

CHAPTER 4695
DEPARTMENT OF HEALTH
HUMAN RESOURCES

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4695.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4695.0100 to 4695.0400 the words, terms, and phrases listed in subparts 2 to 15 shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

Subp. 2. **Boards.** "Boards" means the health-related licensing boards as defined in Minnesota Statutes, section 214.01, subdivision 2.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subp. 4. **Form of employment.** "Form of employment" means whether self-employed, working as employee, or other.

Subp. 5. **Individual.** "Individual" means a natural person.

Subp. 6. **Licensed.** "Licensed" means the state government regulation of an occupation as defined in Minnesota Statutes, section 214.001, subdivision 3, clause (d).

Subp. 7. **Licensure or registration status.** "Licensure or registration status" means the status of the individual license or registration as active or inactive under the regulatory authority of the commissioner or the boards. An active status means the individual is duly authorized to engage in the practice of activities for which he or she is licensed or registered. An inactive licensure or registration status means that the license or registration is not in effect.

Subp. 8. **Locality.** "Locality" means city, state or foreign country, county, and zip code.

Subp. 9. **Occupation.** "Occupation" means the health-related occupation for which an individual is licensed or registered by the commissioner or a board.

Subp. 10. **Occupational specialty.** "Occupational specialty" means the area emphasized, such as clinical, teaching, or specialty practice, in the activities the licensee or registrant performs in the health-related occupation for which he or she is licensed or registered.

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Subp. 11. **Permanent license or registration number.** "Permanent license or registration number" means the number assigned to each licensee or registrant by the commissioner or a board upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration. The permanent number may differ from a number the individual may receive upon periodic renewal of his/her license or registration.

Subp. 12. **Professional activity status.** "Professional activity status" means the licensee's or registrant's participation or potential participation in the practice of activities in the occupation for which he/she is licensed or registered. The individual's activity status may be identified as either active or inactive. If active, the extent to which the licensee or registrant is active is indicated by factors such as the duration over time of work in the occupation, whether currently working in the occupation, and by the average numbers of hours worked per week. If inactive, the potential for participation in the occupational labor force is indicated by the licensee's or registrant's status as retired, working in another occupation, disabled, or other employment statuses such as unemployed but seeking employment in the health-related occupation for which the individual is licensed or registered.

Subp. 13. **Professional title.** "Professional title" means the title which designates the position held by a licensee or registrant in his/her work setting in the health-related occupation for which he/she is licensed or registered.

Subp. 14. **Registered.** "Registered" means the state government regulation of an occupation as defined in Minnesota Statutes, section 214.001, subdivision 3, clause (c).

Subp. 15. **Type of setting.** "Type of setting" means the physical environment which may be institutional, such as a hospital, or noninstitutional, such as the patients' homes, in which the individual engages in the occupation for which he or she is licensed or registered.

Statutory Authority: *MS s 144.691*

4695.0200 AUTHORITY AND PURPOSE.

Parts 4695.0100 to 4695.0400 have been developed as required by Minnesota Statutes, sections 14.06, 144.05, 144.051, and 144.052. Parts 4695.0100 to 4695.0400 pertain to:

A. the types of information relating to numbers, distribution, and characteristics of health-related staffing which the commissioner of health deems necessary to collect as specified in parts 4695.0100 to 4695.0400 from individuals licensed or registered by the commissioner or the boards for the purpose of establishing an adequate information resource at the state level for making informed and reasonable decisions pertaining to health staffing; and

B. the forms which shall be used to collect the information.

Statutory Authority: *MS s 144.691*

History: *17 SR 1279*

4695.0300 TYPES OF INFORMATION.

Subpart 1. **Information from licensed or registered individuals.** Individuals who are licensed or registered by the commissioner or the boards shall submit to the commissioner, on forms provided by him/her, the following types of information:

A. permanent license or registration number;

B. locality of principal residence;

C. educational background which shall include:

(1) name and locality of school from which graduated with educational degree required for licensure or registration, and year degree was received;

(2) name and locality of school from which postsecondary educational preparation was received if a specific type of educational degree is not required for licensure or registration, and year preparation completed;

- (3) degrees received from educational institutions;
- (4) professional training beyond first degree received;
- D. professional activity status in the occupation which shall include:
 - (1) number of weeks worked in the occupation during the 12 months preceding data collection survey period;
 - (2) whether currently working in the occupation;
 - (3) average number of hours per week currently working in the occupation for which licensed or registered, apportioned by categories of activities in the occupation;
 - (4) if not currently working in the occupation, status as a member of the potential labor force for the occupation.
- E. locality where currently working in the occupation;
- F. type of setting where currently working in the occupation;
- G. category of current form of employment in the occupation;
- H. occupational specialty;
- I. current active licensure or registration held in other states.

Subp. 2. **Information from licensees of registrants in occupations.** The following types of information shall be collected only from the licensees or registrants in occupations for which the information is applicable given the practice characteristics of the occupation:

- A. the approximate number of patients treated in the course of the licensee's or registrant's currently active practice during a specified period;
- B. the range of employment of auxiliary personnel in the practice setting; and
- C. professional title of licensee or registrant.

Subp. 3. **Out-of-state registrants or licensees.** The commissioner may at the commissioner's option reduce the types of information for which responses are requested from licensees and registrants residing and practicing out-of-state.

Subp. 4. **Additional information.** In addition to the types of information listed in parts 4695.0100 to 4695.0400, name, current (mailing) address, licensure or registration status (at the time of data collection), birth date, sex, professional activity status, and educational background shall be included in the required information, as specified in Minnesota Statutes, section 144.052, subdivision 1.

Statutory Authority: *MS s 214.13*

History: *10 SR 1908; 17 SR 1279*

4695.0400 TYPES OF FORMS FOR COLLECTION OF INFORMATION.

Subpart 1. **Forms.** Information shall be collected on forms designed by the commissioner which shall contain statements of the statutory authority for collecting the information and of the data classification as classified pursuant to the Minnesota Government Data Practices Act. Whenever a survey form is sent to licensees or registrants in the same envelope as their license or registration renewal application, a statement will be added to the form to the effect that the survey is independent of licensure or registration renewal and that responses to the survey will have no bearing on license or registration renewal. The exact form and wording of the questions may vary depending upon the specific occupation surveyed so that the questions will be specific and relevant to the characteristics of each occupation; and may change in form and wording over time so that a question can be classified or its emphasis modified.

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Subp. 2. **Additional information.** When resources available to the commissioner permit, the form may include questions in addition to the types of information specified in part 4695.0300, subparts 1 and 2. Such questions may solicit:

A. Information sought by the commissioner for the purpose of making decisions pertaining to health staffing, but to be provided by the licensee or registrant on a voluntary basis.

B. Information sought by parties other than the commissioner for purposes of making decisions pertaining to health staffing. In these instances:

(1) the proposed additional questions may be included only if the commissioner determines that:

(a) the additional questions are relevant to making decisions pertaining to health staffing;

(b) resources permit the inclusion of additional questions on the form; and

(c) the information collection required by part 4695.0300, subparts 1 and 2, would not be delayed or otherwise inconvenienced by the inclusion of additional questions on the form;

(2) the form shall clearly identify the party requesting the additional information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

Statutory Authority: *MS s 144.691*

History: *17 SR 1279*

HUMAN SERVICES OCCUPATIONS; IDENTIFICATION AND REGULATION

4695.0500 PROCEDURES FOR DETERMINING REGULATIONS OF HUMAN SERVICE OCCUPATIONS.

Parts 4695.0500 to 4695.1600 establish the process to be used by the commissioner of health and the Human Services Occupations Advisory Council in carrying out the charges of Minnesota Statutes, sections 214.001, 214.13, and 214.141. They specify the procedures by which human services occupations are identified and decisions are made regarding the state's need to regulate persons in specific occupations. Parts 4695.0500 to 4695.1600 apply to all human services occupations that are not now credentialed by the state.

Statutory Authority: *MS s 214.13*

4695.0600 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4695.0500 to 4695.1600, the words, terms, and phrases listed in subparts 2 to 21 shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

Subp. 2. **Administrative authority.** "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.

Subp. 3. **Applicant group.** "Applicant group" means an occupational group that has submitted a letter of intent to begin the regulatory process.

Subp. 4. **Career progression.** "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of health.

Subp. 6. **Competence.** "Competence" means possession of requisite abilities to fulfill work obligations.

Subp. 7. **Conflict of interest.** "Conflict of interest" means:

A. a direct or indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice, or preconceived notion as to make it possible for the member to consider objectively the evidence presented and base a decision solely on such evidence;

B. circumstances such that a member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

Subp. 8. **Continuing education.** "Continuing education" means education or training beyond the individual's precredentialing preparation for an occupation.

Subp. 9. **Council.** "Council" means the Human Services Occupations Advisory Council.

Subp. 10. **Credentialing.** "Credentialing" means licensure or registration and the process by which they are obtained and administered.

Subp. 11. **Department.** "Department" means Minnesota Department of Health.

Subp. 12. **Function.** "Function" means a special task, duty, or performance required in the course of work or activity.

Subp. 13. **Functional differentiation.** "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

Subp. 14. **Human services occupations.** "Human services occupations" means an occupation whose principal functions are performed customarily for remuneration on behalf of individuals, families, or groups to assist in achieving:

A. optimal economic security through the provision of employment services, income security services, and income maintenance and ancillary supportive services;

B. optimal health through the provision of maintenance, diagnostic, treatment, and ancillary supportive services in the area of physical health, environmental health, mental health, and developmental disabilities;

C. optimal knowledge and skills through the provision of formal educational services, supplementary educational services, and ancillary supportive services; or

D. optimal social functioning through the provision of social adjustment services, social development services, protective services, correctional services, services to victims of abuse, neglect, exploitation or crime, and ancillary supportive services.

Subp. 15. **Letter of intent.** "Letter of intent" means an applicant group's written expression of aim to pursue regulation.

Subp. 16. **Licensure.** "Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

Subp. 17. **Not now credentialed.** "Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or specialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded, or specialty licensure or registration.

Subp. 18. **Occupational group.** "Occupational group" means human service workers who have common occupational functions.

Subp. 19. **Public forum.** "Public forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.

Subp. 20. **Questionnaire.** "Questionnaire" means document designed to provide information about an occupational group for purposes of aiding in making a regulatory determination.

Subp. 21. **Registration.** "Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

Statutory Authority: *MS s 214.13*

4695.0700 PROHIBITION.

A council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

Statutory Authority: *MS s 214.13*

4695.0800 FACTORS FOR DETERMINING THE NECESSITY OF REGULATION.

Subpart 1. **Consideration of factors.** In the review of an applicant group questionnaire, the subcommittee, council, and commissioner shall base their recommendation or decision as to whether or not the applicant group shall be regulated upon the factors contained in Minnesota Statutes, section 214.001, subdivision 2.

Subp. 2. **Factor of unregulated practice.** In applying the factor of whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote, at a minimum the relevance of the following shall be considered:

A. harm shall be construed to be a condition representative of physical, emotional, mental, social, financial, or intellectual impairment resulting from the functions rendered or failed to be rendered by the applicant group;

B. potential for harm may be recognizable when evidenced by at least one or more of the following: expert testimony; client, consumer, or patient testimony; research findings; legal precedents, financial awards, or judicial rulings;

C. potential for harm may be recognizable when evidenced by at least one or more of the following characteristics of the applicant group;

(1) inherently dangerous nature of the applicant group's functions;

(2) dangerous nature of devices or substances used in performing applicant group's functions;

(3) exercise by practitioners of the applicant groups of an observable degree of independent judgment when: identifying or evaluating a consumer's or client's symptoms; formulating a plan for consumer or client care, service delivery or treatment; and/or providing consumer or client care, delivering service, or implementing a plan of treatment;

D. potential for harm may be remote when evidenced by at least one or more of the following: infrequent or rare instances of impairment; impairment which is minor in nature; or secondary or tertiary effects of the applicant group's function.

Subp. 3. **Occupation requiring special skill factor.** In applying the factor of whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability, the existence of the following items shall be considered as indicating that specialized skill or training or their continuation is required:

A. that the functions performed by the practitioner are several and their performance necessitates a thorough understanding of the complex relationship between those functions;

B. that the one or more functions performed by the practitioner requires a detailed understanding of the specific components of the function and the relationship between the

functions and the symptoms, problem, or condition that function is intended to address or ameliorate;

C. that the absence of specialized skill or training is likely to increase the incidence and/or degree of harm as defined in subpart 2 to the consumer as client; and

D. that there occur frequent or major changes in areas of skilled knowledge and technique of which the practitioner must keep informed in order to meet current standards.

Subp. 4. **Factor of more effective means.** In applying the factor of whether the citizens of this state are or may be effectively protected by other means, at a minimum the relevance of the following shall be considered:

A. Indicators of protection by other means shall include but not be limited to:

- (1) supervision by practitioners in a regulated occupation;
- (2) existence of laws governing devices and substances used in the occupation;
- (3) existence of laws governing the standard of practice;
- (4) existence of standards for professional performance;
- (5) employment in licensed human service facilities which are required to employ competent staff;
- (6) existence of federal licensing as credentialing mechanism;
- (7) existence of civil service procedures which effectively screen potential employees for competence;
- (8) graduation of members of the applicant group from an accredited educational institution or training program;
- (9) mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;
- (10) existence of professional credentials and standards of performance which effectively sanction malpractice; and
- (11) existence of a national certification process which effectively attests to the competency of recognized professionals.

B. Indicators of protection by other means shall be assessed and evaluated at least in view of the extent to which they:

- (1) address all practitioners within an occupational group;
- (2) appear sufficient to protect the general public from harm caused by the practice of the occupation in question; and
- (3) appear to be permanent and ongoing mechanisms.

Subp. 5. **Overall cost effectiveness and economic impact.** In determining whether the overall cost effectiveness and economic impact would be positive for citizens of the state, the following shall be considered:

A. Positive cost effectiveness and economic impact results where the benefits expected to accrue to the public from a decision to regulate an occupation are greater than the costs resulting from that decision.

(1) Cost effectiveness means the relationship of the benefits anticipated from a decision to regulate an occupation to the overall costs to the public resulting from that decision.

(2) Economic impact means the direct and indirect effects on the price and supply of services provided by the occupation under consideration for regulation. Direct effects include impacts on the cost and supply of practitioners who would be regulated. Indirect effects include: the degree to which the existing practitioners will be precluded from practice because of regulation; the degree to which persons aspiring to practice the occupation, who if not for regulation could practice the occupation successfully, but will be

prohibited because of inability to meet entry requirements; impact on ability of minorities or protected classes to enter the occupation; or impact on innovations in the delivery of care or services as a result of regulation.

(3) Costs of a decision to regulate include the estimated costs to state and local governments of administering the proposed regulatory program; educational requirements and training costs including costs associated with experiential requirements of the proposed mode of regulation; and costs to the public such as reduced or increased access by potential or existing providers to labor markets.

(4) Benefits of a decision to regulate an occupation include access to less expensive but similar providers; measurable improvements in quality of care; reductions in costs of services; process for seeking redress for injury from malpractice, or other unprofessional conduct, and reduction in the potential for public harm from unregulated practice.

B. Cost effectiveness and economic impact can be evaluated through consideration of the following factors:

(1) degree to which regulation directly or indirectly impacts the costs and prices of goods or services provided by applicant group;

(2) impact upon the current and future supply of practitioners of the regulated occupation;

(3) degree to which the existing practitioners will be precluded from practice because of regulation;

(4) impact, if any, on innovations in the delivery of care or services as a result of regulation;

(5) costs of additional education and training required as a result of the regulation of the occupation;

(6) manner in which and degree to which regulation will result in improvement in the quality of care;

(7) degree to which services of the applicant group substitute for currently regulated occupations and estimated comparative costs of applicant group and currently regulated practitioners;

(8) degree to which services of the applicant group supplement currently regulated occupations;

(9) whether regulation confers or facilitates access to reimbursement for government assistance programs such as medicare and medicaid; estimated impact on program budgets; and

(10) impact on expenditures by government and private third-party payors, if any, resulting from regulation of the occupation.

Subp. 6. **Nonlimiting guidelines.** Subparts 2 to 5 shall be considered nonlimiting guidelines to be used in applying the statutory factors contained in Minnesota Statutes, section 214.001, subdivision 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in light of the statutory factors; provided, however, that the additional elements shall be identified during the course of the review and evaluation process, all interested persons given the opportunity to comment thereon, and shall be specifically addressed in the commissioner's written decision required by part 4695.1500.

Statutory Authority: *MS s 214.13*

History: *10 SR 1908*

**IDENTIFICATION OF OCCUPATIONAL GROUPS,
QUESTIONNAIRE CONTENTS, AND PROCESSING PRIORITIES****4695.0900 APPLICANT INITIATED IDENTIFICATION.**

Subpart 1. **Letter of intent and questionnaire.** The applicant group shall submit a letter of intent to the commissioner. Upon receipt of the letter of intent the commissioner shall send these rules and a questionnaire to the applicant group.

Subp. 2. **Submission of questionnaire.** The applicant group shall submit the completed questionnaire to the commissioner within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six-month period voids the original letter of intent and discontinues the regulatory decision process. The applicant group shall submit a new letter of intent if it desires to pursue regulation.

Subp. 3. **Transfer of questionnaire to council.** When the questionnaire is deemed complete by the department, the commissioner shall transmit the questionnaire to the council. If the department deems the questionnaire to be incomplete, it shall return the questionnaire to the applicant group with a report describing the deficiencies. If the applicant group considers the questionnaire to be complete, it may request that the questionnaire be submitted to the commissioner to determine whether the questionnaire contains adequate data for the commissioner to commence the process. Nothing in parts 4695.0500 to 4695.1600 shall prevent the department from informally assisting the applicant group in the completion of the questionnaire.

Statutory Authority: *MS s 214.13*

4695.1000 COMMISSIONER-INITIATED IDENTIFICATION.

Subpart 1. **Determination by commissioner of need for regulation.** When the commissioner, council, other groups, or individuals have reasons to suspect that an occupational group exists or is emerging but has not applied for credentialing and the question of regulation should be addressed the commissioner shall determine whether the need to regulate the group should be investigated. The determination shall be based upon evidence that raises the question of the need for occupational regulation. Such evidence may be derived from sources that include, but are not limited to court decisions, data collected by state and national regulatory agencies, federal law or rule, and information submitted by legislators, government or private agencies, or the public.

Subp. 2. **Collection of data.** The commissioner may direct staff to collect data substantially equivalent to that on the questionnaire for evaluation in the manner specified in parts 4695.1300 to 4695.1600.

Statutory Authority: *MS s 214.13*

4695.1100 CONTENTS OF QUESTIONNAIRE.

The questionnaire shall direct an applicant group to submit information related to the following matters:

A. evidence that an applicant group claiming to speak for an occupational group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified;

B. evidence that the occupational group meets the regulatory factors contained in Minnesota Statutes, section 214.001, subdivision 2; and

C. such other and additional information or evidence consistent with the provisions of applicable statute and these rules as well as information necessary to clarify matters already contained in the application.

Such information shall be requested for the sole purpose of enabling the commissioner to fairly, adequately, and completely evaluate the applicant questionnaire to determine whether an occupational group should be regulated, and if an occupational group is

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credentialed, under which administrative authority it will be regulated. The commissioner may suspend or terminate the regulatory decision process for failure to supply the information requested.

Statutory Authority: *MS s 214.13*

4695.1200 QUESTIONNAIRE PROCESSING PRIORITIES.

The commissioner may determine the priority for processing questionnaires. The priority of an applicant group will be based on evidence available in the questionnaire, particularly that relating to the potential harm to the public that the continued practice of the unregulated group may cause. After a determination of priority for entering the regulatory decision process has been made, the commissioner shall take the actions listed in parts 4695.1300 to 4695.1600.

Statutory Authority: *MS s 214.13*

REGULATORY DECISION PROCESS

4695.1300 DELAYED CONSIDERATION.

The commissioner shall proceed to notify the applicant group of the date at which its application might reasonably expect to be considered under parts 4695.1400 and 4695.1500. The notification will include the reasons for the delayed consideration.

Statutory Authority: *MS s 214.13*

4695.1400 IMMEDIATE CONSIDERATION.

Subpart 1. **Appointment of subcommittee.** When a questionnaire is received by the council, the chair of the council shall appoint a subcommittee of at least five members, none of whom shall have a conflict of interest, and shall name one of the members as subcommittee chair. Insofar as possible the subcommittee shall be broadly representative of the council.

Subp. 2. **Subcommittee procedures.** The subcommittee will meet to study the questionnaire as it addresses the factors contained in Minnesota Statutes, section 214.001, subdivision 2, and materials available to the subcommittee and to raise any questions members feel ought to be addressed either in subcommittee meetings or at the public forum. All written material related to the regulatory decision for an occupational group will be available as part of a public file retained at the Minnesota Department of Health and other locations the commissioner deems appropriate.

Subp. 3. **Public forum.** The subcommittee shall hold at least one public forum for the purpose of providing for public participation in the regulatory decision process, collecting information, raising and clarifying issues, and when possible, providing for the negotiation of differences. The first public forum shall be held within four months of the subcommittee appointments. The public forum shall be open to all persons.

Notification of the public forum shall be made in the following manner. All groups and persons identified by name as part of the occupational group by the questionnaire and through department study will be notified by mail. A news release will be sent out by the commissioner. Notice will be published in the department's monthly listing of health-related meetings. Notice will be sent to the public information offices of the Department of Corrections and the Department of Human Services for inclusion in any bulletins they use for public notification of meetings. Notice will be published in the State Register.

The conduct of the public forum(s) will be in accordance with procedures adopted by the council and available in writing to the public at the public forum. All interested persons will be given an opportunity to make a presentation although time limits may be imposed.

Subp. 4. **Subcommittee recommendations.** The subcommittee shall make recommendations to the council with respect to: the need for regulation, the type of regulation, whether any recommended credential be licensure or registration and the administrative

authority for any recommended credential. The department shall also make separate recommendations which accompany those of the subcommittee. Each recommendation shall be accompanied by the rational/justification used in arriving at the decision. Regulation of an occupational group shall be based on the factors contained in Minnesota Statutes, section 214.001, subdivision 2.

Subp. 5. **Council action.** The council will review the subcommittee recommendation and approve or modify it as necessary. A council final report and recommendations, along with supporting documents, will be sent to the commissioner for action. The department report and recommendations, with supporting documents, will accompany the council report.

Statutory Authority: *MS s 214.13*

History: *L 1984 c 654 art 5 s 58; 17 SR 1279*

4695.1500 COMMISSIONER ACTIONS.

Subpart 1. **Commissioner actions.** The commissioner, upon review of the council report and recommendations, will take one of the actions listed below. The commissioner's action will be accompanied by a report giving the reason for the decision. Notification of the action will be made in the same manner as that of the public forum as called for in part 4695.1400, subpart 3.

Subp. 2. **Registration with existing licensing board.** If the commissioner determines that an occupational group shall be credentialed by registration with an existing health-related licensing board acting as the administrative authority, the commissioner will establish procedures and adopt rules in cooperation with the identified board. The rules shall include, if appropriate, but not be limited to the following:

- A. functional differentiation of the group;
 - B. qualifications for registration for all entry routes;
 - C. requirements for different levels of registered titles corresponding to steps in the occupation's career progression;
 - D. organizational structure of any advisory councils to the administrative authority;
 - E. procedures for registration;
 - F. requirements for registration renewal, including but not limited to provisions attempting to assure continued competency;
 - G. disciplinary procedures;
 - H. fee setting for initial application for registration and for renewal application;
- and
- I. such other information that the commissioner deems necessary for the regulation of the occupational group.

Subp. 3. **Registration with existing licensing board, commissioner, or new licensing board.** If the commissioner determines that an occupational group should be credentialed by licensure, with either an existing health related licensing board, the commissioner, or a new and separate licensing board, acting as administrative authority, the commissioner shall promptly so report to the legislature.

Subp. 4. **Registration with the commissioner.** If the commissioner determines that an occupational group shall be regulated by registration, with the commissioner acting as administrative authority, the commissioner shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in subpart 2, items A to I.

Subp. 5. **Regulation under Minnesota Statutes.** If the commissioner determines that an occupational group should be regulated pursuant to Minnesota Statutes, section 214.001,

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subdivision 3, clause (a), (b), or (d) or any combination thereof or in combination with credentialing under parts 4695.0500 to 4695.1600, the commissioner shall promptly so report to the legislature.

Subp. 6. **No regulation.** If the commissioner determines that regulating the occupational group is not in the public interest, the applicant group (if the application was initiated by the group) or the council (if the application was initiated by the commissioner) shall be so notified.

Subp. 7. **Further study required.** If the commissioner determines that further study of the occupational group is required, the commissioner shall refer the recommendation back to the council for further study in accordance with the commissioner's instructions. The instructions shall include a specified time in which to complete this study. Extensions of time may be granted if needed to complete adequately the further study.

Statutory Authority: *MS s 214.13*

4695.1600 RECONSIDERATION PROCESS.

Subpart 1. **Request for reconsideration.** If an interested person or the applicant group is dissatisfied with the decision of the commissioner, the person or applicant group may request, within 60 days of notification of that decision, that the commissioner reconsider the application. The person or applicant group shall submit in writing, along with the request for reconsideration, arguments detailing why the decision of the commissioner was not supported by the evidence presented or why new or changed evidence does not support the earlier decision of the commissioner.

Subp. 2. **Commissioner action.** The commissioner may reconsider the regulatory decisions or remand them, along with all reports, recommendations, and supporting documents to the council. If the matter is remanded, the council shall reconsider the application and recommend either no change or appropriate changes to the commissioner. The council may refer the matter to the subcommittee which initially considered the application. The recommendation of the council shall include substantiating documentation. Reconsideration by the council may include new public forums if new or changed evidence warrants it.

Subp. 3. **Notice of result.** The commissioner shall notify the person or applicant group of the results of the request to reconsider the regulatory decisions.

Statutory Authority: *MS s 214.13*

REGISTRATION REQUIREMENTS

4695.2500 REGISTRATION OF ENVIRONMENTAL HEALTH SPECIALISTS/SANITARIANS.

The purpose of parts 4695.2500 to 4695.3200 is to establish the administrative structure, the procedures, and the requirements for the registration of those persons who are qualified to present themselves as environmental health specialists/sanitarians.

Statutory Authority: *MS s 214.13*

4695.2600 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4695.2500 to 4695.3200, the words, terms, and phrases listed in subparts 2 to 9 shall have the meaning stated herein, unless the language and context clearly indicates that a different meaning is intended.

Subp. 2. **Acceptable continuing education activity.** "Acceptable continuing education activity" means a learning experience in which a registrant has participated, evidence of which he/she submits to the council as part of the application for registration renewal, and which meets the requirements stated in parts 4695.2500 to 4695.3200.

Subp. 3. **Applicant.** "Applicant" means a person who applies pursuant to parts 4695.2500 to 4695.3200, either initially or on a renewal basis, to be registered as an environmental health specialist or sanitarian.

Subp. 4. **Commissioner.** "Commissioner" means commissioner of health.

Subp. 5. **Contact hour.** "Contact hour" means an instructional session of 50 consecutive minutes excluding coffee breaks, registration, meals (with or without speaker), or other social activities.

Subp. 6. **Council.** "Council" means environmental health specialists/sanitariums advisory council as referenced in parts 4695.3100 and 4695.3200.

Subp. 7. **Environmental health specialist/sanitarian.** "Environmental health specialist/sanitarian" means a person registered pursuant to these rules to plan, organize, manage, implement, and evaluate one or more program areas comprising the field of environmental health. Environmental program areas include but are not limited to: food, beverage, and lodging sanitation; housing; refuse disposal; water supply sanitation; rodent, insect, and vermin control; accident prevention; swimming pool and public bathing facility sanitation; radiation safety; air and water quality, noise pollution, and institutional and industrial hygiene. Implementation includes community education, investigation, consultation, review of construction plans, collection of samples and interpretation of laboratory data, enforcement actions, review and recommendation of policy and/or regulation.

Subp. 8. **Registration.** "Registration" or "registered" means that an applicant has been found by the commissioner to meet the qualifications specified in parts 4695.2500 to 4695.3200 to protect environmental health. Only persons so registered are permitted to use the designated titles of "environmental health specialist" or "sanitarian" or the initials "R.S."

Subp. 9. **Registration examination.** "Registration examination" means the examination approved by the commissioner and administered by the commissioner or the commissioner's designated agent. For approval the examination must meet the following criteria:

A. the examination has been validated by a content validity study which consists of data showing that the examination covers a representative sample of the job tasks, work behaviors, performance skills to be performed on the job for which the applicant is to be evaluated; and/or

B. the examination has been validated by a criterion related validity study which consists of empirical data demonstrating that the selection procedure is predictive of, or significantly correlated with, job performance and which has a validity coefficient significant at the .05 level of significance; and

C. validity studies are based upon a review of information about the job for which the examination is to be used, which shall include but is not limited to an analysis of job tasks, work behaviors, or performance skills that are relevant to the job; and

D. job tasks, work behaviors, or performance skills used as a basis for test developments and validity studies must include but are not limited to the knowledge areas in the definition of environmental health specialist/sanitarian as outlined in subpart 7; and

E. the examination has been determined to be reliable utilizing the parallel forms or internal consistency methods of estimating reliability and the reliability coefficient is no less than .70; and

F. the examination is revised or a new form is issued when technical advances in the field indicate the examination should be updated to acknowledge related changes in the definition of environmental health specialist/sanitarian as outlined in subpart 7. The commissioner may adopt for use at the commissioner's discretion any standardized national test which meets these criteria.

Statutory Authority: *MS s 214.13*

History: *17 SR 1279*

4695.2700 INITIAL REGISTRATION.

Subpart 1. **Application.** All applicants for initial registration shall submit an application on a form to be prepared by the commissioner and fees as prescribed in part 4695.2900.

The information requested by the commissioner on the application shall be such so as to permit a complete evaluation of each applicant to determine whether the applicant meets the requirements for registration as specified in these rules and any applicable statutes. To clarify incomplete or ambiguous information presented in the application, the commissioner may request an applicant to submit additional information as may be necessary to determine the applicant's qualifications. In order to be registered, an applicant shall provide:

A. Evidence of receiving a baccalaureate or postbaccalaureate degree in environmental health, sanitary science, sanitary engineering, or other related environmental health field which includes at least 30 semester or 45 quarter hour credits in the physical or biological sciences.

B. Evidence of at least one year of supervised employment in one or more of the program areas listed in part 4695.2600, subpart 7, definition of "environmental health specialist/sanitarian." Supervision shall be provided by an environmental health specialist or a sanitarian or a licensed health professional, or an engineer or other professional with a graduate degree in one of the physical or biological sciences, or other person whom the commissioner deems has equivalent environmental health background.

C. Evidence of passing the registration examination.

Subp. 2. **Applicants without a baccalaureate.** For a period of six months following August 1, 1979, an applicant may be registered without having received a baccalaureate or higher degree as provided in subpart 1 if the applicant:

A. submits evidence of experience in one or more of the program areas listed in part 4695.2600, subpart 7, definition of an "environmental health specialist" or "sanitarian" for at least the five years immediately preceding his/her application;

B. submits a statement of satisfactory employment by the employer or supervisor which indicates that the applicant has performed competently in one or more of the program areas listed in the definition of environmental health specialist/sanitarian;

C. submits evidence of having passed a civil service or other qualifying exam for a job classification of "environmental health specialist" or "sanitarian" or inspector or public health officer or engineer or other similar equivalent job title classification or of having successfully completed the registration exam.

Subp. 3. **Examination retakes.** No applicant shall make more than two attempts within any 12-month period to successfully complete the registration examination.

Subp. 4. **Applicants licensed outside Minnesota.** Persons who have attained a registration or license outside of Minnesota may be entitled to registration in Minnesota if they can provide evidence of meeting the requirements set forth in subpart 1, items A to C.

Statutory Authority: *MS s 214.13*

4695.2800 RENEWAL REGISTRATION.

Subpart 1. **Expiration and renewal.** An applicant's registration shall expire biennially on his/her birthday unless it is renewed. Each applicant shall be required to renew his/her registration every two years except that following the initial registration date, an applicant shall renew his/her registration no less than 24 months and no more than 36 months if he/she is registered for the first time on a date other than his/her birthday. Every applicant shall submit a completed registration renewal application, on a form provided by the commissioner together with the renewal fee for the biennium or part thereof. The information requested by the commissioner on the registration renewal application shall be such so as to permit a complete evaluation of each application to determine whether the applicant meets the requirements for registration renewal as specified in these rules and any applicable statutes. To clarify incomplete or ambiguous information presented in the application, the commissioner or the commissioner's agent may request an applicant to submit additional information as may be necessary to determine the applicant's qualifications for renewal. Applications submitted after the applicant's birthday must be accompanied by the late fee of \$10 together with all other information required by parts 4695.2500 to 4695.3200.

Subp. 2. **Continuing education.** For registration renewal, each registrant shall submit evidence of successful completion of 24 contact hours of acceptable continuing education activities the content of which is related to one or more of the environmental program areas contained in part 4695.2600, subpart 7.

Subp. 3. **Criteria for continuing education.** A continued education activity must meet the following criteria in order for credit to be given:

A. It must have a specific, written objective(s) which describe expected outcomes for the participant.

B. It must be presented by knowledgeable person(s) who have reviewed the development in the subject being covered in the program within the last two years. His/her qualifications must be documented by one of the following: specialized training in the subject matter; experience in teaching the subject matter; experience in working in the subject areas.

C. It must last at least one contact hour.

D. It must have stated in written form what mechanism was utilized to demonstrate whether or not learning did occur. The mechanism may include, but is not limited to, a successfully completed written test or a performance component.

E. It must utilize a mechanism to validate participation. This may include, but is not limited to, earned credits and/or verification of attendance. Program sponsors shall maintain attendance sheets for three years.

Subp. 4. **Council review of compliance with renewal requirements.** The council shall review the submitted evidence and decide if the evidence demonstrates that the registrant has complied with the renewal requirements set forth in subparts 2 and 3. If the council decides that the evidence demonstrates that the registrant has so complied, the council will recommend to the commissioner that the registrant's continuing education activities should be accepted.

If the council decides that the evidence does not demonstrate that the registrant has complied with subparts 2 and 3, the council will so inform the applicant who will then have an opportunity to submit additional evidence, decide if it demonstrates that the registrant has complied with subparts 2 and 3, and recommend to the commissioner that the registrant's continuing education activities should or should not be accepted. The commissioner will then make the final decision regarding the acceptability of the registrant's continuing education activities.

Subp. 5. **Expiration for more than two years.** Applicants who have permitted their registrations to expire for more than two years may regain their registration when they successfully complete the registration examination, complete continuing education requirements, and submit the required renewal forms and fees.

Statutory Authority: *MS s 214.13*

History: *17 SR 1279*

4695.2900 APPLICATION FEES.

Fees to be submitted with initial or renewal applications shall be as follows:

A. Initial application fee, \$45 plus examination fees.

B. Biennial renewal application fee, \$45.

C. Penalty for late submission of renewal application, \$10, if not renewed by designated renewal date.

Statutory Authority: *MS s 214.13*

History: *10 SR 1687*

4695.3000 DISCIPLINARY ACTIONS.

Subpart 1. **Investigation upon complaint.** Upon receipt of a complaint or other communication, whether oral or written, which alleges or implies the existence of a ground for denial of registration or disciplinary action as specified in subpart 2 the commissioner or council may initiate an investigation.

Prior to any disciplinary action a written complaint shall be obtained from a complaining party. In so doing, the council may request the registrant to appear before them to determine the merits of the situation in question. In each case, the council shall make a recommendation to the commissioner as to whether proceedings under the Administrative Procedure Act would be appropriate and should be initiated.

Subp. 2. **Refusal to grant or renew registration.** The commissioner may refuse to grant or renew a registration, suspend or revoke a registration, or use any reasonable lesser remedy against a registrant for any of the following reasons:

- A. submission of false or misleading information or credentials in order to obtain or renew registration;
- B. failure to meet the requirements for initial or renewal registration; or
- C. incompetency, negligence, or inappropriate conduct in the performance or environmental health duties or related functions.

Subp. 3. **Compliance with the Administrative Procedure Act.** Disciplinary actions shall comply with the provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14.

Subp. 4. **Revocation or suspension.** Upon revocation or suspension, the registrant shall return to the commissioner his/her registration and current renewal certificates.

Subp. 5. **Reregistration after revocation.** A registrant who has had his/her registration revoked shall not be entitled to apply for reregistration until at least one year following the effective date of the revocation or such longer period of time specified by the commissioner.

Subp. 6. **Reinstatement.** A suspended registration may be reinstated upon fulfillment of the terms of suspension; provided, however, that all requirements of the rules for registration renewal, if applicable, shall be met prior to reinstatement.

Statutory Authority: *MS s 214.13*

**ENVIRONMENTAL HEALTH SPECIALIST/SANITARIAN
ADVISORY COUNCIL**

4695.3100 MEMBERSHIP.

The council shall consist of seven members appointed by the commissioner as follows:

- A. two public members as defined in Minnesota Statutes, section 214.02;
- B. one educator or a representative from a regulated industry for which environmental health specialists/sanitarians are charged with enforcement of the regulation;
- C. four environmental health specialists/sanitarians representative of county, municipal, and state agencies which reflect the distribution of environmental health specialists/sanitarians among these employers at the time of appointment.

Statutory Authority: *MS s 214.13*

4695.3200 ORGANIZATION, DUTIES, AND RESPONSIBILITIES.

The council shall be organized and administered under the provisions of Minnesota Statutes, section 15.059, and the commissioner's policies relating to advisory councils. The council shall:

- A. advise the commissioner regarding environmental health specialist/sanitarian registration standards;

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B. advise the commissioner on enforcement of the environmental health specialist/sanitarian rules;

C. provide for the dissemination of information regarding environmental health specialist/sanitarian registration standards; and

D. review applications and recommend applicants for registration or registration renewal.

Statutory Authority: *MS s 214.13*