



State of Minnesota
**TELECOMMUNICATIONS ACCESS FOR
COMMUNICATION-IMPAIRED PERSONS BOARD**
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May 18, 1994


Ms. Maryanne Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by Minnesota Statutes, section 14.23, I have enclosed is a copy of the TACIP Board's Statement of Need and Reasonableness in the matter of the proposed amendments to the rules governing the eligibility of services for the Equipment Distribution Program (Minnesota Rules 8775). These amendments are going through the process of adoption without a public hearing and the notice of intent will be published in the *State Register* on Tuesday, May 31, 1994.

Please feel free to contact me at 296-0412 (voice) or 296-9863 (TTY/TDD) if you have any questions.

Sincerely,


Sonya Guggemos
Administrative Assistant

Enclosure

**STATE OF MINNESOTA
TELECOMMUNICATIONS ACCESS FOR COMMUNICATION-IMPAIRED
PERSONS BOARD**

In the Matter of the Proposed
Amendments to the Rules
Governing Eligibility for Services,
Minn. Rules Parts 8775.0100,
8775.0300, 8775.0400, 8775.0500, and
8775.0800

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

The rules which are being revised are from the Telecommunications Access for Communication-Impaired Persons (TACIP) Board's Equipment Distribution Program as administered by the Deaf and Hard of Hearing Services Division of the Department of Human Services. The Minnesota Statute governing the TACIP programs was revised in 1993 in order to update some of the statutory language and, in the case of the Equipment Distribution Program, to further define the clientele served by the program. The proposed amendments to the existing Minnesota Rules governing eligibility for services reflect the previously mentioned statute changes.

This statement of need and reasonableness can be made available in other formats, including Braille, large print and audio tape. To receive this statement of need and reasonableness in another format, please contact the TACIP Board office at 612 296-0412 or 1 800 657-3599 (Voice)/ 612 296-9863 or 1 800 657-3603 (TTY/TDD).

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minnesota Statutes section 237.51, subdivisions 1 and 5, which provides:

"Subdivision 1. Creation. The telecommunication access for communication-impaired persons board is established to establish and administer a program to distribute communication devices to eligible communication-impaired persons and to create and maintain a telecommunication relay service. "

"Subdivision 5. Duties. In addition to any duties specified elsewhere in sections 237.50 to 237.56, the board shall:

(1) define economic hardship, special needs, and household criteria so as to determine the priority of eligible applicants for initial distribution of devices and to determine circumstances necessitating provision of more than one communication device per household;

(2) establish a method to verify eligibility requirements;

(3) establish specifications for communication devices to be purchased under section 237.53, subdivision 3;

(4) enter contracts for the establishment and operation of the telecommunication relay service pursuant to section 237.54;

(5) inform the public and specifically the community of communication-impaired persons of the program;

(6) prepare the reports required by section 237.55;

(7) administer the fund created in section 237.52

(8) reestablish and fill the position of program administrator whose position is in the unclassified service and fill other positions in the classified service required to conduct the business of the board;

(9) adopt rules, including emergency rules, under chapter 14 to implement the provisions of sections 237.50 to 237.56; and

(10) notwithstanding any provision of chapter 16B, develop guidelines for the purchase of some communication devices from local retailers and dispensers if the board determines that otherwise they will be economically harmed by implementation of sections 237.50 to 237.56."

Under this statute the Agency has the necessary authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minnesota Statutes chapter 14 requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means

that the solution proposed by the Agency is appropriate. The need for the rules is discussed below.

The main problem being addressed by the proposed amendments to the specified rules is the discrepancy between the language and terminology used in Minnesota Statutes 237.50-237.56, which governs the Equipment Distribution Program, and the existing rules.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

As a whole, the proposed amendments to the existing rules are reasonable because the amendments reflect the changes made by the Minnesota Legislature to the statute governing the TACIP Board and programs in 1993.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules,

8775.0100 DEFINITIONS

Part 8775.0100, Subp. 6. Communication Device.

Part 8775.0100, Subp. 6. defines the term "communication device" as a device that when used in conjunction with the telephone system allows a communication-impaired person to communicate with another person using the telephone system. The subpart lists various types of communication devices as examples. The changes made to the subpart are reasonable for several reasons:

a. The phrase "used in conjunction with the telephone system" more correctly describes the term "communication device" than the earlier wording "connected to a telephone". Some of the communication devices are not used directly with a telephone, but instead are directly connected to the telephone lines or system.

b. The term "telephone device for the deaf" has been changed to read "telecommunications device for the deaf" as the latter term more accurately describes the communication device to be distributed. A telecommunications device for the deaf does not necessarily need to be used in conjunction with standard premise equipment, and can be directly connected to the telephone lines or system.

c. The deletion of the brand name "telebraille" and the addition of the phrase "braille device for use with the telephone system" incorporates the statutory language (MN Stat. section 237.50, subd. 4) necessary so that any appropriate braille device may be purchased and distributed through the program.

d. The phrase "any other device the board considers necessary" incorporates statutory language (MN Stat. section 237.50, subd. 4) which will allow the TACIP Board and the Equipment Distribution Program to better serve individuals who need specialized communication devices due to their unique telecommunications needs.

Part 8775.0100, Subp. 7 Communication-impaired person.

Part 8775.0100, Subp. 7 defines the term "communication-impaired person" as someone who is determined by the Deaf and Hard of Hearing Services Division of the Minnesota Department of Human Services to be deaf, deaf and blind, hard-of-hearing, mobility impaired, or speech impaired as defined by subparts 8, 9, 12, 16a, and 20. The changes made to this subpart are necessary to delete obsolete language and to make possible service to additional persons defined as communication impaired in Minnesota Stat. section 237.50, subd. 3.

Part 8775.0100, Subp. 8 Deaf.

Part 8775.0100, Subp. 8 defines the term "deaf" as "a hearing impairment of such severity that the individual must depend primarily upon visual communication such as writing, lip reading, manual communication, and gestures." A person who is deaf needs a telecommunications device for the deaf to communicate effectively through the telephone system. The changes made to this subpart are reasonable because the changes standardize language used in Minnesota Statutes and Minnesota Rules. The amendment is based on 1993 M. S. Ch. 272 revision of definition of "Deaf". The term "telephone device for the deaf" has been changed to read "telecommunications device for the deaf" as the latter term more accurately describes the communication device to be distributed. A telecommunications device for the deaf does not necessarily need to

be used in conjunction with standard premise equipment, and can be directly connected to the telephone lines or system.

Part 8775.0100, Subp. 9 Deaf and blind.

Part 8775.0100, Subp. 9 defines the term "deaf and blind" as the conditions of someone who is deaf or has a severe to profound hearing loss and is blind or visually impaired. A deaf and blind person needs a braille device or other specially designed equipment to communicate effectively on the telephone. This amendments made to this subpart are reasonable because the changes remove redundant language and more clearly specify the recipients of equipment for deaf and blind persons. Changes have also been made to delete the brand name ("telebraille") of braille equipment for use with a telephone system and to substitute the term. "telecommunications device for the deaf" for "telephone device for the deaf".

Part 8775.0100, Subp. 10. Division.

Part 8775.0100, Subp. 10 defines "division" as the Deaf and Hard of Hearing Services Division of the Minnesota Department of Human Services. The amendment to this subpart is reasonable because it reflects the name change of the agency responsible for equipment distribution.

Part 8775.0100, Subp. 12. Hard-of-hearing.

Part 8775.0100, Subp. 12. defines the term "hard-of-hearing" as "hearing impairment resulting in a functional loss, but not to the extent that the individual must depend primarily upon visual communication." A person who is hard-of-hearing may need a communication device to communicate on the telephone. The change to this subpart are reasonable because it standardizes language used in Minnesota Statutes and Minnesota Rules. The amendment is based on 1993 M. S. Ch. 272 revision of definition of "Hard-of-hearing".

Part 8775.0100, Subp. 13. Hearing Impaired.

Part 8775.0100, Subp. 13 is repealed because it is replaced by Part 8775.0100, Subp. 12.

Part 8775.0100, Subp. 16a. Mobility impaired.

Part 8775.0100, Subp. 16a defines "mobility impaired" as "a motor skill condition that significantly impedes a persons ability to use standard customer

premises telephone equipment." The subpart further states that a "mobility impaired person may require the use of a communication device with auxiliary equipment to communicate on the telephone." This subpart is reasonable because it incorporates the statutory language (MN Stat. section 237.50, subd. 4) and defines who will be considered "mobility impaired" for purposes of communication device distribution.

8775.0300 ELIGIBILITY FOR TACIP SERVICES

Part 8775.0300, Subp. 2. Application process.

Part 8775.0300, Subp. 2 requires that each applicant for communication devices complete an application and provide the required documentation of communication-impairment. The amendments to this subpart are reasonable because they reflect the name change of the agency responsible for equipment distribution, and replace the term of "hearing loss" with the term "communication-impairment" thereby reflecting more accurately the service group as defined in MN Stat. section 237.50, subd. 3.

Part 8775.0300, Subp. 3. Documenting, verifying, and reviewing eligibility.

Part 8775.0300, Subp. 3. provides the Deaf and Hard of Hearing Services Division with guidelines as to the documentation, verification and review of the eligibility of persons applying to receive communication devices. The amendment to this rule is reasonable as it replaces the misleading term "verify" with "redetermine" in the sentence referring to the reviewing of an applicant's eligibility. In this scenario, the applicant's eligibility has already been verified and is currently being redetermined.

Part 8775.0300 Subp. 4., D. Eligibility criteria.

Part 8775.0300 Subp. 4, Section D states that as one of the criterion for eligibility for the TACIP program, the applicant must be a resident in a household at or below the applicable median income of the state, except an applicant who is deaf and blind may reside in a household having an income at no more than 150 percent of the applicable median income of the state. The deletion of the brand name "telebraille" and the addition of the phrase "braille device for use with the telephone system" is necessary so that any appropriate braille device may be purchased and distributed through the program.

Part 8775.0300 Subp. 5. Persons not eligible.

Part 8775.0300 Subp. 5 provides that persons who are residents of a residential treatment facility that receives federal funding and is required to be fully accessible and persons who can obtain communication device through federal provisions, are not eligible for TACIP services. The changes to this subpart are reasonable as sections of the Americans with Disabilities Act of 1990 are relevant in cases such as these.

8775.0400 PRIORITY FOR INITIAL DISTRIBUTION OF COMMUNICATION DEVICES.

Part 8775.0400 Subp. 2a. Third priority: speech and mobility impaired.

Part 8775.0400 Subp. 2a. provides that persons with both speech and mobility impairments are third in priority in receiving communication devices from the TACIP program. This prioritization is reasonable because the multiple disabilities of speech and mobility impaired persons places their need for communication devices at a higher level than those without multiple impairments.

Part 8775.0400 Subp. 3. Fourth priority: impaired speech.

Part 8775.0400 Subp. 3. provides that persons with impaired speech are fourth in priority in receiving communication devices from the TACIP program. Persons with impaired speech are now fourth in priority because of the addition of the category of speech and mobility impaired.

Part 8775.0400 Subp. 3a. Fifth priority: mobility-impaired.

Part 8775.0400 Subp. 3. provides that persons with a mobility impairment are fifth in priority in receiving communication devices from the TACIP program. This new category has been placed fifth in priority because mobility impaired persons are generally more likely able to use standard premise telephone equipment than persons with speech impairments.

Part 8775.0400 Subp. 4. Sixth priority: hard-of-hearing.

Part 8775.0400 Subp. 4. provides that hard-of-hearing persons are fifth in priority in receiving communication devices from the TACIP program. This prioritization is now sixth because of the addition of the two new categories of "speech and mobility impaired" and "mobility impaired". The term "hard of hearing" has replaced "hearing impaired" as this standardizes language used in Minnesota Statutes

and Minnesota Rules as based on 1993 M. S. Ch. 272 revision of definition of "Hard-of-hearing".

Part 8775.0400 Subp. 5. Seventh priority: others without special needs.

Part 8775.0400 Subp. 5. provides that persons who are communication-impaired but do not have any financial or special needs are seventh in priority in receiving communication devices from the TACIP program. This prioritization is now seventh because of the addition of the two new categories of "speech and mobility impaired" and "mobility impaired".

8775.0500 HOUSEHOLDS ELIGIBLE TO RECEIVE SEVERAL DEVICES

Part 8775.0500 Subp. 1. Deaf

Part 8775.0500 Subp. 1 details the type of communication devices that may be distributed to a person who is deaf. The amendments to this subpart are reasonable because they standardize the language used in Minnesota Statutes and Minnesota Rules as based on 1993 M. S. Ch. 272 revision of definition of "Deaf". The term "telephone device for the deaf" has been changed to read "telecommunications device for the deaf" as the latter term more accurately describes the communication device to be distributed.

Part 8775.0500 Subp. 2. Deaf and blind.

Part 8775.0500 Subp. 2 details the type of communication devices that may be distributed to a person who is deaf and blind. The amendments made to this subpart are reasonable because deletion of the brand name "telebraille" and the addition of the phrase "brailling device for use with the telephone system" will provide for any appropriate brailling device to be purchased and distributed through the program. Also, the term "telephone device for the deaf" has been substituted with "telecommunications device for the deaf" as the latter term more correctly describes the communication device to be distributed.

Part 8775.0500 Subp. 4. Hard-of-hearing.

Part 8775.0500 Subp. 4 details the type of communication devices that may be distributed to a person who is hard-of-hearing. This amendment is necessary to standardize language used in Minnesota Statutes and Minnesota Rules. Amendment

is based on 1993 M.S. Ch. 272 revision of definition of "Hard-of-hearing". [Replaces "Hearing Impaired"]

Part 8775.0500 Subp. 5. Mobility impaired.

Part 8775.0500 Subp. 5 details the type of communication devices that may be distributed to a person who is mobility-impaired. This amendment is reasonable because the identified communication devices are those which will most effectively enable a person with a mobility impairment to communicate with another person using the telephone system.

Part 8775.0500 Subp. 6. Speech and mobility impaired.

Part 8775.0500 Subp. 5 details the type of communication devices that may be distributed to a person with a speech and mobility impairment. This amendment is reasonable because it identifies devices for which persons with a speech and mobility impairment will be eligible to receive.

8775.0800 APPEALS

Part 8775.0800 Subp. 2. Procedure.

Part 8775.0800 Subp. 2 provides the procedure to be used to request an appeal. Language amendments in this subpart are reasonable in order to incorporate the new title for offices distributing communication devices, i.e. "Regional Service Center for Deaf and Hard-of-Hearing People" into the rules.

Part 8775.0800 Subp. 3. Conciliation conference.

Part 8775.0800 Subp. 3 provides the procedures to be used in holding a conciliation conference in the matter of an appeal. Language amendments in this subpart are reasonable in order to incorporate the new title for offices distributing communication devices, i.e. "Regional Service Center for Deaf and Hard-of-Hearing People" into the rules.

Part 8775.0800 Subp. 4. Formal hearings.

Part 8775.0800 Subp. 4 provides the procedures to be used in holding a formal hearing in the matter of an appeal. Language amendments in this subpart are reasonable in order to incorporate the new title for offices distributing communication devices, i.e. "Regional Service Center for Deaf and Hard-of-Hearing People", into the rules.

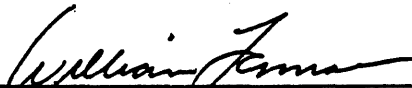
V. COSTS TO LOCAL PUBLIC BODIES

Minnesota Statutes, Section 14.11, subdivision 1, requires the Agency to include a statement of the rule's estimated costs to local public bodies in the notice of intent to adopt rules if the rule would have a total cost of over \$100,000 to all local bodies in the state in either of the two years immediately following the adoption of the rule. This requirement is not applicable in this case because the rule changes proposed will not have a cost to local public bodies.

VI. CONCLUSION


Based on the foregoing, the proposed Minnesota Rules parts 8775.0100 - 8775.0800 are both needed and reasonable.

Dated: 4-11-94



William Lamson
TACIP Board Administrator

Dated: 4/11/94



James Beutelspacher
TACIP Board Chair