DEPARTMENT of HUMAN SERVICES

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OPTIONS for the MINNESOTA MERIT SYSTEM

Prepared by
Department of Human Services
Human Resources Division
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INTRODUCTION

The Department of Human Services was directed by the 1995 Legislature to report on delivery options for the Minnesota Merit System. The legislation directs that:

> By March 1, 1996, the Commissioner of Human Services shall report to the Chair of the Senate Health and Family Services Finance Division and the Chair of the House Health and Human Services Finance Division on options for the delivery of merit-based employment services by entities other than the Department of Human Services in order to reduce the administrative costs to the state while maintaining compliance with applicable federal regulations [Laws of Minnesota, 1995, Chapter 207, Article 11, Section 8].

As a response to this directive, the Department of Human Services is submitting this report. This report addresses these issues:

1. The options that exist for carrying out the state's obligations;
2. The costs associated with each of the options.

The report has six main sections. It begins with a background of the Minnesota Merit System (hereafter referred to as the Merit System), followed by a description of the federal requirements and the functions currently performed by the Merit System. The report then discusses the options for the state along with cost considerations. The report ends with a set of recommendations.

The total cost involved in the preparation of this report is estimated at $24,000.

I. BACKGROUND

The Merit System has been in existence since 1941 providing human resource services to county human services agencies. It has been part of the Department of Human Services' responsibility to supervise the county administration of social services and income maintenance programs. During this 55 year history, the Merit System has twice been assigned additional responsibilities. In 1951, it gained responsibility under the jurisdiction of the Governor and the Department of Public Safety for local emergency management agencies. In 1969, further responsibility was authorized for local health agencies under the jurisdiction of the Commissioner of Health. The authorizing statutes for Human Services, Health and Emergency Services are Minn. Stat. §§ 256.012, 393.07, subd. 5, 144.071 and 12.22, subd. 3.

The Merit System currently serves 77 counties through 73 human services and social services agencies, 6 health agencies and 22 emergency management agencies. There are approximately 3,700 employees covered in the human services and health positions and about 25 employees in emergency management positions.

In Minnesota, the Merit System covers positions that are funded in whole or in part by federal funds requiring a merit system of personnel administration. Counties may develop their own personnel or merit systems under the authority of the County Personnel Act (Minnesota Statutes, §§375.56-375.71). There are 10 counties that have developed their own merit systems. They are: Anoka, Beltrami, Blue Earth, Dakota, Hennepin, Itasca, Olmsted, Ramsey, Scott and Washington. In St. Louis County, clerical and paraprofessional staff are covered by the St. Louis County personnel system, but the professional and supervisory staff are covered by the Merit System. The counties that have their own personnel or merit systems are large enough to have been able to absorb the costs of establishing and maintaining merit systems.

The Merit System program staff consists of seven full-time employees and one half-time employee. The budget for Fiscal Year 1996 is $294,000. Because one position is funded by the Reimbursement Division of the Department of Human Services, the total costs associated with the Merit System program are estimated at $335,000. DHS is able to capture federal reimbursement for approximately 50% of the merit system expenses.

The DHS Office of Equal Opportunity, Affirmative Action and Civil Rights has one full-time staff member who works closely with Merit System staff. This staff person is responsible for reviewing county affirmative action plans and policies and providing consultation and technical assistance. Counties are required to have affirmative action plans for the employees served by the Merit System. Counties may have their own plans, or may choose to follow guidelines that have been developed by the DHS Office of Equal Opportunity, Affirmative Action and Civil Rights. Fourteen counties have developed county-wide affirmative action plans that have been certified by the Minnesota Department of Human Rights.

Finally, the Merit System Council is a three member governor-appointed body created in rule (Minnesota Rules, parts 9575.0010-0140). The Council hears appeals and reviews some of the work of the Merit System staff, including classification and compensation plans. In a typical year, the Council meets about three times and hears three or four appeals, usually concerning disciplinary action taken by a county agency.

II. FEDERAL REQUIREMENTS

MERIT SYSTEM STANDARDS

The federal requirement for a merit system of personnel administration is contained in Title II of the Intergovernmental Personnel Act, 42 USC § 4701-4728. The act covers all programs supported in whole or in part by certain federal grant-in-aid funds. The funds requiring a merit system of personnel administration include those from the Federal Emergency Management Agency, the Health Care Finance Agency and the Departments of Labor, Justice, Agriculture and Health and Human Services. The individual laws governing the specific programs all have language similar to the following:

> In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which....provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods.

The methods relating to the establishment and maintenance of personnel standards on a merit basis are found in federal regulations (Standards for a Merit System of Personnel Administration, 5 CFR Part 900). These regulations outline the minimum requirements that a jurisdiction must meet in order to have a merit system. The latest revision of the standards was issued in April, 1983 by the federal agency responsible for oversight of merit systems (the Office of Personnel Management, or OPM). This revision does not include the detail that was present in earlier versions of the standards. The details provided guidance to states and local governments on how to achieve compliance. A copy of the current federal merit system standards is found in Attachment A. The standards today consist basically of broad statements of principle, which follow:

> The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as:
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> a] Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
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> b] Providing equitable and adequate compensation;
>
> c] Training employees, as needed, to assure high quality performance;

d] Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;

e] Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws;

f] Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

Even though the details of the standards, or the guidelines, are no longer part of the regulations, all merit systems in Minnesota operate as if they are still in existence. This is primarily because the details generally describe what historically have been common elements in a merit system. They also tend to describe or represent good personnel practices and standards which have been widely recognized and cited by courts in equal employment opportunity lawsuits.

The federal authorities state that one reason for the change in the standards was to encourage innovation and diversity in merit systems. They do not provide states or local governments with any standards clarification because it may prohibit innovation and experimentation. Yet, at the same time, OPM responds to and investigates complaints from states and local governments and can cite a jurisdiction as being not in conformity with the standards. This lack of guidance, combined with the authority to potentially withhold federal funds, is difficult to reconcile. It is not clear what a jurisdiction is required to do in order to meet the merit system requirements, nor is there a clear indication of any functions that a merit system would no longer have to perform under a "new" interpretation of the standards. Because federal authorities have declined to provide any specifics as to what has to be done to achieve compliance or conformity with the standards, this is an issue which needs resolution. There should be further dialogue between federal officials and state and county human resources professionals as to what a jurisdiction needs to do in order to achieve conformity with the merit system standards.

FEDERAL OVERSIGHT AND RESOLUTION OF COMPLAINTS

Federal merit system requirements are satisfied by certification of an agreement by a chief executive of a state or local jurisdiction to maintain a system of personnel administration in conformance with these standards. OPM has indicated that it is the nature of the state's relationship with its local jurisdictions that determines which official is the chief executive responsible for ensuring compliance with the merit system standards. The state could determine that it has responsibility for each county maintaining merit standards, or alternately, that each county is responsible for maintaining merit system standards. If each county were to be responsible for maintaining merit system standards and there was a complaint brought to the federal authorities, OPM would begin by asking the state to participate in the process of resolving the complaint. Since it is the state that determines the state and local relationship, the state determines what its own role will be. If the state chooses to have no responsibilities for investigating or resolving the complaint, then OPM would conduct the investigation. The focus of OPM's investigation of a complaint is the jurisdiction's policies and practices. OPM is unable to offer redress to complainants. Its only role is to determine that the jurisdiction has an acceptable system in place.

If OPM were to find a county out of conformity with the merit principles, it would attempt to work with the county to find an acceptable means of achieving conformance. Because the federal authorities are encouraging innovation, they do not penalize a county that has tried an experiment and failed. If, however, OPM determines that a county policy or procedure was out of conformance with the principles and the county refuses to put into place an alternate policy or procedure that would be in conformity with the principles, OPM will issue a certificate of non-compliance. At that time, the funding agency (Department of Health and Human Services or the Federal Emergency Management Agency) would become involved. The strongest action available to a funding agency is to withhold any further funding and to insist on repayment of any funds disbursed since the issuing of the non-compliance certificate.

The impact of a county penalty on the state depends on the state and county relationship. If a state has determined that each county has responsibility for maintaining merit standards, then only the county out of compliance would be sanctioned. If a state has determined that the state itself has responsibility for each county maintaining merit standards, then the state is at risk for funds to be withheld as well.

Regardless of which jurisdiction is responsible for assuring merit principles, OPM does recommend that the state maintain some level of oversight because it will often look to the state to assist in resolving complaints. When complaints are received by OPM, staff at OPM will often attempt to have the state participate in the process and resolve the issue without federal involvement. If there is no resolution and a penalty needs to be assessed, the funding agency would instruct the state to withhold money from the offending county. OPM staff also have stated that "in the event a county receiving Federal funds through the state does not comply with merit standards, the

Federal funding agency may pressure the state to assist in resolving the county's non-compliance by withholding all grant-in-aid monies."

In Minnesota, human services programs are administered by county employees and the state monitors or supervises the administration of the programs. The federal money for the programs is first sent to the state and then passed to the counties. Given this fact, a logical conclusion could be drawn that, in Minnesota, the responsibility for assuring compliance with the merit principles rests with the state.

III. MERIT SYSTEM FUNCTIONS

The basic functions of the Merit System include:

Selection. This includes developing job-related objective selection procedures, scheduling applicants for examinations, establishing eligible registers and referring qualified candidates to county agencies.

The merit principles require that employees be selected on the basis of their relative ability, knowledge and skills. In order to carry this out, knowledges, skills and abilities required to do a job must be identified and applicants must be assessed on the degree to which they possess the necessary knowledges, skills and abilities. Employment examinations are used to test those knowledges and rank applicants' abilities in job-related areas. The different types of examinations used by the Merit System to screen applicants include written multiple choice exams, essay exams, oral exams, experience and training ratings and typing performance tests. The type of examination used for a particular position is dependent upon the job responsibilities and the knowledges, skills and abilities required to perform the job. Current incumbents and supervisors are involved in determining what knowledges, skills and abilities are required prior to hire and are involved in writing and selecting items to be included in exams. A considerable amount of time is spent by Merit System staff in developing new examinations and revising existing examinations.

Currently, 42 examinations are kept open for application all year long. Other examinations, for less frequently used classifications, are opened on an as needed basis. The examination announcements are sent to counties, job services offices, employment agencies, and organizations serving protected group members. Counties can use local resources such as newspapers and organizations to advertise vacancies.

Each month, the Merit System receives between 500 and 750 applications. Most positions have minimum qualifications of education and experience, so the applications are reviewed by Merit System staff to determine if the minimum qualifications have been met.

All written tests (with the exception of those for clerical positions) are administered in conjunction with the Department of Employee Relations (DOER), which tests for state openings. DOER has 23 testing sites around the state and monitors Merit System tests at the same time as their exams, generally at no cost to the Merit System. The Merit System schedules candidates for written tests using an applicant tracking software package, SIGMA IV. Each county agency has responsibility for administering the written and performance examinations for clerical positions.

After the tests have been administered, the Merit System scores the examinations and establishes a list of those who have passed the examination, using the SIGMA IV software. Counties with vacancies obtain lists of qualified candidates on a county, regional, or statewide basis. The Merit System maintains the data base with files on candidates, a history of referrals to counties and a historical record of how the files have been pulled together (that is, which candidates have been referred to the various counties). The examination scheduling, scoring and the referral processes are fully automated.

Applicants may appeal their examination scores, or a determination by Merit System staff that they do not qualify for a particular examination. Appeals that cannot be resolved at the staff level are heard by the Merit System Council.

Classification. This includes maintaining a job-related classification plan, reviewing individual classification requests, conducting studies of entire classifications, developing new classes and revising existing ones.

Every position covered by the Merit System is placed within a job classification. Whenever a county develops a new position, Merit System staff determine the appropriate classification for the position. This is done to ensure that the position is compensated appropriately as well as to ensure that the appropriate examination is given applicants for the position.

Counties also send position descriptions of current employees to the Merit System office for review. Merit System staff review these position descriptions to determine the proper classifications of the positions. An employee's position may be determined to be properly classified, or may be reclassified to another classification at a higher, lower or equivalent level.

Currently, the Merit System has 129 job classifications. Each year, about three to five new classifications are created and a similar number deleted. Classification specifications (which are documents that provide general descriptions of the kind of work performed and knowledges, skills and abilities required to do the work) are reviewed and updated periodically. Current incumbents and supervisors assist in the review and revision of the classification specifications.

An appeal process exists if an employee or supervisor objects to the classification decision made by the Merit System. Appeals that cannot be resolved at the staff level are heard by the Merit System Council.

Compensation. This includes establishing and maintaining a compensation plan so that adequate and equitable compensation for county human services, health and emergency management employees is ensured.

Of the 77 counties served by the Merit System, 40 are unionized and four others have local associations recognized by the Bureau of Mediation Services as being exclusive representatives. For those counties with collective bargaining agreements, compensation is determined through the collective bargaining process. Employees not covered by the terms of a union contract are covered by the Merit System pay plan. This plan ties each classification to a broad salary range. The counties are required to pay non-bargaining unit employees a base salary no less than the first step of the Merit System range and no greater than the top step of the range. Other compensation such as benefits or bonuses is not covered by the Merit System.

The salary ranges assigned to classifications are determined, in part, by a job evaluation system. Labor market factors also are considered in establishing salary ranges. Each year, adjustments are made to the salary ranges, based upon an examination of salary increases granted by other jurisdictions and Department of Labor indices, such as the Consumer Price Index. The Merit System conducts salary surveys for some benchmark positions (such as Social Worker, Financial Worker and Clerk Typist) to determine if the proposed salary ranges are competitive with other jurisdictions.

A salary adjustment for non-bargaining unit employees also is recommended each year. A variety of factors are taken into consideration in making this adjustment, including salary increases given to state employees, increases granted employees of counties with their own merit systems, and the Consumer Price Index.

Human resources consultation. This includes providing human resource management and advice to county agency managers and supervisors on a wide variety of issues and concerns. These include classification issues, organizational matters, disciplinary actions, and interpreting and applying applicable laws, rules and policies.

> Most of the time spent in this function is on an individual basis with county managers and supervisors. County human services directors have questions in a broad range of areas, such as organizational changes, employee discipline, sick leave abuse, reference checking, layoffs, nepotism policies, family leave policies, political involvement (Hatch Act), the Americans with Disabilities Act and sexual harassment investigations, to name a few. The Merit System does do formal training, either on a statewide basis or for a particular county, and Merit System staff attend regional human services meetings to provide updates on changes in the human resources field.

Monitoring. This includes monitoring personnel practices and actions to ensure that personnel are hired, retained, promoted and terminated in accordance with federal and state laws, rules and policies.

> Merit System staff monitor and record personnel transactions for compliance with rules and laws. Personnel actions (salary increases, promotions, demotions, etc.) are recorded on a form and sent to the Merit System office. This information is stored in an employee database. The software that is used to maintain the employee database also allows Merit System staff to prepare reports for other DHS program staff when there is a need to know average salaries, the numbers of staff in various classifications, protected group status for affirmative action plans, etc.

> The Merit System provides counties with a dispute resolution process. Employees may appeal certain disciplinary actions taken by county agencies to the Merit System Council. Council decisions are then remanded back to the counties in the form of recommendations.

IV. POSSIBLE OPTIONS FOR DELIVERING MERIT SYSTEM SERVICES

The following are options for delivering Merit System services:

1. **Transfer functions to another state agency.**
2. **Retain the current system, but charge counties.**
3. **Transfer functions to county agencies.**

A discussion of each option, including the advantages, disadvantages and cost considerations, follows.

Transfer functions to another state agency

Of all of the state agencies that could take on the merit system functions currently being performed at DHS, the most logical is the Department of Employee Relations (DOER), which is the only one with functions similar to the Merit System. Other agencies, such as the Bureau of Mediation Services, Department of Labor and Industry, and the Department of Human Rights do have regulations which affect county and local employees, but do not have staff performing functions which are similar to those of the Merit System.

DOER is responsible for developing and administering examinations for state positions. DOER's staffing division has about 35 employees who perform many of the same functions as the DHS Merit System. DOER also has a mechanism for announcing position openings--the biweekly "Minnesota Career Opportunities" bulletin.

The Merit System uses DOER monitors at out-state locations to administer its examinations. DOER also uses the same applicant tracking software package that is used by the Merit System. However, there are significant differences between the two systems in how the database files are set up. There are also differences between DOER and the Merit System in many of the procedures affecting the treatment of applicants. The state and counties also have different laws covering veterans rights.

Cost Considerations of transferring functions to DOER

Transferring the Merit System functions to DOER could reduce costs to the state if it resulted in an economy of scale. Right now, there are significant differences in the two systems. Full system integration would be difficult, if not impossible. As an example, both systems use the same software program for applicant tracking, but each has customized or altered the program to meet their own needs and requirements. The differences are large enough that the systems would still need to operate separately.

Approximately 5,000 technical college workers became state employees in July, 1995. All of them require DOER services, such as payroll. About one-third to one-half of the employees are in the classified service, which creates the need for developing new exams, developing new classifications, doing job audits and other staffing services. DOER has experienced this increased workload with no additional staff. As a result, DOER makes a compelling argument that it cannot absorb any more work and that it would only take on the Merit System functions if current resources could be transferred from DHS.

This option would not result in any savings to the state, since DOER would not be able to absorb the work without any additional staff or resources, given its current workload. Current Merit System staff would have to be transferred to DOER and no economy of scale could be realized since the systems would still need to operate separately.

Right now, it is estimated that 50% of the Merit System expense is returned to DHS through federal financial participation. If the Merit System functions were transferred to DOER, the amount of federal reimbursement received by the state would be adversely affected. DOER general fund expenditures are incorporated into the "Statewide Cost Allocation Plan" (SWCAP) along with the Department of Finance, Department of Administration and other state central service departments, and then allocated to all of the other state agencies. DHS would get an allocated share of these SWCAP costs and would incorporate that share into the DHS cost allocation plan. These costs would generate some federal reimbursement, but because of the several allocation processes that the Merit System costs would be subject to, the amount of federal reimbursement captured would be extremely small.

Finally, an important consideration which is not tied to cost issues is the strategic direction toward which DOER is moving. Centralizing the Merit System functions at DOER is clearly contrary to DOER's current strategic direction of decentralizing many human resources activities to state agencies. DOER has been delegating functional areas, such as classification and selection, to many state agencies and, as a result, absorbing the Merit System functions would not be consistent with DOER's current direction.

Retain the current system, but bill the counties

It has been suggested that a billing process, charging each of the counties a fee for services performed, could be set up that would cover all or part of the state's costs. This option has been considered several times in the past and has been rejected. See Attachment B for discussions on billing for services.

When considering implementation of a billing system or revolving fund, one has to evaluate the appropriateness of the functions and how conducive the work being performed lends itself to fee for service. The functions performed by the Merit System are done because of federal requirements and to ensure the flow of federal money to Minnesota counties. While the Merit System provides many services to county agencies, it also has a monitoring role. The question here is whether it makes sense to charge counties when one of the roles of the Merit System is to ensure conformance with the federal standards. This role is clearly not a "service" to counties.

Further, the role played by the Merit System is similar to that of other program areas in DHS. Staff in the various program areas or divisions of DHS write rules which specify how federal and state program requirements should be met, and also are responsible for monitoring or supervising the administration of DHS programs by the county human service agency employees. To charge for Merit System activities suggests that DHS should review all other county services and compliance activities to determine if counties may be billed for them as well.

Cost Considerations of billing the counties

The cost considerations of this proposal are also delineated in Attachment B. For a billing system to be established and maintained, the following would be necessary:

- A timekeeping/billing records system would have to be developed.

- A cost allocation system would have to be developed to establish the charge rate and a cost allocation plan amendment would have to be written and negotiated through final approval by the Federal Division of Cost Allocation.

- All potential customers would have to include estimated costs of the service in their budgets and identify revenue sources.

- A billing, accounts receivable, cash management, and accounting system would have to be developed and staff hired to maintain it.

- Customers would have to be willing and have the money to pay the fees. Policies on how to handle customers who do not pay would have to be developed and implemented.

The savings realized by a billing process would be offset by the additional costs associated with administering a billing system. Additional DHS staff would most likely be needed to maintain the system.

A simpler billing process could perhaps be established which would entail charging a county a flat rate for services. However, under either a simple billing process or the more complex ones outlined in Attachment B, there still would be costs to setting up a billing, accounts receivable and accounting system as well as a system to deal with customers who do not pay. Additionally, if larger counties would choose to develop their own merit systems and leave the state system, costs to remaining counties would rise and may become prohibitive. The result would be that the state system would no longer be an option for smaller counties because of the costs. If these small counties could not establish their own merit systems because of costs, and if they were unable to pay their bill for Merit System services, the state would most likely have to cover part or all of the costs of operating the Merit System.

Billing the counties would have an impact on the federal reimbursement received by the state. Merit System expenditures are currently allocated to DHS programs as part of the department cost allocation plan and earn approximately 50% federal reimbursement that is deposited in the general fund. Billing the counties for the entire expenses of the Merit System means that the state would have to forego this federal reimbursement. DHS could bill the counties for the net state costs of operating the Merit System (total costs minus federal receipts), but because of the relatively small budget of the Merit System, the savings to the state would be offset by the administrative costs that DHS would incur in establishing and maintaining such a billing system.

Transfer functions to the counties

Transferring all functions currently performed by the Merit System to each county is yet another option. With this option, each county becomes responsible for ensuring compliance with merit standards. The federal approach to merit systems is to encourage innovation and flexibility among state and local governments and to intervene in disputes only when necessary. Minnesota could use the same model in reshaping the current system. In other words, with respect to the responsibility for maintaining conformance with merit principles, the state-county relationship could mirror the federal-state relationship. This is ideally what should be expected of counties.

Realistically, however, counties will not be able to take on the functions of a merit system without additional resources. At the present time, many counties served by the Merit System have county administrators or county coordinators who may, as part of their functions, handle personnel issues. In most of the counties, the coordinator or administrator works alone or has only one clerical support staff member assigned to work with them. And, because their duties are varied, they do not work full-time in human resources.

Some counties may argue that they are already carrying out some human resource functions for other county jobs, but it is debatable whether these would place them in compliance with merit system standards. For example, counties currently hire staff in county departments other than human services, but the extent to which they are developing some type of formal assessment process to ensure that the first merit principle (recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills...) is met is questionable. However, because the federal government no longer provides details as part of the merit system standards, there is an assumption that counties could achieve compliance with merit principles in a different manner than what is currently done by the Merit System, but it is unclear as to exactly what "different" means.

Another approach within this option is to encourage counties to operate regionally. For example, four or five contiguous counties could establish a regional human resources office. There would be some economy of scale in operating in this fashion, but there still would be a need for counties to hire additional staff. The role and responsibilities of the staff in this office would most likely be limited to assessment of applicants for vacancies and other selection related functions. It may be cumbersome for the responsibilities of this office to expand to other areas, since the individual counties in the region would most likely be using different job evaluation systems and have different personnel policies and/or labor contracts.

With either of the above options, the counties may have difficulty recruiting and attracting qualified professional staff to their human resources operation. Rural areas of the state have traditionally had difficulty filling professional level positions. Shortages of qualified staff may result in counties paying higher salaries.

With the transfer of the Merit System functions to the counties, counties could make use of outside vendors to perform some or all of the functions. However, it would be expensive for a county to contract out all of the functions currently performed by the Merit System. Other organizations, such as the Association of Minnesota Counties (AMC) could provide certain services, such as training or consultation, to individual counties, or several counties on a regional basis. The AMC might have to create an infrastructure to handle the merit system functions.

It should be noted that there already is a mechanism for counties to establish their own personnel systems (see County Personnel Act, Minn. Stat. §§375.56-375.71). Right now, there is little or no movement in the counties to develop their own systems. Although some counties may talked about it, none of the 77 counties served by the Merit System have, at this time, taken any formal steps to establish a personnel system that meets federal merit system standards. If DHS is able to get clarification from the federal government as to what is currently acceptable, and if that clarification means that we can demonstrate compliance with simpler systems, more counties may become interested in pursuing this option.

Cost Considerations of transferring functions to the counties

There would probably be increased costs to counties with this option, but the cost to each county would depend on how the function is handled and upon each county's infrastructure. Performing some functions on a regional basis or using AMC for some services may result in an economy of scale. For example, an organization such as the AMC might be able to provide the same services now provided for about the same cost. Contracting out some functions, such as exam development, would probably result in significant additional costs: One vendor estimates that the average cost of developing an examination for a jurisdiction is $5,000.

If handled by each county individually, all counties would experience workload increases in that they would be responsible for specific functions now handled by DHS, such as recruiting and testing candidates, setting compensation, and creating classifications for health, human services and emergency management employees. Counties would experience expenses as they create policies and procedures to maintain federal merit principles. It should be noted, too, that the county health and human services agencies normally are two of the largest departments in a county. Counties with full-service human resources departments may not have to hire additional staff. There are currently about three such counties currently served by the Merit System, so it is reasonable to estimate that most counties would need to add staff.

Because of the differences in county capabilities to assume the merit system functions, a cost analysis is difficult to complete. However, there are some, albeit rather crude, cost estimates that can be made. Since counties will experience an increase in workload, and because most of the counties covered by the Merit System do not have staff who work full-time in merit system functions, it is a conservative estimate that each county will need at least one professional staff person in human resources to carry out the functions. This person should have familiarity or experience in areas such as staffing, compensation and affirmative action/equal employment opportunity, and have a general knowledge of sound human resource management practices.

To arrive at the cost of one professional human resources staff member, the State of Minnesota classification of Personnel Representative is being used. The first step of the range, effective 7-1-95, is $32,072. With an additional 25% calculated for benefits, the annual total salary is $40,090. Since there are 77 counties served by the Merit System, the estimated minimum cost on a statewide basis is $3,086,930. Other costs would include additional clerical or support staff.

Another cost consideration concerns the federal reimbursement received by DHS as a result of Merit System expenses. If the Merit System functions were transferred to the counties, (whether assumed by them on an individual basis, regional basis, or with assistance from AMC or outside contractors), the state would no longer be able to claim the federal reimbursement. This means that the state programs that have made use of this federal money would either have to reduce costs or cover their expenses by using state money. Counties may, depending upon their own cost allocation plans, be able to recover some federal reimbursement. If counties placed the merit system operations and costs in county personnel offices, the costs would be subject to the provisions of the county-wide Cost

Cost Considerations (continued)

Allocation Plan and would be allocated out to the county departments including the Human Services department. That allocated portion of the costs would be incorporated into the county Human Services cost allocation plan and federal reimbursement would be claimed. This would yield very little federal reimbursement since the costs would be going through so many allocations that they would be diluted.

If the counties placed the merit system operation and costs directly in the county Human Services department, the counties could receive reimbursement, but there still would be cost dilution. It is estimated that, under this scenario, up to 25% of the costs could be recovered as federal reimbursement. This, however, may change. At the present time, federal administrative reimbursement is uncapped, but it is anticipated that welfare reform efforts and associated funding changes will result in fewer federal dollars for administrative functions in the future.

It is apparent that the costs resulting from the transfer of merit system functions to the counties is greater than the costs associated with operating the current state based Merit System.

V. OTHER ISSUES

A system to maintain federal merit principles clearly is important. However, given the current activity in health care and welfare reform efforts at the federal level, the problem of how best to manage the merit system requirement is not one of DHS's most pressing issues. It is inevitable that there will be policy and funding changes in welfare programs in the near future. Because the individual laws governing the specific health care and welfare programs contain language requiring adherence to the merit principles, conformance with the merit system principles is part of the requirements of each of the programs. As a result, decisions reached on how to manage the merit system requirement may best be dealt with in conjunction with the other program and funding changes that DHS will be forced to respond to.

A proposal by DHS to transfer the functions to the counties will have an impact not only on the county human services, health or emergency management agency, but on general county administrative costs. The functions would most likely be assumed by the county administrator, county coordinator, auditor, or whoever has responsibility for county personnel services, rather than the county social services director. Further, counties are having to take on more responsibilities in a number of areas, not only human services. It may not be good timing to give more responsibilities to the counties without some assurance that there are adequate resources at the local level.

It is clear that there will be fewer federal administrative dollars available to the state and the counties in the future. This means that choosing the most cost effective means of managing the merit system operation for county social services agencies is very important and that efforts should be made to reduce costs wherever possible.

VI. RECOMMENDATIONS

1. Considerations on how best to manage the merit system requirement should be made subsequent to other policy decisions that DHS makes as a result of the welfare and health care reform efforts at the federal level.

2. Any decisions on how to manage the merit system requirement should be made with adequate input from county customers and other affected parties, such as the Minnesota Association of County Social Services Administrators and the Association of Minnesota Counties.

3. The decisions on how to manage the merit system requirement should include a fiscal impact statement.

4. There should be further dialogue between federal officials and state and county staffs as to what a jurisdiction needs in order to achieve conformity with the merit system standards. Since the details of how to achieve compliance are no longer incorporated in the standards, federal officials should be invited to speak with state and county staff about the merit system standards and the number of possible ways that a jurisdiction can achieve compliance.

5. Merit System staff should enter into discussions with counties regarding possible delegation alternatives, including delegation of some activities to a consortium of counties. Training would have to be provided to county staff before such delegation could take place.

6. Continuing efforts should be made to re-engineer processes within the current state based merit system.

ATTACHMENT A

APPENDIX A TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES

1. Personnel mobility assignments of OPM personnel pursuant to title 5, U.S.C. chapter 33 and 5 CFR part 334 (36 FR 6488).

[38 FR 17920, July 5, 1973, as amended at 48 FR 6311, Feb. 11, 1983]

APPENDIX B TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. None at this time.

APPENDIX C TO SUBPART D—APPLICATION OF SUBPART D, PART 900, TO PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE OF THE OFFICE OF PERSONNEL MANAGEMENT

Nondiscrimination in Federally assisted programs or projects:

Examples. The following examples without being exhaustive illustrate the application of the nondiscrimination provisions of the Civil Rights Act of 1964 of this subpart in programs receiving financial assistance under programs of the Office of Personnel Management.

(1) Recipients of IPA financial assistance for training programs or fellowships may not differentiate between employees who are eligible for training or fellowships on the ground of race, color, or national origin.

(2) Recipients of IPA financial assistance for training programs may not provide facilities for training with the purpose or effect of separating employees on the ground of race, color, or national origin.

Subpart E—[Reserved]

Subpart F—Standards for a Merit System of Personnel Administration

AUTHORITY: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR part 557 (1971–1975 Compilation).

SOURCE: 48 FR 9210, Mar. 4, 1983, unless otherwise noted.

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provisions of title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603–604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as—

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) *Certification by Chief Executives.* (1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies any applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.

(3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

(b) *Resolution of Compliance Issues.* (1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They shall resolve all questions regarding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.

(3) if a chief executive is unable to resolve a compliance issue to the satisfaction of the Office of Personnel Management, the Office will assist the chief executive in resolving the issue. The Office of Personnel Management, as authorized by section 208 of the Intergovernmental Personnel Act, will determine whether personnel systems are in compliance with the Standards and will advise Federal agencies regarding application of the Standards and recommend actions to carry out the purpose of the Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

[48 FR 9210, Mar. 4, 1983; 48 FR 10801, Mar. 15, 1983]

§ 900.605 Establishing a merit requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

§ 900.606 Publication of procedures to implement merit requirements.

Procedures to implement these merit requirements will be specified in the Federal Personnel Manual System and other relevant publications of the Office of Personnel Management.

APPENDIX A TO SUBPART F—STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, section 1522, on January 2, 1975; 42 U.S.C. 300m-1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).[1]

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).[1]

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).[1]

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).[1]

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

[1] Pub. L. 92-603 repealed Titles I, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

Adoption Assistance and Foster Care, Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV-B); 45 CFR 1392.49(c).

Development Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Pub. L. 95-602, on November 6, 1978; 45 CFR 1386.21.

Emergency Management Assistance, Civil Defense Act of 1950 (Title II), as amended; 44 CFR 302.5.

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR 98.14(a).

Part III: The following programs have personnel requirements which may be met by a merit system which conforms to the Standards for Merit Systems of Personnel Administration.

Program, Legislation, and Reference

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1.

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV section 4510(a).

Subpart G—Nondiscrimination on the Basis of Handicap in Federally Assisted Programs of the Office of Personnel Management

AUTHORITY: 29 U.S.C. 794.

SOURCE: 45 FR 75569, Nov. 14, 1980, unless otherwise noted.

§ 900.701 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, to eliminate discrimination

ATTACHMENT B

FUNDING SUPPORT FUNCTIONS
THE "CHARGE FOR SERVICES" CONCEPT

Obtaining funding for support functions is an intractable and perennial problem. It seems that no one likes "administration", program/policy staff are reluctant to acknowledge support services provided for them, and the great variety of support tasks performed diffuses the impact of the total need.

One solution that is frequently proposed is for support operations to become self-funding by charging for the services that they provide. In the instant case, there are two scenarios that could be played out.

The first derives from the concept that the support division should operate "like a business". The way the State of Minnesota operates, this would mean that the division would become a true revolving fund or, stated another way, would become an "Internal Service Fund" such as the Intertechnologies Group or the State Motor Pool. Some ramifications of this approach are as follows:

- Legislative authority to establish the Fund would be required.

- A 100% timekeeping/billing records system would have to be developed, such as the computerized task management system that MAXIS uses. All staff in the division would have to utilize this system.

- A cost allocation system would have to be developed to establish the charge rate and a cost allocation plan amendment would have to be written and negotiated through final approval by the Federal Division of Cost Allocation. Updating amendments would have to be prepared, submitted, and approved every time something changed the rate calculations.

- State approval of the fees to be charged would have to be obtained through the Department of Finance per the state earnings report statute.

- Start up funding and cash flow reserve funds would have to be appropriated.

- All potential customers would have to include estimated costs of the service in their budgets and obtain the appropriations for them. For the customers to accomplish this, an ongoing charge estimation process would have to be developed by the service division.

- A billing, accounts receivable, cash management, and accounting system would have to be developed and staffed.

- Customers would have to be willing and able (have the money) to pay the charges. Action steps and a policy on how to deal with overdue customers would have to be developed.

The Internal Service Fund scenario is an unlikely one, because Legislative authorization would be very difficult to obtain. However, as complicated as it is, the Internal Service Fund idea is actually quite a bit simpler than the second scenario.

The second scenario is predicated on the ability of state agencies to do expenditure adjustments and reallocations. The support division would incur the expenses and make the expenditures. Then the expenditures would be reallocated from the service division accounts to customer accounts using the "9 group" object of expenditure classification. Most of the ramifications of the Internal Service Fund approach would apply (only the need to obtain Legislative authority to establish a separate fund would not be required) and some new ones would be added. The ramifications are as follows:

- A 100% timekeeping/billing records system would have to be developed, such as the computerized task management system that MAXIS uses. All staff in the division would have to utilize this system.

- A cost allocation system would have to be developed to establish the charge rate and a DHS Cost Allocation Plan amendment would have to be written and negotiated through final approval by the Federal Division of Cost Allocation. Updating amendments to the DHS Cost Allocation Plan would have to be prepared, submitted, and approved every time something changed the rate calculations.

- The DHS Cost Allocation Plan computer program would have to be reprogrammed in order to deal with the "9 group" charges. At this time it is difficult to see how this could even be done.

- State approval of the fees to be charged would have to be obtained through the Department of Finance per the state earnings report statute.

- Start up funding and cash flow reserve funds would have to be appropriated.

- General and Budget Activity specific explanations of the "9 group" adjustments would have to be written into the Biennial Budget narrative so that it is clear what costs are included where in the biennial budget document. Since the budget document will show "negative" expenditures in places, this will be very difficult to explain to legislators.

- All potential customers would have to include estimated costs of the service in their budgets and obtain the appropriations for them. For the customers to accomplish this, an ongoing charge estimation process would have to be developed by the service division.

- Since the "9 group" adjustments are always retroactive, DHS customers would have to be educated in how to manage their accounts. Monthly estimates of charges applied could be developed by the service division for each customer activity/division to facilitate this management.

- A billing, accounts receivable, cash management, and accounting system would have to be developed and staffed.

- Customers would have to be willing and able (have the money) to accept the charges. Action steps and a policy on how to deal with overdue customers would have to be developed.

When the time, effort, administrative complexity, additional administrative costs, and additional administrative staff that would be required to implement and maintain a "charge for support services" system are considered and compared to the volume of business conducted, it becomes quite obvious that the "charge for services" idea is not viable. However strange it may seem, there is little doubt that the present patchwork system of funding support functions is the most efficacious. This is not to say that streamlining efforts are not possible or that attempts to improve the process should not be undertaken.

Financial Management Division
Jon B. Darling - May 9, 1994