

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

LE REVIEW CHECKLIST

File No. 1395
DATE RECEIVED 9/11/87
REVIEW DATE 9/20/87
DUE DATE 9/25/80

APPROVED 9.21.87 mjc
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.1620
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED X
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion~~
~~Date published in State Register~~
~~Comments~~

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

144.09-144.22
144.05-144.07 Statutory Authority

none Small Business Statement

none Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

yes Small Business Statement

n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

7/15/87 Date (30)/25 days before adoption

✓ Publication in State Register

7/20/87 Date (30)/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting

9/1/87 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney

Catherine Avina Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : September 24, 1987

TO : CATHERINE E. AVINA
Special Assistant
Attorney General

FROM : MARTHA CASSERLY
Special Assistant
Attorney General

PHONE : 6-6204

SUBJECT : In the Matter of the Adopted Rule Relating to Services for Children with Handicaps

The above-referenced rule has been approved as to its legality by the Attorney General on September 21, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth 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.

MJC:nah
Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Health

Adopted Permanent Rules Relating to Services for Children with Handicaps

Rules as Adopted

4705.0100 DEFINITIONS.

Subpart 1. to 9. [Unchanged.]

Subp. 9a. **Copayment.** "Copayment" means the financial participation in the cost of a diagnostic evaluation on the part of an applicant and established on the basis of ability to pay under part 4705.0300.

Subp. 10. to 31. [Unchanged.]

4705.0300 APPLICANT ELIGIBILITY FOR DIAGNOSTIC EVALUATION.

An applicant shall complete an application provided by SCH as described in part 4705.0500. Any applicant, regardless of income, who meets all of the following criteria shall be eligible for a diagnostic evaluation authorized by SCH:

A. a resident of Minnesota; and

B. a child under 21 years of age with a suspected handicap, or an adult 21 years of age or over with cystic fibrosis or hemophilia.

In addition to items A and B, an applicant shall agree to make a copayment if any is required under this part. An applicant shall be required to make use of available third-party reimbursement sources for the examinations and tests necessary for a diagnostic evaluation. Prior written authorization shall be required for a diagnostic evaluation to be reimbursed in full or in part by SCH.

No copayment shall be required from an applicant whose adjusted gross income is equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's. A copayment of $7.50 shall be required from an applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a

household of the same size as the applicant's, and a copayment of $15 shall be required from an applicant whose adjusted gross income is equal to or greater than 100 percent of the state gross median income for a household of the same size as the applicant's.

4705.0900 LIMITATIONS ON AUTHORIZATION OF REIMBURSEMENT FOR TREATMENT SERVICE(S).

SCH shall authorize reimbursement to a service provider only for treatment that is part of the treatment plan for an individual's handicapping condition. SCH shall not authorize reimbursement for the treatment of conditions determined by SCH to be primarily cosmetic in nature. SCH shall not authorize reimbursement for costs of equipment such as hospital beds or wheelchairs unless no other resource is available. Within any 12-month period, SCH shall pay no more than $15,000 for the care of an individual. SCH shall not authorize reimbursement for treatment service(s) not associated with an individual's eligible condition. An exception shall be made and treatment services not associated with an individual's eligible condition shall be authorized, subject to the $15,000 per 12-month period limit, when the SCH medical director has determined that medical conditions exist which, if left untreated, could have a deleterious impact upon the applicant's health status.

SCH shall not authorize reimbursement for treatment services for individuals 21 years of age or over with hemophilia except as specified in part 4705.1000.

APPROVED AS TO FORM AND LEGALITY

September 21 1987

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 23 1987

Joan Anderson Growe
Secretary of State

2:00 pm

Department of Health

Proposed Permanent Rules Relating to Services for Children with Handicaps

Rules as Proposed

4705.0100 DEFINITIONS.

Subpart 1. to 9. [Unchanged.]

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B. a child under 21 years of age with a suspected handicap, or an adult 21 years of age or over with cystic fibrosis or hemophilia.

In addition to items A and B, an applicant shall agree to make a copayment if any is required under this part. An applicant shall be required to make use of available third-party reimbursement sources for the examinations and tests necessary for a diagnostic evaluation. ~~There shall be no out-of-pocket cost to the applicant for the actual examinations and tests.~~ Prior written authorization shall be required for a diagnostic evaluation to be reimbursed in full or ~~for that~~ in part ~~not reimbursed by third-party payers~~ by SCH.

No copayment shall be required from an applicant whose adjusted gross income is equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's. A copayment of $7.50 shall be required from an

Approved by Revisor

applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a household of the same size as the applicant's, and a copayment of $15 shall be required from an applicant whose adjusted gross income is equal to or greater than 100 percent of the state gross median income for a household of the same size as the applicant's.

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SCH shall not authorize reimbursement for treatment services for individuals 21 years of age or over with hemophilia except as specified in part 4705.1000.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Services for Children with Handicaps

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4705

The attached rules are approved for publication in the State Register

Susan E. Quayle

Susan E. Quayle
Assistant Revisor

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Co-Payments for Diagnostic Evaluations and Limitations on Reimbursement for Treatment Services for Services for Children with Handicaps, and Adults with Cystic Fibrosis and Hemophilia, Minnesota Rules Chapter 4705

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State Department of Health intends to amend chapter 4705 to establish co-payments for diagnostic evaluations and to increase the annual limitation on reimbursement for treatment services for children with handicaps and adults with cystic fibrosis and hemophilia. The Department intends to amend chapter 4705 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is found at Minnesota Statutes, sections 144.05 to 144.07 and 144.09 to 144.12 and in Minnesota Department of Administration Reorganization Order No. 101, issued pursuant to Minnesota Statutes, section 16.125. Reorganization Order 101 gives the Commissioner of Health authority to implement Minnesota Statutes, sections 250.05, 256.01, subd. 2(3) and (5), 256.011, 257.175 and 260.35 insofar as they concern the Services for Children with Handicaps Program.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

David Giese, Assistant Director
Maternal and Child Health Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5170

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and that identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. Giese upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Mr. Giese.

Dated: July 2, 1987

MINNESOTA DEPARTMENT

OF HEALTH

S. Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

IN THE MATTER OF PROPOSED
AMENDMENTS TO RULES RELATING
TO CO-PAYMENTS FOR DIAGNOSTIC
EVALUATIONS AND LIMITATIONS
ON REIMBURSEMENT FOR TREATMENT
SERVIDES FOR SERVICES FOR
CHILDREN WITH HANDICAPS, AND
ADULTS WITH CYSTIC FIBROSIS
AND HEMOPHILIA, MINNESOTA
RULES CHAPTER 4705.

STATEMENT OF NEED
AND REASONABLENESS

The Minnesota Commissioner of Health (hereinafter "commissioner"), pursuant to Minnesota Statutes, sections 14.05 through 14.12 and 14.22 through 14.28, presents facts establishing the need for and reasonableness of the proposed amendments to rules captioned above.

In order to adopt the proposed amendments, the commissioner must demonstrate that she has complied with all the procedural and substantive requirements of rulemaking. Those requirements are that: 1) there is statutory authority to adopt the rule, 2) all necessary procedural steps have been taken, 3) the rules are needed, 4) the rules are reasonable, and 5) any additional requirements imposed by law have been satisfied. This statement demonstrates that the commissioner has met these requirements.

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1. STATUTORY AUTHORITY.

The commissioner's legal authority for adopting these rules is found in Minnesota Statutes, sections 144.05 through 144.07, and 144.09 through 144.12. Further authority is vested in the commissioner through Minnesota Department of Administration Reorganization Order No. 101 issued pursuant to Minnesota Statutes, section 16.125 (hereinafter "Reorganization Order 101"). Reorganization Order 101 vests within the commissioner the authority to implement Minnesota Statutes, sections 250.05, 256.01, subdivision 2(3) and (5), 256.011, 257.175, and 260.35 insofar as these statutes concern the Services for Children with Handicaps Program.

2. STATEMENT OF NEED.

The legislature has delegated to the commissioner certain responsibilities for administering and supervising programs related to children with handicaps and adults with cystic fibrosis and hemophilia. Minnesota Statutes, section 256.01, subdivisions 2, 3 and 5 (1981). Under the program entitled Services for Children with Handicaps (hereinafter "SCH"), the commissioner reimburses service providers for services authorized by SCH for handicapping conditions in children and for care and treatment of individuals with cystic fibrosis and hemophilia. Such reimbursement is subject to the limitation of available federal and state funds. In order to implement and affectuate these program responsibilities, the commissioner adopted Minnesota Rules, parts 4705.0100 to 4705.1400. These rules established, among other things, provisions for diagnostic evaluations and limitations on reimbursement for treatment.

There is a need to make changes to these rules for the following reasons: First, consistent with the existing provisions related to sharing costs for treatment services, it has been determined that applicants with the financial ability to do so should participate in sharing the costs associated with the provision of diagnostic evaluations. Currently, applicants may not be assessed any out-of-pocket costs for the actual examinations and tests. Second, amendments are necessary to increase the maximum dollor amount that SCH can pay for an applicant's treatment services during a 12-month period. The current limit of $10,000 has not been increased since it was established in 1979.

The rule-by-rule justification will explain the need for each rule amendment, as well as justifying the reasons for making these changes.

3. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS.

The commissioner has determined that the amendment of the rules in parts 4705.0100, 4705.0300 and 4705.0900 is non-controversial and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.05 through 14.12 and 14.22 through 14.28, which provide for an expedited process for the adoption of non-controversial administrative rule changes without the holding of a public hearing.

Procedural Rulemaking Requirements of the Administrative Procedure Act

The commissioner did not seek information or opinions in preparation for adoption of these rule amendments from sources outside the agency and, therefore, did not publish a notice in the State Register pursuant to Minnesota Statutes, section 14.10.

These rules minimize the duplication of statutory language. See Minnesota Statutes, section 14.07, subdivision 3 (1). The implementation of these rules will not require the expenditure of public money by local public bodies of greater than $100,000 in either of the two years following their adoption, nor do the rules have any impact on agricultural land. See Minnesota Statutes, section 14.11. The adoption of these rules will not affect small businesses. See Minnesota Statutes, section 14.115, subdivision 7 (b).

Pursuant to Minnesota Statutes, section 14.23, the commissioner has prepared this statement of need and reasonableness which is available to the public. The commissioner will publish notice of intention to adopt the rules without public hearing in the State Register and mail copies of the

notice and proposed rules to persons registered with the Minnesota Department of Health pursuant to Minnesota Statutes, section 14.14, subdivision 1 (a). The notice will include the following statements: a) that the public have 30 days in which to submit comments on the proposed rule; b) that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period; c) giving information pertaining to the manner in which persons shall request a hearing; d) that the rule may be modified if modifications are supported by data and the views submitted; and e) other information required by Minnesota Statutes, section 14.22.

If 25 or more persons submit to the Minnesota Department of Health a written request for a hearing on the proposed rule, the agency shall proceed under the provisions of Minnesota Statutes, sections 14.131 through 14.20 and notice of the hearing shall be published in the State Register.

If no hearing is required, the commissioner will submit the proposed rule and notice as published, the rule as proposed for adoption, any written comments which have been received, and this statement of need and reasonableness to the Attorney General for approval as to their legality and form to the extent that it relates to legality.

These rules shall become effective five working days after publication of a notice of adoption in the State Register.

4. GENERAL STATEMENT OF REASONABLENESS.

The original administrative rules for the Services for Children with Handicaps Program were written in 1979 pursuant to Title V of the Social Security Act, U.S.C., title 47, chapter 7, which authorizes the program, and pertinent state statutes which enable the commissioner to promulgate rules. Amendments, reflecting procedural improvements to the original rules, were adopted in 1986.

The program provides approximately 300 diagnostic clinics per year in order to augment the existing medical expertise in communities across the State and to offer an opportunity to utilize interdisciplinary teams to evaluate children with complicated handicapping conditions such as seizures, cerebral palsy, delayed development, orthopedic conditions, scoliosis, congenital heart problems or heart murmurs, hearing loss or speech and language problems, cleft lip and palate conditions, or other facial or dental anomalies. To date, families have not been required to make any out-of-pocket payment to assist in defraying the cost of providing evaluations in these diagnostic clinics or in other medical care settings. Since the cost of providing diagnostic evaluations has continued to rise over the years, the commissioner believes that it is reasonable for families, who have the financial ability to do so, to assist in defraying a portion of the costs associated with the provision of these services. This approach is consistent with the philosophy embodied in the current requirement that families with an adjusted income above 60 percent of the state gross median income for a household of the same size share in the cost of providing treatment services.

The current $10,000 per 12-month period limitation on authorization of reimbursement for treatment services was established in 1979. Its purpose was to assure that a few very costly medical procedures, such as liver transplants, would not rapidly deplete the funds available for treatment services and deny a larger number of families the opportunity to receive financial assistance through the Program. This mechanism has worked well in meeting its intended purpose. However, due to the increasing costs of treatment services, more and more families are adversely impacted by the $10,000 per 12-month period limitation. Therefore, the commissioner believes that it is reasonable to periodically adjust this limit and is proposing that it be increased to $15,000 per 12-month period. It is estimated that the proposed change would benefit approximately 26 families per year at this time.

Additionally, these amendments are reasonable because they are not unduly burdensome to participants. Also, the commissioner does not exceed the scope of her rulemaking authority as provided by state statute.

5. RULE-BY-RULE JUSTIFICATION.

Part 4705.0100, subp. 10 defines the term "co-payment." It is necessary to include this term in order to distinguish between an applicant's financial participation in the cost of diagnostic evaluation, referred to as "co-payment," and an applicant's financial participation in the cost of treatment services, referred to as "cost sharing."

Part 4705.0300 establishes the co-payment requirement and specifies three levels of co-payment dependent upon an applicant's adjusted gross income, as defined in Part 4705.0100, Subp. 2, and household size. The commissioner believes that it is reasonable to require financial participation in the cost of diagnostic evaluations because the cost of providing these services have continued to rise over the years. Often the evaluations are conducted in clinics organized and operated directly by the Services for Children with Handicaps (SCH) Program. The cost to the SCH Program of providing these services varies with the type of clinic offered. An average cost for the eight different clinic types is $120 per patient visit. These costs are determined on the basis of the number of patients seen and the professional staffing pattern at each type of clinic. Experience has shown that the cost of providing similar diagnostic evaluations in other medical care settings is equal to or greater than those in SCH clinics. The new co-payment provision will apply to diagnostic evaluations performed in SCH clinics as well as to those conducted by other medical care providers. At the present time, other medical care providers bill private insurance if the applicant's deductible has been met. Although it has not been used to date, this practice will be adopted by the SCH Program as well for diagnostic evaluations performed in its clinics.

The system proposed by the commissioner to provide for an applicant's financial participation in the cost of diagnostic evaluations will neither create an undue hardship for any applicant nor pose an undue administrative burden on the SCH Program. In order to assure that the imposition of co-payment requirements will not create an economic barrier to the utilization of SCH's diagnostic evaluations, three levels of financial participation are established.

For an applicant whose adjusted gross income is equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's, no co-payment will be required. Sixty percent of the state gross median income for a household with four members is approximately $18,500 per year. This percentage was chosen in order to be consistent with the percentage used in the cost-share provisions of part 4705.0600 pertaining to treatment services. However, the commissioner does not propose to use a "SCH adjusted income," as defined in Part 4705.0100, Subp. 24, because of the additional administrative expense required to make these determinations. While this effort is justified for purposes of determining financial participation in the provision of treatment services due to the higher cost of these services and the smaller number of applicants involved, it is not warranted or feasible for diagnostic evaluations where the maximum financial participation is $15.00 per patient visit and some 5,000 individuals receive evaluations in SCH field clinics alone each year. Instead of requiring applicants to provide copies of their IRS forms and other information as is done for purposes of determining "SCH adjusted income," they will only be required to make a simple statement concerning their family size and estimated "adjusted gross income." A similar process is used to determine income eligibility in certain other public programs, such as the Special Supplemental Food Program for Women, Infants and Children (WIC), and it is the only

information which will be required to determine which level of financial participation is appropriate for each applicant.

For an applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a household of the same size as the applicant's, the co-payment amount will be $7.50 per patient visit. For an applicant whose adjusted gross income is equal to or greater than 100 percent of the state gross median income for a household of the same size as the applicant's, the co-payment amount will be $15.00 per patient visit. One hundred percent of the state gross median income for a family of four is approximately $30,800 per year. The upper level of financial participation, $15.00 per clinic visit, was chosen because it is currently in use by the International Diabetes Center, Park Nicollet Medical Foundation, 5000 West 39th Street, Minneapolis, Minnesota 55416 for their juvenile diabetes clinics which are held in several communities across the state. These clinics have been conducted in cooperation with SCH for a number of years. SCH currently makes the co-payment for families with a previously determined zero cost-share. All other families are required to make the $15.00 co-payment out-of-pocket and experience has shown that this has not created an economic barrier to utilization of the International Diabetes Center's Clinics. Therefore, it is unlikely that a $15.00 co-payment requirement will create an undue hardship for any applicant with an adjusted gross income equal to or greater than 100 percent of the state gross median income for a household the same size as the applicants.

Section 505 (D)(i) of Title V of the Social Security Act states:

> "(D) if the State imposes any charges for the provision of health services assisted by the State under this title, such charges (i) will be pursuant to a public schedule of charges,"

Inasmuch as Title V funds are used to operate SCH field clinics, the

commissioner must comply with the requirements of establishing a "public schedule of charges" if any charges are to be imposed. While "schedule" is not defined per sé, it is assumed that it would require more than one level of out-of-pocket payment. Therefore, the commissioner proposes to create a level of financial participation between the zero co-pay and $15.00 co-pay amounts. This middle level, of $7.50 per patient visit, would be required of an applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a household of the same size as the applicant's. For a family of four, this represents an income range between approximately $18,500 and $30,800 per year. A co-payment of $7.50 per patient visit will not create an undue hardship for any applicant in this income range.

Other subparts of Section 505 (D) prohibit the imposition of charges for services provided to low income individuals and require the adjustment of charges in a schedule to reflect considerations pertinent to determining an individual's ability to pay, such as income and family size. The commissioner's proposed provisions for requiring applicant financial participation in the cost of diagnostic evaluations meets both of these requirements. As discussed above, applicants with adjusted gross incomes equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's are not assessed any out-of-pocket cost. For purposes of determining low income pursuant to Section 505 (D), federal poverty guidelines are used. For a family of four, the federal poverty guideline is approximately $11,000 per year. This is far less than the approximately $18,500 which represents 60 percent of the state gross median income for a family of four. Therefore, the requirement that charges not be imposed on low income individuals is

satisfied. Additionally, income and family size is used to determine which level of co-payment applies, satisfying the need to consider an individual's ability to pay.

Part 4705.0900 changes the limitations on authorization of reimbursement for treatment services. The current limit of $10,000 per 12-month period was established in 1979. Due to the increased cost of medical care services since that time, the limitation is creating difficulty in providing sufficient financial assistance in a number of areas including the following:

1. Coverage of blood products for individuals with hemophilia.
2. Coverage of bronchial drainage for individuals with cystic fibrosis.
3. Coverage of growth hormone.
4. Coverage of orthopedic surgery such as spinal fusion.

Based on a recent review of authorizations issued, it has been estimated that approximately 26 families per year would benefit from an increase in the current dollar limitation. Therefore, the commissioner is proposing to increase the limit to $15,000 per 12-month period. Although the proposed increase will not be sufficient to fully meet the needs of all of the estimated 26 families, the amount of the increase must be balanced between the number of families who will benefit and the cost of the increase to the SCH Program. If all of the estimated 26 families were to fully utilize the additional $5,000 per 12-month period, the increase would cost $130,000 per year to fund. Since this represents a maximum estimated increase in annual treatment costs and since some proportion of this increase will be offset by revenue generated pursuant to the proposed changes in Part 4705.0300, the commissioner believes that the additional costs to the SCH Program will be acceptable.

Date: June 25, 1987

Minnesota Department of Health

Sr. Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Co-Payments for Diagnostic Evaluations and Limitations on Reimbursement for Treatment Services for Services for Children with Handicaps, and Adults with Cystic Fibrosis and Hemophilia, Minnesota Rules Chapter 4705

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David Giese, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes sections 14.14, subdivision 1.a, and 14.22 or 14.30, that their names be placed on the State Department of Health rulemaking mailing list is accurate, complete, and current as of this 15th day of July, 1987.

That on the 15th day of July, 1987, at the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

D. L. Giese

DAVID GIESE, Assistant Director
Maternal and Child Health Division

Subscribed and sworn to before me
this 15th day of July, 1987.

Martin Kvidera

MARTIN KVIDERA
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 31, 1991

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Co-Payments for Diagnostic Evaluations and Limitations on Reimbursement for Treatment Services for Services for Children with Handicaps, and Adults with Cystic Fibrosis and Hemophilia, Minnesota Rules Chapter 4705

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All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

David Giese, Assistant Director
Maternal and Child Health Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5170

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and that identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. Giese upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Mr. Giese.

Dated: July 2, 1987

MINNESOTA DEPARTMENT

OF HEALTH

Sister Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner

Department of Health

Proposed Permanent Rules Relating to Services for Children with Handicaps

Rules as Proposed

4705.0100 DEFINITIONS.

Subpart 1. to 9. [Unchanged.]

Subp. 9a. Copayment. "Copayment" means the financial participation in the cost of a diagnostic evaluation on the part of an applicant and established on the basis of ability to pay under part 4705.0300.

Subp. 10. to 31. [Unchanged.]

4705.0300 APPLICANT ELIGIBILITY FOR DIAGNOSTIC EVALUATION.

An applicant shall complete an application provided by SCH as described in part 4705.0500. Any applicant, regardless of income, who meets all of the following criteria shall be eligible for a diagnostic evaluation authorized by SCH:

A. a resident of Minnesota; and

B. a child under 21 years of age with a suspected handicap, or an adult 21 years of age or over with cystic fibrosis or hemophilia.

In addition to items A and B, an applicant shall agree to make a copayment if any is required under this part. An applicant shall be required to make use of available third-party reimbursement sources for the examinations and tests necessary for a diagnostic evaluation. ~~There shall be no out-of-pocket cost to the applicant for the actual examinations and tests.~~ Prior written authorization shall be required for a diagnostic evaluation to be reimbursed in full or ~~for that~~ in part ~~not reimbursed by third-party payers~~ by SCH.

No copayment shall be required from an applicant whose adjusted gross income is equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's. A copayment of $7.50 shall be required from an

Approved by Revisor SEQ

applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a household of the same size as the applicant's, and a copayment of $15 shall be required from an applicant whose adjusted gross income is equal to or greater than 100 percent of the state gross median income for a household of the same size as the applicant's.

4705.0900 LIMITATIONS ON AUTHORIZATION OF REIMBURSEMENT FOR TREATMENT SERVICE(S).

SCH shall authorize reimbursement to a service provider only for treatment that is part of the treatment plan for an individual's handicapping condition. SCH shall not authorize reimbursement for the treatment of conditions determined by SCH to be primarily cosmetic in nature. SCH shall not authorize reimbursement for costs of equipment such as hospital beds or wheelchairs unless no other resource is available. Within any 12-month period, SCH shall pay no more than ~~$10,000~~ $15,000 for the care of an individual. SCH shall not authorize reimbursement for treatment service(s) not associated with an individual's eligible condition. An exception shall be made and treatment services not associated with an individual's eligible condition shall be authorized, subject to the ~~$10,000~~ $15,000 per 12-month period limit, when the SCH medical director has determined that medical conditions exist which, if left untreated, could have a deleterious impact upon the applicant's health status.

SCH shall not authorize reimbursement for treatment services for individuals 21 years of age or over with hemophilia except as specified in part 4705.1000.

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Services for Children with Handicaps

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4705

The attached rules are approved for publication in the State Register

Susan E. Quayle
Assistant Revisor

Sue Abderholden
MN Assoc. for Retarded Citizens
3225 Lyndale Avenue South
Minneapolis, MN 55408

Michael J. Ahern
Moss and Barnett
1200 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402

Anna Anderson, Director
Public Health Department
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Joan Archer
MN Manufactured Housing Association
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Assoc. for Retarded Citizens of
of Hennepin County
2344 Nicollet Avenue South, #370
Minneapolis, MN 55404

ATTN: Advocate

Walter A. Baldus
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ATTN: Robert J. Ran

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328 Hennepin Avenue
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Minnesota Government Report
Room B-28, Press Room, State Capitol
St. Paul, MN 55155

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Blue Earth, MN 56013

Mrs. Irene Homlquist
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Box 23
Worthington, MN 56187

Hope Residence Inc.
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Waterville, MN 56096

Ingleside Engineering
and Construction, Inc.
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Rockford, MN 55373

ATTN: Brian Van Beusekom

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Stillwater, MN 55082

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Minneapolis, MN 55415

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Mary Luth
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Stillwater, MN 55082-0006

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MN Assoc. of Health Care Facilities
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Bloomington, MN 55420

Carl F. Meissner, Clerk/Administrator
City of Cottage Grove
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Cottage Grove, MN 55016

Nancy Meyer, Public Health Supervisor
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St. Paul, MN 55102

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St. Paul, MN 55155

Louis R. Nelson
620 North Woods
Mora, MN 55051

Phil Newberg
MN Board Examiners -- Nursing
Home Administrators
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St. Paul, MN 55114

New Dawn, Inc.
Box G
Fulda, MN 56131

D. Bill Olson
Habilitative Services, Inc.
Box 123
Windom, MN 56101

Mr. Donald W. Olson
Olson Well Service
RR
Halstad, MN 56548

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Minnesota Chiropractic Association
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St. Paul, MN 55113

Guy Peterson, Administrator
Goodhue - Wabasha CHS
426 West Avenue
Red Wing, MN 55066

Alex Petterson
Community Involvement Programs
2217 Nicollet Avenue South
Minneapolis, MN 55404-3302

Kathleen Pine, Executive Director
Dakota's Children, Inc.
400 W. Marie
West St. Paul, MN 55118

Pine Ridge Homes, Inc.
915 - 18th Street
Cloquet, MN 55720

Pine River Group Home, Inc.
Box 96
Pine River, MN 56474

Port-A-Ray Medical Services, Inc.
2025 Nicollet Avenue
Minneapolis, MN 55404

ATTN: W. A. Abler

Presbyterian Family Foundation
901 Memorial Parkway
Willmar, MN 56201

Attn: Beverly Helgeson, Administrator

The Residence, Inc.
2499 N. Rice Street #220
Roseville, MN 55113

Residential Services of
Northeast Minnesota, Inc.
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Duluth, MN 55803-3008

Paul Riddle
Metropolitan Council
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Holly A. Rodin
SEIU - Joint Council #7
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Developmental Disabilities Program
State Planning Agency
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Mark S. Wiger
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New Ulm, MN 56073

Merlin A. Wilbur
100 Sibley Street
Hastings, MN 55033

Terri Williams
6810 Hemlock Lane North
Maple Grove, MN 55369

Wright County Human Services
Courthouse
Buffalo, MN 55313

Proposed Rules

Pursuant to Minn. Stat. of 1984, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Health

Proposed Permanent Rules Relating to Services for Children with Handicaps

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Health intends to amend chapter 4705 to establish co-payments for diagnostic evaluations and to increase the annual limitation on reimbursement for treatment services for children with handicaps and adults with cystic fibrosis and hemophilia. The Department intends to amend chapter 4705 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is found at *Minnesota Statutes*, sections 144.05 to 144.07 and 144.09 to 144.12 and in Minnesota Department of Administration Reorganization Order No. 101, issued pursuant to *Minnesota Statutes*, section 16.125. Reorganization Order 101 gives the Commissioner of Health authority to implement *Minnesota Statutes*, sections 250.05, 256.01, subd. 2(3) and (5), 256.011, 257.175 and 260.35 insofar as they concern the Services for Children with Handicaps Program.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

David Giese, Assistant Director
Maternal and Child Health Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5170

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule

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

and that identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. Giese upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Mr. Giese.

Dated: 2 July 1987

Sister Mary Madonna Ashton, Commissioner
Minnesota Department of Health

Rules as Proposed

4705.0100 DEFINITIONS.

Subpart 1. to 9. [Unchanged.]

Subp. 9a. **Copayment.** "Copayment" means the financial participation in the cost of a diagnostic evaluation on the part of an applicant and established on the basis of ability to pay under part 4705.0300.

Subp. 10. to 31. [Unchanged.]

4705.0300 APPLICANT ELIGIBILITY FOR DIAGNOSTIC EVALUATION.

An applicant shall complete an application provided by SCH as described in part 4705.0500. Any applicant, regardless of income, who meets all of the following criteria shall be eligible for a diagnostic evaluation authorized by SCH:

A. a resident of Minnesota; and

B. a child under 21 years of age with a suspected handicap, or an adult 21 years of age or over with cystic fibrosis or hemophilia.

In addition to items A and B, an applicant shall agree to make a copayment if any is required under this part. An applicant shall be required to make use of available third-party reimbursement sources for the examinations and tests necessary for a diagnostic evaluation. ~~There shall be no out of pocket cost to the applicant for the actual examinations and tests.~~ Prior written authorization shall be required for a diagnostic evaluation to be reimbursed in full or ~~for that~~ in part ~~not reimbursed by third party payers~~ by SCH.

No copayment shall be required from an applicant whose adjusted gross income is equal to or less than 60 percent of the state gross median income for a household of the same size as the applicant's. A copayment of $7.50 shall be required from an applicant whose adjusted gross income is greater than 60 percent but less than 100 percent of the state gross median income for a household of the same size as the applicant's, and a copayment of $15 shall be required from an applicant whose adjusted gross income is equal to or greater than 100 percent of the state gross median income for a household of the same size as the applicant's.

4705.0900 LIMITATIONS ON AUTHORIZATION OF REIMBURSEMENT FOR TREATMENT SERVICE(S).

SCH shall authorize reimbursement to a service provider only for treatment that is part of the treatment plan for an individual's handicapping condition. SCH shall not authorize reimbursement for the treatment of conditions determined by SCH to be primarily cosmetic in nature. SCH shall not authorize reimbursement for costs of equipment such as hospital beds or wheelchairs unless no other resource is available. Within any 12-month period, SCH shall pay no more than ~~$10,000~~ $15,000 for the care of an individual. SCH shall not authorize reimbursement for treatment service(s) not associated with an individual's eligible condition. An exception shall be made and treatment services not associated with an individual's eligible condition shall be authorized, subject to the ~~$10,000~~ $15,000 per 12-month period limit, when the SCH medical director has determined that medical conditions exist which, if left untreated, could have a deleterious impact upon the applicant's health status.

SCH shall not authorize reimbursement for treatment services for individuals 21 years of age or over with hemophilia except as specified in part 4705.1000.

Pollution Control Agency

Proposed Permanent Rules Relating to Water Quality Permit Fees

Notice of Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) will hold public hearings in the above-entitled mater at the following times and locations:

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Co-Payments for Diagnostic Evaluations and Limitations on Reimbursement for Treatment Services for Services for Children with Handicaps, and Adults with Cystic Fibrosis and Hemophilia, Minnesota Rules Chapter 4705

FINDINGS OF FACT
CONCLUSIONS AND ORDER
ADOPTING A RULE WITHOUT
PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on July 20, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on July 15, 1987. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. One request for a public hearing on the rule was received by the agency.

Two comments on the rule were received by the agency. No requests for notice of submission to the attorney general wre received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Permenant Rules Regarding To Services For Children With Handicaps is adopted this 1st day of September, 1987, pursuant to authority vested in me by Minnesota Statutes, section Minn. Stat. §§ 144.05 to 144.07 and 144.09 to 144.12 and Minnesota

Department of Administration Reorganization Order No. 101, issued pursuant to Minn. Stat. § 16.125.

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

Sr Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Co-Payments for Diagnostic Evaluations and Limitations on Reimbursement for Treatment Services for Services for Children with Handicaps, and Adults with Cystic Fibrosis and Hemophilia, Minnesota Rules Chapter 4705

DECLARATION OF COUNSEL

I, Catherine E. Avina, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 50.X506.1620.

Dated: September 9, 1987

CATHERINE E. AVINA
Special Assistant
Attorney General

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL - Health

DATE : September 9, 1987

TO : J. Michael Miles
Assistant Attorney General
Administration/Finance Division

FROM : Catherine E. Avina
Special Assistant
Attorney General

PHONE : 341-7272

SUBJECT : Adopted Rules

Pursuant to Minn. Stat. § 14.26, the attached documents in support of the above-referenced rules are submitted to your office for approval:

1. Notice of Intent to Adopt A Rule Without A Public Hearing, executed July 2, 1987.

2. A copy of the Proposed Rule with Revisor's approval.

3. Statement of Need And Reasonableness, executed June 25, 1987.

4. Affidavit of Mailing which also certifies the mailing list, executed July 15, 1987.

5. A photocopy of the relevant pages of the July 20, 1987, State Register, at 12 S.R. 93, in which the Notice and proposed amendments referenced above were published.

6. Comment received by the agency.

7. Findings of Fact, Conclusions and Order Adopting A Rule Without A Public Hearing, executed September 1, 1987.

8. The original and three copies of the rules as adopted.

9. Declaration of Counsel.

Please call me if you have any questions or concerns.

CEA:sv

Attachments

RECEIVED
ATTORNEY GENERAL'S OFFICE

SEP 11 1987

204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

Rule:

See proposed. Not all new material.

Notice of Intent - ~~ok~~ Does not have a small business statement.

Authority

144.05 - 144.07

144.09 - 144.22 ok