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.