria. Minn. Stat. Sec. 116M.07, Subd. 7c (1985 Suppl.).

A major policy goal of several key legislators was to provide access to lower interest HELP loans for hospitals in greater Minnesota. The cities of Minneapolis, St. Paul, and Duluth have issued tax-exempt bonds for HELP loans in recent years. Meanwhile, greater Minnesota hospitals could only obtain debt financing from private lenders, at higher interest rates.

The purpose of the Commissioner's review of these loan applications is to ensure that loans are made consistent with the state's health care policy goals. Since interest payments on bonds and notes issued by the Authority are exempt from federal income taxation, the tax exempt funds represent a loss of tax revenue which must be borne by all tax payers. This represents a subsidy by the taxpayer to the bond holders. The Legislature therefore determined that there was a public interest in the uses of loans made from the proceeds of tax exempt funds. The Commissioner's review ensures that the public interest is served in this program.

The 1985 Legislature created this program to provide statewide access to lower interest HELP funds. These proposed rules make specific and implement the

criteria set forth in Minn. Stat. Sec. 116M.07 Sec 7, Subd. 7c. Part 4647.0100 of the proposed rules defines key terms needed to implement the HELP program. Part 4647.0200 establishes the timelines for the Commissioner's review. Part 4647.0200 also sets forth the documentation and information needed by the Commissioner to determine if the application is consistent with the criteria in Section 116M.07 Sec. 7, Subd. 7c. Part 4647.0300 contains the method for ranking applications.

Small Business Considerations in Rulemaking

Minn. Stat. Sec. 14.115 (1984), requires agencies proposing rules to consider the impact of those rules on small businesses. The Commissioner's proposed rules govern a loan program which is available only to hospitals. Minn. Stat. Sec. 14.115, Subd. 7(c) (1984), provides that the requirements of section 14.115, pertaining to Small Business Considerations in Rulemaking, do not apply to "service businesses regulated by government bodies...such as...hospitals". Therefore, the Minnesota Department of Health is not obligated to comply with the requirements of Minn. Stat. Sec. 14.115 Subd. 7 (1984).

Rule by Rule Justification of Need and Reasonableness

Part 4647.0100 **DEFINITIONS.**

The following are key terms which must be defined in rule in order for the program to be implemented. Some of these terms are used in the statute and need to be made specific; others are created for the purposes of administering

the program and need definition in rule.

Subp. 2. **APPLICANT.** This term is used frequently throughout the rules. A loan application program needs a definition of who may apply. The Act restricts this program to hospitals, and therefore this definition is reasonable.

Subp. 3. **APPROVABLE APPLICATION.** Minn. Stat. Sec. 116M.07, Subd. 7c (1985 Suppl.), states that an application is approvable if it meets the criteria listed therein. These proposed rules make the statutory criteria more specific. Therefore, it is necessary and reasonable for the proposed definition of Approvable Application to state that the application must meet the statutory criteria as implemented by the rules in order to be approvable.

It is necessary to address the question of whether a separate application must be made for each piece of equipment for which a loan is requested, or whether hospitals may submit one application covering a number of pieces of equipment. The statute is silent on this point. Allowing applications to contain more than one project is reasonable because it avoids creating additional paperwork for the applicant. Further, it may not be cost-effective for hospitals to make a separate application for each piece of equipment if the loan would be for a small dollar amount. Combining several equipment requests in one loan application is more efficient for the applicant, and facilitates review by the Commissioner of Health as well.

Subp. 4. **APPROVED APPLICATION.** This definition follows closely the language used in Minn. Stat. Sec. 116M.07, Subd. 7c (1985 Suppl.). Approvable

Applications become "Approved" when the Commissioner determines that money is available to fund the loan application. It is necessary to determine if projects within a loan application may be funded. It is reasonable for the Commissioner to fund projects within an Approvable Application so that the entire amount of funds available may be utilized.

Subp. 5. **AUTHORITY.** The Minnesota Energy and Economic Development Authority is responsible under Minn. Stat. Sec. 116M.07, Subd. 7a-c (1985 Suppl.), for selling bonds, determining the rate at which proceeds of the bond sale will be available, and authorizing the loan after the application is approved by the Commissioner of Health. The term Authority is used in the rules, and it is neccessary to distinguish the Authority referred to.

Subp. 6. **COMMISSIONER.** It is neccessary and reasonble to ensure that it is clear that the "Commissioner" referred to throughout these rules is the Commissioner of Health and not the Commissioner of Energy and Economic Development (DEED).

Subp. 7. **COST OF PROJECT.** Cost-effectiveness and efficiency of the project is one of the major criteria for review by the Commissioner. A clear and precise definition of costs is necessary. It is reasonable to include costs associated with financing the project as well as the cost of purchasing, installing or operating the equipment. Financing costs may have an impact on the cost-effectiveness or efficiency of a project, and therefore this information is needed for the Commissioner's review.

The list of items to be included is from Minn. Rules 8300.3022, Subp. 2,

adopted by the DEED for other loan programs. It is reasonable for this program to be consistent with other DEED programs, even though the review is being conducted by the Department of Health.

Subp. 8. **ELIGIBLE EQUIPMENT.** The legislation is clearly directed toward loans for health care equipment, and not to fund purchases of consumable supplies, real estate, major new construction or remodelling, or equipment unrelated to the provision of health care. Therefore, it is necessary to specify the scope of equipment which is eligible for loan funds.

It is reasonable to use the phrase "depreciable assets", as this distinguishes equipment from consumables. The term machinery is a synonym for equipment, and tangible real property clearly excludes land. It is reasonable to include fixtures, because many pieces of health care equipment must be affixed to the building in order to be operated (e.g., X-ray equipment or surgical lamps). Some pieces of equipment require special wiring or temperature or humidity controlled environments. Remodelling costs for these purposes may be very costly, and the hospital may be unable to finance them except through this program. Restricting the program only to the equipment itself, and not the remodelling required to use the equipment will make the program useless to many applicants. It is therefore reasonable to include as eligible for loan program funds any remodelling needed to make the equipment operable.

Subp. 9. **ESSENTIAL HEALTH CARE SERVICES.** Minn. Stat. Sec. 116M.07, Subd. 7c (4) (1985 Suppl.), requires that loans made under this program be used only for projects which establish or maintain patient access to essential health

care services. This phrase is not, however, defined in the statute, and must therefore be defined in rule.

This definition is reasonable because obstetrical/neo-natal care, and diagnosis, treatment or prevention of illness or disease comprise the usual business of a hospital and are activities commonly accepted as essential to the care of patients.

It is reasonable to also include services necessary for the efficient delivery of direct patient care services. In the current highly competitive health care market, the ability to efficiently deliver services is crucial to maintaining patient access to those services at that hospital. In rural areas, if a hospital were to cease providing all or some of the services listed here as essential, patients would be forced to travel great distances for their health care. In the case of emergencies, these distances might prove fatal. Therefore, assisting hospitals to more efficiently provide services is reasonable in view of the criteria listed in Minn. Stat. Sec. 116M.07, Subd. 7c (4) (1985 Suppl.).

It is reasonable to exclude experimental procedures from the list of Essential Health Care Services. Experimental procedures are by definition unproven, and therefore they cannot be considered essential. It is reasonable to use the federal Medicare definition of "experimental" since all hospitals in Minnesota are Medicare certified, and they are familiar with that definition. Title 18 of the Social Security Act may be found at the Department of Health or any public or law school law library.

Subp. 10. **FUNDS.** The term "Funds" is used throughout the rules, and must therefore be defined. This definition is reasonable in that it clearly references the funds which are the subject of the enabling legislation which created the program and which the rules are intended to implement.

Subp. 11. **HELP.** "HELP" is an acronym for the Health care Equipment Loan Program, and is used throughout the rules in place of the longer phrase. This definition is needed to clarify the acronym, and is reasonable because it is a common form of referring to this type of program.

Subp. 12. **HOSPITAL.** Minn. Stat. Sec. 116M.07, Subd. 7c (1) (1985 Suppl.), clearly refers to hosptials as the intended recipients of these loan funds. However, the term "hospital" is not defined in this section, and must therefore be defined in rule. Minn. Stat. Sec. 144.50, Subd. 2 (1984), defines Hospital for the purposes of licensing health care facilities. However, that section includes a diverse group of health care facilites, including outpatient surgical centers and nursing homes. In order to ensure that the loan program is limited to hospitals as the legislature intended, it is reasonable to use an additional, more restrictive standard.

The federal Medicare standard is a reasonable choice because, as noted above, all Minnesota hospitals are Medicare certified, and they will be familiar with this definition. The Medicare law defines a hospital as a facility which is primarily engaged in providing diagnostic, therapeutic, or rehabilitative services to inpatients under the supervision of physicians and which must provide 24 hour nursing services. These are characteristics of a hospital as the term is commonly understood, and clearly distinguishes

"hospital" from a nursing home or freestanding outpatient surgical center. Section 1861 (e) of the Social Security Act, as amended, may be found at the Department of Health or any public or law school law library.

Subp. 13. **NON-APPROVABLE APPLICATION.** The term Non-approvable Application is used in the rules, and so must be defined. It is reasonable to define a Non-approvable Application as one which does not meet the statutory review criteria as implemented by the rules. It is also reasonable to define a Non-approvable Application as one which does not contain sufficient information to permit the Commissioner to determine if the project meets the statutory criteria for approvability.

Subp. 14. **PROJECT.** The term "Project" is used in the statute, but not defined, and therefore must be defined in the rules. It is reasonable to consider functionally related equipment as one Project, because the functional relationship would make it difficult to separate out the relatedness of any given piece of equipment to the provision of Essential Health Care Services, or for the Applicant to show the cost-effectiveness and efficiency of one piece of equipment in isolation from other pieces of equipment with which it will be used.

Subp. 15. **REVIEW PERIOD.** Minn. Stat. Sec. 116M.07, Subd. 7c (b) (1985 Suppl.), provides that the Commissioner shall specify by rule a time period for determining whether monies are sufficient to fund all Approvable Applications. DEED rules relating to this program provide application deadlines on a quarterly basis beginning with February 1, 1986 and extending for a three-year period. These dates provide a reasonable starting time for the Review Period

as they are clear and precise. Section II. B of this Statement of Need and Reasonableness supplies the rationale for a ten week period. Ending the Review Period at ten weeks after the DEED deadline allows at least one week before the Authority's regularly scheduled meetings when the Authority will act on the Approved Applications.

Subp. 16. **SUITABLE FINANCING.** This term is used, but not defined in Minn. Stat. Sec. 116M.07, Sud. 7c (a)(3) (1985 Suppl.). Therefore, it must be defined in rule. Low interest loans derived from the proceeds of the sale of tax-exempt bonds are a scarce resource. As explained in the Introduction, the legislature had clear public policy goals in mind for this program. Section 116M.07, Subd. 7c (a)(3), provides that HELP loans are only available to applicants who were unable to obtain "suitable financing" from other sources. Suitable Financing as defined here means financing that is more advantageous to the borrower in terms of total cost (including "points"), interest, maturity, dollar amount or conditions. This definition is reasonable in that it limits access to these funds to those Applicants who are unable to obtain more favorable financing elsewhere.

Part 4647.0200 **REVIEW OF APPLICATIONS**

Subpart 1. **REVIEW OF APPLICATIONS BY THE COMMISSIONER OF HEALTH.** A statement is needed to inform people that the statute requires the Commissioner of Health to review and approve health care equipment loan applications submitted to the Commissioner of Energy and Economic Development. It is reasonable because applicants might otherwise assume that the Commissioner of Energy and Economic Development was responsible for approving loan applications.

Subp. 2. **TIME FRAME FOR COMMISSIONER'S REVIEW.** Fairness to all applicants requires that they have notice of the length of time the Commissioner of Health will take to review applications and an understanding of the process the Commissioner will follow.

To ensure fair and equal treatment of all applications, it is necessary that there be a definite length of time for review, a process by which the Commissioner shall review applications received from the Commissioner of Energy and Economic Development and several deadlines within the review procedure. Deadlines are needed to ensure orderly review, approval and timely return of applications to the Commissioner of Energy and Economic Development.

The rules set a deadline of five weeks within which the Commissioner must request additional information from applicants. Five weeks is adequate time to determine if each application is sufficient for the Commissioner to evaluate the application for compliance with the statutory criteria. The five week deadline is needed to ensure that the Commissioner will expedite determination

of whether additional information is required to continue review of the applications for satisfaction of statutory criteria.

The Rules set a deadline of seven weeks within which applicants must answer a request from the Commissioner for additional information if their applications are to be acted upon by the Commissioner within the review period. A deadline for receiving additional information is necessary so that the Commissioner may determine approvable applications. Without a deadline for receipt of additional information, new or different information could continually alter the number and dollar values of approvable applications and thwart the prioritization process used for approving applications.

The seven week deadline means that all applicants asked to submit additional information to the Commissioner have at least two weeks in which to respond. Two weeks is necessary to give applicants time to supplement their applications, and while it is adequate for applicants, it does not unduly delay the Commissioner's precedure for determining approvable applications.

The Rules establish a nine week deadline for concluding review of applications for satisfaction of the statutory criteria. This deadline gives the Commissioner two weeks to review completed applications, determine the number and total dollar value of applications qualified under the statutory criteria to receive funds during the review period and determine whether funds available in the review period are sufficent. Two weeks is adequate and not excessive.

The statute requires the Commissioner to prioritize applications if the

funds available in the review period are insufficent. One week is a reasonable time period in which to determine if funds are sufficient, and to prioritize applications. Thus, the rules establish a ten week deadline within which the Commissioner is to conclude review and notify the commissioner of Energy and Economic Development of applications approved for loans.

The Commissioner envisions the possibility that funds available in a review period may exceed the combined dollar value of all approvable applications for that review period. In order to distribute as much of the funds available in the review period as possible, it is necessary and reasonable to have a mechanism for considering, during the review period, applications which would otherwise be reviewed in a subsequent review period. Thus, it is reasonable to provide for review and prioritization of applications received by the Commissioner after the Authority's application deadline if it is feasible to do so.

Subp. 3. **COMMISSIONER'S REVIEW CRITERIA.** The statute requires the Commissioner to review each loan application to determine whether the application satisfies five criteria set forth in the statute. To evaluate whether applications satisfy the criteria, the Commissioner must have supporting documentation that is relevant to the requirements contained in the criteria.

A. The first criterion is that the applicant be a hospital and that it be owned and operated by a political subdivision or non-profit corporation. To satisfy this criterion, the Commissioner requires that each applicant

include its hospital license number and the number of licensed beds. The Commissioner can determine facts pertaining to ownership and operation from license records within the Department of Health. The licensed number of beds will be used by the Commissioner to prioritize applications, so it is reasonable to require applicants to include the number in their applications. The hospital license number and the number of licensed beds is the most efficient manner by which the Commissioner can verify that the applicant satisfies the criterion. In addition, it is the least burdensome for applicants.

B. Duplicates the statutory language.

(1) The statute prohibits applicants from using health care equipment loans to refinance existing debt. Since applicants cannot document a nonevent or prove the negative, it is necessary and reasonable to request applicants to certify or promise that loans will not be used to refinance existing debt.

(2) This provision permits the hospital to use the loan for cash outlays for Eligible Equipment expenditures incurred after the effective date of the rules and before the applicant receives loan funds. A limited opportunity for applicants to apply loan funds to obligations on Eligible Equipment purchased, ordered or installed before loan funds are actually received is needed to support or promote efficient acquisition of Eligible Equipment and reduce delays. It is reasonable to reimburse for eligible equipment purchased, ordered or installed because an obligation to pay may attach at any one of these three points. The language of this provision

therefore reflects the way in which hospitals acquire materials in the ordinary course of business.

C. The statute requires that applicants were unable to obtain suitable financing from other sources. Since applicants cannot document fulfillment of this criteria without actually securing a loan with less favorable terms and conditions than available under the Health Care Equipment Loan Program, it is necessary and reasonable for applicants to certify that they were unable to obtain suitable financing as suitable financing is defined in Part 4647.0200, Subp. 16 of these rules.

D. The statute requires that, for a loan application to be determined approvable, the applicant must demonstrate that the loan is necessary to the initial or continued provision of an essential health care service which would not otherwise be available within a reasonable distance from the hospital. Items D. (1) - (4) identify four types of information considered necessary for the Commissioner's review.

(1) It is necessary and reasonable to require the applicant to submit a brief narrative description of activities to be undertaken with the loan proceeds. A concise statement of the hospital's planned activities is a minimum requirement for the Commissioner's understanding and review of the loan application.

(2) The acquisition and installation of new equipment does not necessarily mean the hospital will be providing a new service. Information on how the project (functionally related equipment) relates to current services is needed to clarify whether the hospital will be providing a new service or maintaining or upgrading current services. This information is critical for addressing the criterion about availability of essential health care services within a health service area. Data on the use of services affected by the project will clarify how the project relates to current services.

(3) It is necessary and reasonable to require the applicant to describe the hospital service area it serves in order to address the geographic availability portion of the criteria. There are no standard definitions of hospital service area and dimensions of the service area may vary for different types of services for any given hospital. Therefore it is necessary for the applicant to define its hospital service area in conjunction with its application.

(4) According to the authorizing statute, the applicant must demonstrate to the Commissioner's satisfaction that the project is needed to establish or maintain patient access to essential health care services. Therefore, it is necessary and reasonable to require the applicant to put forth, in brief narrative form, a description of the need for the project including anticipated patient need and use and how the project relates to the provision of an essential health care service, directly or indirectly.

The State Health Planning program, administered by the State Planning Agency, on occasion advances guidelines relating to the need for specific types

of health services within Minnesota and desireable delivery system configurations for provision of these services. To ensure that hospitals are aware of State Health Planning Program guidelines, it is necessary and reasonable to require hospitals to refer to relevant planning program documents and particularily to the substance of planning guidelines relevant to proposed projects when describing the need for their project. State Health Planning program guidelines do not have a legal standing as law or regulations. They will provide useful information, however, for the Commissioner's review of need for the project.

E. Minn. Stat. Sec. 116M.07, Subd. 7c (a)(5), (1985 Suppl.), requires that Projects funded under this program be "cost-effective and efficient". This phrase, however, is ambiguous and needs to be made more specific in rule.

Cost-effectiveness is a concept used by economists to relate costs to benefits. Specifically, a project is cost-effective when the benefits it provides are comensurate with, or exceed, the costs. Among several options for achieving a given goal, the most cost-effective option is the one which economists would consider "best" on economic grounds. An important consideration is that while cost-effectiveness is an appropriate criterion for choosing among alternative means to the same goal, it does not permit an evaluation of which of two different goals should be pursued.

Efficiency is a related economic concept and denotes a condition where resources are maximally employed. Any change in resource allocation

results in less total benefit (usually measured as "output").

The concepts of cost-effectiveness and efficiency cannot be measured in practice with the precision envisioned in economics textbooks. Therefore, the standards proposed in these rules to evaluate cost-effectiveness and efficiency must be realistic and practical, and yet contain the essential elements.

The legislature's intent in imposing this requirement is to ensure that projects funded will be fiscally prudent. The specific requirements in this part of the rules are intended to provide a mechanism for establishing that the applicant has evaluated the proposed projects against other alternatives and believes this project to be the wisest choice. This is a reasonable and practical mechanism for meeting the criterion of cost-effectiveness and efficiency.

An important distinction is that this is a loan program, not a grant program. Hospitals will be required to repay these funds with interest. The only difference between this program and the private debt market is that the interest rate on these funds is likely to be lower than the market rate. Some projects will be cost-effective at this lower rate that would not be at the higher market rate. The funds are not, however, "free" as they would be in a grant program. In the latter case there would be greater cause for concern about the prudence of proposed projects. More stringent requirements would be appropriate in the case of grant programs to ensure that the taxpayer's funds are being used wisely. The fact that hospitals must eventually use their own funds to repay the loan principal and interest provides strong natural

incentives for fiscal prudence. Therefore, it is reasonable that the documentation required in this part be brief and limited to what is necessary to show that the Applicant has evaluated benefits and costs.

The rules ask for a brief narrative description to establish cost effectiveness and efficiency. The criteria listed in this part require a written summary of the decision process a prudent Applicant would likely use in deciding whether to apply for funds under this program. The narrative form is reasonable because the types of projects and the situation of the Applicants will be so diverse as to preclude development of a more structured format. The narrative form allows the Applicant to address the criteria in the manner most applicable to its Project, while providing necessary data for review by the Commissioner.

(1) Section 116M.07, Subd. 7c (4) of the Act sets as a major policy criterion the maintenance or establishment of patient access to Essential Health Care Services. It is therefore necessary and reasonable to measure the cost effectiveness and efficiency of the Project in relation to benefits to patients and to the Hospital which provides care for those patients. This criterion differs from those listed under part 4 of these rules in that it requires the applicant to compare the expected benefits to the expected costs, and show that the benefits outweigh the costs. As described earlier, this direct comparison of costs and benefits is integral to the concepts of cost-effectiveness and efficiency.

In defining the costs against which the benefits are to be evaluated it is necessary and reasonable to include the Costs of the Project (see discussion on page ____ SONR), and in addition operating costs and impact on patient charges. Operating costs are important because the kinds of equipment funded under this program will be used for several years. Costs of operation - such as personnel and utilities - can be fairly high in the case of some sophisticated diagnostic equipment. Even if the initial purchase of a piece of equipment seems cost-effective, it may not be once operating costs are taken into account.

It is also necessary and reasonable to include impact on patient charges as one of the potential costs (or benefits) of a Project. Rising health care costs has been a major public policy concern for the last decade. It would defeat the legislature's goal of containing health care costs if projects funded under this program added to patient charges. Minn. Laws 1984, Ch. 534, sec. 10.

(2) This item requires the Applicant to describe the costs and benefits of alternatives or substitutes for the Project, including continuing to provide patient services without the Project. These requirements are a necessary part of cost-effectiveness analysis. One cannot evaluate whether a project is cost-effective without examining the alternatives. Operating without the Project is always an alternative and must be evaluated.

(3) The problem of rising health care costs is system-wide, not hospital specific. If several hospitals in the same service area all receive funds for equipment to provide the same service without regard to patient

demand, the result may be under-utilized equipment. Hospitals will be forced to increase charges to other patients to cover the costs associated with the equipment that is under-utilized. Requiring Applicants to consider the impact on other hospitals in the service area alerts them and the Commissioner to situations such as the one described above. It is reasonable for Applicants to reference the State Health Plan and the Health Systems Agency Plan as these documents provide useful demographic material and projections of patient demand which will assist Applicants in meeting this criteria.

Subp. 4. **ADDITIONAL INFORMATION** It is reasonable and necessary to allow the Commissioner to request additional information from applicants regarding the review criteria addressed in parts ___. Additional information may be needed to clarify or further substantiate statements made by the applicant. Giving Applicants an opportunity to provide additional information will expedite the review process, since applications considered incomplete as submitted can be clarified or added to within that review period. Without this provision applications considered incomplete as submitted would be determined to be Not Approvable, and Applicants would have to wait until the next review period to resubmit the application with the necessary additional information.

It is reasonable and necessary to require timely submission of additional information by applicants in order to allow the Commissioner sufficient time to review all applications for approvability during the review period. By requiring that all additional information be submitted within seven weeks of the beginning of the review period, the Commissioner has three weeks in which to complete application reviews, determine approvable and approved applications

and notify the commissioner of energy and economic development of approved applications. This is a sufficient, but not excessive, amount of time for the Commissioner to complete the review process.

Providing that applications for which additional information was requested and not received by the designated deadline be carried over to the next review period simplifies the administration of the review process. Without this provision, these applications would be determined to be Not Approvable, and the applicant would have to resubmit the application in the next Review Period.

Part 4647.0300 **DETERMINATION OF APPROVED APPLICATIONS**

Subpart 1. The authorizing statute requires the Commissioner to carry out these steps. It is reasonable and necessary to repeat the statutory requirement in this section of the rules so that the rules achieve a clear, step-by-step description of the loan application review process.

Subp. 2. The authorizing statute requires the Commissioner to rank order all approvable applications in a review period if the total amount of funds requested in approvable applications exceeds the amount of funds available for that review period.

The statute further requires the Commissioner to compare the relative merits of applications in relation to two specific criteria for approvability and to establish a priority ranking of applications. The two statutory criteria relate to the loan being necessary to establish or maintain patient

access to an essential health care service that would not otherwise be available within a reasonable distance from that facility ("the loan is necessary") and to the project being cost-effective and efficient ("the project is cost effective").

A system for ranking loan applications in priority order is set forth in Subpart 2, items A through F. The system is based on the criterion "the loan is necessary," and not on the criterion "the project is cost effective". It is reasonable and necessary to rely exclusively on "the loan is necessary" criterion to establish a rank ordering of approvable applications because of the nature of cost effectiveness and efficiency concepts.

Using the state-of-the-art economic analysis of human services activities, it is not possible to precisely quantify the cost-effectiveness and relative efficiency of proposed hospital equipment projects. Quantitative information on costs, and on benefits (to the extent benefits can feasibly be quantified) will be considered together with available qualitative information about the project, facility, and service area to arrive at a conclusion about whether or not an individual project is cost-effective and efficient. Such a judgment will be made by the Commissioner in determining whether an application is approvable in relation to "the project is cost-effective" criterion.

Because the analysis of cost-effectiveness and efficiency cannot be based solely on quantitative measures, it is not possible to to precisely determine <u>how cost effective and efficient</u> a project is, nor is it possible to compare the relative merits of approvable applications according to cost-effectiveness and efficiency of projects contained in the applications.

Since approvable applications cannot be determined to be cost-effective and efficient with precision, it is reasonable to establish a priority ranking system for approvable applications based on the criterion "the loan is necessary."

A. In the priority ranking system, applications submitted by applicants which have used the proceeds of tax-exempt financing for equipment acquisition and installation within the past 2 years receive second-order priority (Category B).

This decision-rule is necessary and reasonable to implement the legislative intent for the program which is to enhance access to lower cost financing for facilities which have limited access through other channels.

Facilities which have had recent access to the proceeds of tax-exempt financing are not precluded from participating in the program, but do receive a lower priority within each review period for the allocation of available funds.

B. First-order priority approvable applications (those in Category A) are ranked according to the number of licensed beds of the applicant hospital, where a smaller number of beds receives a higher ranking than a larger number of beds. Size of hospital, measured by the number of licensed beds, is regarded as a proxy measure for the criterion "the loan is necessary" on two grounds.

First, it is generally true that the smaller a hospital, the greater the difficulty obtaining lower cost financing. Credit rating, insurability, and amount of funds needed all pose significant barriers to smaller hospitals obtaining lower cost financing on their own, apart from a pool. Thus, assigning higher priority to smaller hospitals is consistent with the program's legislative intent, as described above.

Second, public policy conerns for ensuring adequate geographic access to essential health care services pertain especially to areas in Greater Minnesota which are relatively 'underserved' in terms of health care providers and facilities. While there is not a one-to-one correspondence between size of hospital and availability of health care services in a geographic area, it is generally true that smaller hospitals are located in areas where maintaining adequate geographic access to essential services is a potential problem. All approvable applications have been determined to contain cost-effective and efficient projects encompasssing consideration of the economic impact of the project in the hospital service area. This minimizes the chances of HELP loans being granted to smaller hospitals in hospital rich areas for projects which are potentially duplicative.

Giving higher priority to loan applications from smaller hospitals thus addresses public policy concerns of ensuring adequate geographic access to essential services.

C. In order to promote the maximum use possible of lower cost financing available through this program, it is desirable to allocate all funds

available in a review period for which there is demand. It is thus necessary and reasonable to allow the Commissioner the flexibility to approve parts of an application, with the applicant's consent, in the event that the last dollars available to be allocated in a review period cover part, but not all of an application's requested funds.

D. and E. The need and reasonableness for rank ordering approvable applications within categories B and C in the same manner prescribed for Category A parallels the discussion above of rank ordering within Category A.

F. In order to assure that approvable applications receive fair treatment in the allocation of funds in a review period it is necessary and reasonable for the Commissioner, at the beginning of each review period, to consider each application being carried over from a prior review period and to place it in the appropriate category for review according to the facts pertaining to the applicant in the current review period.

Part 4647.0400 **NOTICE.**

In consideration for the applicants, it is necessary and reasonable that the Commissioner notify by mail each applicant whose application is determined not approvable or not approved during a review period.

It is not necessary for the Commissioner to notify applicants whose applications have been approved, because these applicants will be notified by the commissioner of energy and economic development.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Department of Health Governing the
Health Care Equipment Loan Program

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, John A. Breviu, 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.

John A. Breviu

Special Assistant Attorney General

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL - Health

PHONE : 341-7272

DATE : December 27, 1985

TO : J. Michael Miles
Assistant Attorney General
204 Administration Building

FROM : John A. Breviu
Special Assistant
Attorney General

SUBJECT :

RECEIVED
DEC 27 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

In the Matter of Health Department Rules Governing the Health Care Equipment Loan Program

Enclosed for your review and approval pursuant to Minn. Rules 2000.0400 are the Department of Health's adopted rules governing the Health Care Equipment Loan Program. Enclosed please find the following:

1. Notice of Intent to Solicit Outside Opinion;

2. Order for Notice of Intent to Adopt Rules Without Public Hearing;

3. Mailing list certificate;

4. Findings of Fact and Conclusions setting forth the reasons for changes between the rule as proposed and the rule as adopted;

5. Statement of Need and Reasonableness;

6. Certificate of compliance with rulemaking procedures;

7. Copies of Notice of Intent to Adopt a Rule Without a Public Hearing (three copies);

8. Copy of affidavit of mailing notice of intent to adopt a rule without public hearing;

9. Copy of rule as proposed;

10. Copy of rule as adopted (four copies); and

11. Copies of order adopting rule (two copies).

JAB:cs

Enclosures