

Minnesota Attorney General: Administrative Rules Proceedings

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Attorney General

Barbara D. Gill
Special Assistant
Attorney General
Department of Welfare

April 12, 1976

Michael B. Miller
Special Assistant
Attorney General

296-4692

Welfare Rule DPW 49

Returned herewith is the above-captioned rule. This rule is not approved as to form and legality for the following reasons:

1. The requirement of factual support for the rules, as evidenced by an affirmative presentation by the promulgating department, was not met;

2. Two rules present questions of legality that should be noted:

   a. The problem of whether non-appealing providers who are in the same factual circumstances as appealing providers should have appeals decisions applied to them; and

   b. The problem of whether records and data produced by providers for the Department of Public Welfare are public records and therefore accessible to public scrutiny.

3. In addition, the rules need two clarifications:

   a. The difference, if any, between the terms "two fiscal years" and "twenty-four months" in Rule (Proposed) 4914 (c)(3); and

   b. The definition of "prevail" in Rule (Adopted) 49 C(1) (q).

MBM/sr

Enclosures

cc: John M. Broeker

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Attorney General

Thomas L. Fabel
Deputy Attorney General
Department of Welfare

May 25, 1976

Michael B. Miller
Special Assistant
Attorney General

296-4692

Welfare Rule 49

To clarify the record on the above-captioned rule, the two questions of legality of the rule raised in paragraph 2 my memorandum of April 12, 1976 were, as a result of discussions with Barbara Gill, resolved in favor of the rule.

MBM/mb

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CURTIS L. STINE

April 16, 1976

Ms. Barbara Gill
Special Assistant Attorney General
Minnesota Department of Public Welfare
Fourth Floor
Centennial Office Building
Saint Paul, Minnesota 55155

Re: Department of Public Welfare Rule 49

Dear Ms. Gill:

For our records, we would appreciate having any comments which you sent over to Mike Miller of the Attorney General's office in regard to the amendments to Rule 49 proposed at public hearing on December 30, 1975. We understand that you had sent some comments over there. Thank you for your anticipated cooperation in this matter.

Very truly yours,

BROEKER AND BACHMAN

By John M. Broeker
John M. Broeker

JMB:jp
cc: Mr. Mike Miller

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Mr. Michael Miller
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April 9, 1976

Mr. James Hiniker
Department of Public Welfare
Fourth Floor
Centennial Office Building
Saint Paul, Minnesota 55155

Re: Department of Public Welfare Proposed Rule 47

Dear Mr. Hiniker:

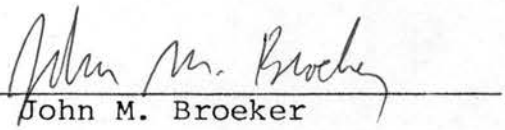
This letter is to confirm Kathryn Baerwald's letter of November 26, 1975, to Mr. Michael Miller in regard to the above rule. You received a copy of that letter. In that letter we indicated that we wished to be notified at the time the Department of Public Welfare files the above-entitled rule with the office of the Attorney General. The purpose of this request is to allow compliance with Atty. Gen. 305(c) which allows an individual or an organization to raise questions as to the form and legality of rules being reviewed by the Attorney General. Our purpose in renewing our earlier request arises out of a recent experience whereunder we were not notified when Rule 49 was sent over to the Attorney General's office even though we had requested to be so notified.

Also, we would also like to recall your attention to our letter to you of January 23, 1976, wherein we requested a copy of the fiscal impact note costing out the proposed changes to Rule 47 which you indicated was being prepared at the time of the public hearing on the Rule 47 amendments. You had indicated to us at the time of the Public Hearing that you would provide us with a copy of such fiscal impact note. We would appreciate receiving this information as soon as possible.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

BROEKER AND BACHMAN

By 
John M. Broeker

cc: Ms. Vera Likins
Ms. Susan Connors
Mr. David Van Wyk
Mr. Rick Evans
Mr. Michael Miller ✓
Mr. Robert C. Baird

JMB:jp

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CURTIS L. STINE

January 19, 1976

Ms. Vera Likins
Commissioner
Minnesota Department of Public Welfare
Fourth Floor - Centennial Office Bldg.
Saint Paul, Minnesota 55155

Re: In the Matter of Proposed Amendments to Rule 49 of the Minnesota Department of Public Welfare Regulating Welfare Per-Diem Rates for Nursing Home Providers Under the Medical Assistance Program - Written Comments to be Added to the Hearing Record of December 30, 1975.

Dear Ms. Likins:

The undersigned law firm appeared at the above referenced hearing on behalf of the Minnesota Association of Health Care Facilities and individual nursing homes located throughout the State of Minnesota. This letter is intended to provide additional written comments to supplement our testimony presented at the time of the public hearing. Our comments are as follows:

① Legal question 4912c.

Although it was announced at the time of the public hearing that the amendment made to this rule was only clarifying, significant legal relationships are affected. As we indicated at the time of the public hearing, we believe this change to be illegal.

unclear
I b 3 vague?

Two obvious problems occur in the definitions of "ownership" and "management" used in the proposed change. First, with a publicly held corporation, any change of a share of stock could be a change of ownership. Second, any change of an administrator could be a change in management. Taken to the absurd, this proposed change might make a present administrator responsible for the wrongdoing of a former owner, even though the new administrator may not be an owner of the facility nor have any say in what appears in a Rule 49 cost statement.

rule prevents fraud

Perhaps more basic than the practical problems cited above is the fact that the proposed change to Rule 4912c. runs contrary to accepted principles of new owners' liability for old owners' debts. The courts have repeatedly ruled that a party cannot go against a new owner for the acts of a previous owner. For example, a new employer is generally not liable for unpaid employee withholding taxes that a prior employer should have paid but did not. Under the case law it is clear that unless one has direct control of the wages paid to employees, and therefore has the power to deduct from employee wages, he is not liable for payment of the withholding taxes. See, e.g. Phinney v. Southern Warehouse Corp., 212 F.2d 488 (5 Cir. 1954); American Fidelity Co. v. Delaney, 114 F. Supp. 702 (D.C. Vt. 1953). Although sometimes trustees in bankruptcy are liable for withholding taxes of the bankrupt, this obligation is in part based on the fact that the trustee has control of paying back wages. See the recent United States Supreme Court case of Otte v. United States, 419 U.S. 43. Since a new nursing home owner or administrator has certainly not had any control over wages paid to the employee in the past, certainly such owner or administrator would not be liable for matters concerning employee wages handled under previous ownership or management. The same principle should apply under Rule 49.

Another area of the common law which has recognized the unique position of a successor is labor law. NLRB v. Burns International Securities, 406 U.S. 272 (1972) holds that a new employer is not bound by the substantive terms of a preexisting collective bargaining agreement. In that case, the United States Supreme Court looked to the policies which militated against making a former contract enforceable against a new employer. These same policies, set out below, are applicable in the nursing home context as well:

1. A successor has neither expressly nor impliedly assumed obligations incurred by its predecessor;

2. To hold otherwise would inhibit the free transfer of capital;

3. Successors must be free to make substantial changes in the operation of the enterprise.

These policy considerations are reiterated in a 1974 United States Supreme Court decision, Howard Johnson Co., Inc. v. Detroit Local Joint Executive Board, 417 U.S. 249 (1974). As pointed out at the time of the public hearing, there is no way for prospective buyers to assure themselves of a nursing home's non-liability or liability to the State under Rule 49.

The basic principle that a successor is not liable for the obligations of its predecessor is so well entrenched in the law that it has been codified in several disparate fields. The Recording Act, Minn. Stat. §507.34, makes an unrecorded conveyance void as against any subsequent purchaser in good faith and for valuable consideration of the same real estate whose conveyance is first duly recorded. Under the Uniform Commercial Code, a bona fide purchase of investment securities acquires them free of any adverse claim. See Minn. Stat. §336.8-301(2). A bona fide purchaser is defined as one who purchases for value, in good faith and without notice of any adverse claim. See Minn. Stat. §336.8-302. Also under the Uniform Commercial Code, a holder in due course takes an instrument free from all claims to it on the part of any person. See Minn. Stat. §336.3-301(1). A holder in due course is one who buys an instrument for value, in good faith, and without notice that it is overdue or has been dishonored, or of any defense against or claim to it on the part of any person. See Minn. Stat. §336.3-302.

All of the above statutes and much of the case law recognizes that a successor cannot be liable for his predecessor's obligation unless he either had notice of them or was actively involved in incurring them. The same conditions for liability should be built into the proposed change to 4912c.

(2) Fact question

4914b.

Much of the testimony on this point given on behalf of the Minnesota Association of Health Care Facilities was presented by Jack Brose, a Certified Public Accountant and partner in the firm of Larson, Allen, Weishair & Co. Mr. Brose supplemented his oral comments to the record by letter of January 5, 1976.

While the 50 cent per patient per day amount may be adequate to cover the cost of the medical director and consultant services for a large facility, it is not necessarily adequate to cover such costs where the facility is small with relatively few residents. Although Mr. Hiniker indicated at the time of the public hearing that the 50 cents was arrived at after consultation with Mr. Harry Lemieux, President of the Minnesota Association of Health Care Facilities, Mr. Lemieux himself later indicated at the hearing that the 50 cent figure was not appropriate for all facilities. Mr. Lemieux proposed that the 50 cent figure should be raised to 75 cents and that the Department should review the propriety of this figure at the close of the first year of the rule's application.

A strong argument can be made that the actual costs for the services of a medical director and consultants should be fully reimbursed

under Rule 49 since the requirements for a medical director and consultants are requirements imposed by the welfare program and are not necessarily applicable to private patients within a facility. It follows that the entire costs of these services should be borne by the welfare system instead of being passed on to private pay residents at facilities.

(3) Unclarity? suggested change is good but w/ mandatory NOTE THIS

4914c.3.

As pointed out at the time of the public hearing by Mr. Hiniker, it is clear that the 24 months referred to in the proposed change represents a minimum as well as a maximum time period during which a covered facility will be exempt from regional maximums. This rule could be clarified by deleting the language "two immediate fiscal years, but not to exceed" which appears in the proposed changes to DWP Rule 49 dated November 25, 1975.

We also endorse comments in regard to this section by Jack Brose, Tom Lenertz (of Riverview Hospital in Crookston) and Oiva Penttila, a Certified Public Accountant, which comments were directed to the difficulties in starting up a new facility or adding an addition in terms of Rule 49 maximums. These comments were made at the time of the Rule 49 hearing.

(4) Fact question

4914c.5.

The Minnesota Association of Health Care Facilities opposes this change, which, in effect, limits the pass-through of salary increases for facilities over the regional maximum by two percent, permits no reimbursement for additional staff required by state and federal regulations if a facility is at the maximum and, in any event, abolishes this exemption by December 31, 1977. There was absolutely no factual justification put on the hearing record justifying this change.

Although Mr. Hiniker explained that the pass-through covered by this rule no longer applied to additional staff because, in theory, all homes should have already attained minimum staffing requirements by the termination of this rule, there is always the possibility that either the Legislature of the Department of Health may impose additional staff requirements. Additional staff requirements may also be required by the federal government. Minimally the rule should be changed to permit the pass-through from the maximum rates of salary cost increases for additional staff which may be required by regulatory agencies in the future. Such additional staffing requirements are likely given present trends in the federal government, the Minnesota Legislature and the Minnesota Department of Health.

The net effect of the proposal being made by the Department of Public Welfare for changes in this rule will force facilities to keep salaries down and to not hire needed additional staff, especially where there is a large percentage of welfare recipients in the facility. Conceivably nursing homes will not be able to remain competitive with hospitals in granting wage increases and will lose staff to hospitals. Even facilities which may desire to give increases will be prohibited from doing so by the proposed change in the rule.

The reason that rule 4914c.5. was inserted in the first instance still exists today. Because of the artifically low rates for salaries built into Rule 49, nursing homes were unable to keep and attract qualified staff and were not able to compete with hospitals and other health care facilities. High turnover and incompetent help directly relates to the quality of patient care.

In fact, if any changes are made to this rule, the rule should be rewritten so as to permit any salary increase or additional personnel costs to be fully covered by Rule 49. Salary costs will remain reasonable since other factors will control the amount of salary increases. For example, to the extent that facilities have private pay patients the facility will have to bear the increased cost itself. This factor will force the facility to be reasonable in making salary increases, yet it will still give the facility the flexibility to meet competition and to provide realistic salary increases.

(3) Procedural question

4915b. through 4915g. (renumbered 4915b. through 4915e.)

All of these changes relate to changes in the appeals process. The Minnesota Association of Health Care Facilities opposes these changes.

In order, the Minnesota Association of Health Care Facilities would prefer:

1. Retention of the present Appeals Committee with the authority to make the final determination as to a facility's Rule 49 rate.

2. The use of an Appeals Examiner from the State of Minnesota's Hearings Examiner Office with the authority to make the final determination of a Rule 49 rate.

3. Retention of the present system.

Dept.'s com.

4. Abolishment of any administrative appeal within the Department of Public Welfare with appeal being permitted directly to District Court.

5. The present proposed system set out in the changes to Department of Public Welfare Rule 49.

The changes would permit a Hearing Examiner, with no training under Rule 49, to come in and attempt to make recommendations to the Commissioner of Public Welfare. Few, if any, Hearing Examiners have the requisite training in order to effectively be able to make recommendations and this proposed change would simply be an exercise in futility.

It is questionable whether the present Rule 49 appeals procedure is a "contested case" within the definition of Minn. Stat. §1504.11 subd. 4, requiring the use of Hearing Examiners. Since the present Advisory Committee only recommends, it is questionable whether such a proceeding affects the "legal rights, duties, or privileges of specific parties" as noted in the statute.

In any event, even if the proposed changes go through intact, the proposed changes do not eliminate all references to the Appeals Committee which now appear in Rule 49. See, for example, rule 4915f. and rule 4915h.

④ legal question - NOTE & pt. out that should be consistent w/ statute.

4915h. (renumbered 4915f.)

Not permitting non-appealing providers from taking advantage of a decision of the Appeals Committee of Hearing Examiner runs completely contrary to basic tenets of law. The proposed rule change has the practical impact of permitting the Department of Public Welfare to perpetuate its wrongs.

Analogizing to tax law, any taxpayer can file an amended return if the applicable statute of limitations has not expired to take advantage of any administrative or court decision. This is true of all other areas of the law within the direct knowledge of the undersigned. The proposed change to rule 4915f. appears to create a whole new legal concept.

In addition, the proposed change may in fact encumber the administrative process in that it could potentially increase the number of contestants challenging Rule 49. Unfortunately the larger facilities with the most resources would be the ones who could afford to bring later challenges taking advantage of an earlier ruling. Small providers lacking resources would unfortunately be the ones who would suffer the most under the proposed changes.

We also respectfully point out to the Department of Public Welfare that this rule requires the Department of Public Welfare to "prepare quarterly a summary of the decisions of the Appeals Committee rendered during the preceding quarter." To the best of our knowledge the Department has not yet prepared these summaries and is in violation of its own regulations.

(5) Fact question

49Ø1a.5.

The Minnesota Association of Health Care Facilities opposes this change unless the Department of Public Welfare is required to make its request for additional data within a specified period of time. The whole purpose of the 30 day provision is to permit a reasonably quick decision as to a provider's rate. If the Department is permitted to delay this rate determination by delaying its request for additional data, the entire purpose of the rule is defeated.

492la.8.

Although the Minnesota Association of Health Care Facilities recognizes the Department of Public Welfare's legitimate interest in verifying data in Rule 49 cost statements, the Association opposes the proposed change to rule 492la.8. Under present Department posture in some cases, the practice of the Department has been to retain documentation provided to it which becomes a matter of public record. The Minnesota Association of Health Care Facilities does not object to the providing of material, but does object to making such material a matter of public record.

(6) Legal question - NOTE - call for legal auth?

Making purchase agreements and supporting documents a matter of public record in effect makes a work product, paid for by the provider, a matter of public record available to be copied and exploited by other entities. This places the purchaser at a competitive disadvantage vis-a-vis other providers who have not had to file such material. Further, no reason has been developed by the Department of Public Welfare to justify this rule change.

The Minnesota Data Records Law, in our opinion, does not require making records submitted to the Department of Public Welfare, in regard to a purchase, matters of public record. Minn. Stat. §256B.27 and Minn. Stat. §256B.30 only mandate that records be used for inspection and audit by the Public Welfare Commissioner. Minn. Stat. §15.17 provides, in pertinent part, as follows:

> "Subd.4. Accessible to public. Every custodian of public records shall keep [these records] in such arrangement and condition as to make them easily accessible for convenient use. . .. Except as otherwise

> expressly provided by law, he shall permit all public records in his custody to be inspected, examined, and abstracted, or copied at reasonable times and under his supervision and regulation by any person . . . ." [Emphasis supplied.]

Nowhere in the law is it provided that purchase agreements and the like are required to be kept on public record. In Kottschade v. Lundberg, 280 Minn. 501, 160 N.W.2d 135 (1968), the Supreme Court of the State of Minnesota construed Minn. Stat. §15.17, subd. 1, which statute requires:

> "All officers and agencies of the state, and all officers and agencies of the counties, cities, villages, and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities."

The Supreme Court in Kottschade recognized that this language, if read literally, would place no bounds on the information which must be made public record. The Court recognized, however, that this could not have been the intention of the Legislature. The Court limited the meaning of "official activities" as used above in the following way:

> "It seems to us that they are limited to official actions as opposed to thought processes. If so, all that need be kept of record is information pertaining to an official decision, and not information relating to the process by which such decision was reached." See 160 N.W.2d at p. 138.

In Kottschade the Supreme Court refused to grant a landowners' associations' request to compel disclosure of land appraisal "field reports". These field reports were required as permanent records under a manual issued by the Minnesota Department of Taxation. The field cards, said the Court, only related to the process by which a tax assessment was arrived at. Such cards did not relate to the assessment itself. Similarly, herein, purchase agreements and other documents related to a change in ownership do not relate to any decision per se. At the very most, such documents relate only to the decision processes of the Department. As such, they are not required to be a public record under the Kottschade rule.

Furthermore, the Department should be aware that records of this nature have been recognized by certain federal agencies to be protectable by the courts. Indeed, the Federal Trade Commission itself has an explicit statutory mandate not to disclose trade secrets in the

course of its hearings and investigations. See 15 U.S.C. §46(s). Although there is no true privilege against discovery of trade secrets or other confidential business information, federal courts, at least, recognize that disclosure should not be had unless necessary. This is especially true where competitors are involved and may have access to the information. 4 Moore's Federal Practice, 2d Ed. pp. 2519-2520.

Clearly the Minnesota Department of Public Welfare will get all of its needed information and the cooperation of providers in the State if it is given the right to review purchase documents (either when initially setting a rate or upon audit) while not requiring such documents to be kept as a matter of public record. No justification has been offered in the hearing record which would support the keeping of these documents as a matter of public record. In fact, all of the testimony would indicate reasons why such material should not be kept as a matter of public record.

4923c.3.

Although it was represented at the time of the public hearing that the proposed new 4923c.3. is present practice, there appears to be some inconsistency between the proposed rule and the present 4923c.1. To make these sections consistent the words "full and normal" should be inserted into 4923c.3. Any other comments on this proposed change would be more appropriately left to the accountants.

4924c.

There appears to be no justification whatsoever for waiving certain portions of Rule 49 "when the Medicare cost allocation factors result in these [nursing care] limitations being exceeded." If Rule 49 is to be based upon the Medicare system, then other features of the Medicare system should also be adopted. For example, Medicare permits a retroactive adjustment at the end of the year where actual costs have exceeded projected costs. To the best of our knowledge this proposed rule change represents the first instance where Rule 49 has acceded to the Medicare formula. A more thorough investigation should be done on the application of the entire Medicare formula to the Rule 49 system rather than having changes made piecemeal which is the approach of this particular rule change.

4933d.17.

This proposed rule change is fraught with problems in attempting to disallow as legitimate costs under Rule 49 certain legal fees. If any type of control is to be placed on legal fees, it would seem that no reimbursement should only be granted in those cases where litigation is not brought in good faith. Facilities have certain built-in incentives not to bring litigation of a frivolous nature since the facility

itself will have to absorb the non-welfare portion of these costs in any event. This proposed change, coupled with the change in 4915f., discussed above, give the appearance of the Department of Public Welfare attempting to cut-off even legitimate objections to Rule 49.

In any event, the proposed rule change leaves many unanswered questions. For example, what does "prevail" mean? A nursing home may receive a very favorable settlement and yet have to yield on a couple of points (for example, we are aware of one situation where a settlement was reached on certain correction orders with the Department of Health wherein the Department acceded to the provider on 34 of the 36 matters involved). In this case the provider prevailed in our opinion, but whether or not the provider prevailed within the meaning of the proposed change is not clear from the proposed change. Also, what about the situation where a facility loses before an agency or at trial but wins on appeal? Under this circumstance has the provider "prevailed"? What if a split verdict is brought in by a court? What is litigation? Does litigation include proceedings before agencies? None of these questions are answered in the proposed rule change.

Clearly this proposal, coupled with the proposed change in 4915f., has the effect of discouraging litigation, especially for those providers with scant resources. The provider who desires to bring an action in good faith will be deterred by this proposal. If the purpose of the Department of Public Welfare is to deter frivolous actions by this proposed rule change, we would point out that there are other means of deterring such suits such as the non-welfare cost to the provider and the Cannons of Ethics prohibiting attorneys from carrying on frivolous suits.

4939d.3.

The Minnesota Association of Health Care Facilities opposes this change. During questioning at the public hearing by the undersigned of Robert Rau, Mr. Rau indicated that less than a dozen homes qualify for the waiver presently granted by rule 4939d.3. Of these dozen, only three would become ineligible by the change in the rule. There was no justification in terms of eliminating these three facilities from the benefits of rule 4939d.3. In fact, Mr. Rau and Mr. Hiniker indicated at the time of the public hearing that the Department has not calculated how much money would be saved by such a change and that the 100 day figure was arbitrary. The express purpose of the exception would not seem to be benefited by making the change desired.

Further, there is no justification for limiting this exception to skilled patients in skilled care facilities. The proposed change to rule 4913b. will not permit a skilled facility with intermediate

care patients to take advantage of the provisions of rule 4939d.c. even though such intermediate care patients are taken into account in establishing the averages for purposes of applying the exception. If a facility "turns over" patients at a rapid rate, presumably its costs are higher and the exception should apply whether or not the patients involved are intermediate care or skilled.

(8) Not qq Finally, the proposed change would make the granting of the exception in rule 4939d.3. discretionary by using the words "may grant" rather than mandatory as is the present case if the facility meets the requisite threshold. If there are certain circumstances under which the Commissioner of Public Welfare intends not to grant this waiver even if the threshold requirements are met by a facility, such additional reasons should be spelled out within the rule. Otherwise this is a violation of the Administrative Procedures Act. Minimally the word "may" should be changed to "shall" to avoid this problem.

(9) legal qq Changed

4951b.

There is absolutely no justification on the record or otherwise for this proposed rule change which would, by the admission of Mr. Rau, apply to only three facilities. Three facilities which now qualify for the exception under 4939d.3. are going to retroactively be deprived of the protection of this provision even though such facilities budgeted based upon being entitled to this exemption. There has been no similar provision in Rule 49 in the past during any time when changes to Rule 49 have been made. The change appears to arbitrary and calculated to "punish" certain facilities who have legitimately qualified for the exemption. The retroactive application of this change is totally unwarranted and patently illegal under basic constitutional provisions, statutory requirements and common law principles.

The Minnesota State Legislature has codified this no retroactive law concept in Minn. Stat. §645.21 which provides:

> "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature."

Obviously a regulation of the Department of Public Welfare has the force and effect of law as provided in the Administrative Procedures Act. We are unaware of any legislative mandate to make the proposed change in 4951b. retroactive.

See also Article I, Section 11 of the Constitution of the State of Minnesota and Article I, Section 10 of the United States Constitution,

both of which provisions mandate the abolishment of the proposed change in rule 4951b. Also many recent decisions in the Medicare area have prohibited the retroactive application of Medicare regulations. More specific citations to these decisions can be provided to you if you desire.

CONCLUSION

Although during opening remarks made by Mr. Hiniker at the time of the public hearing would indicate that many of the proposed changes to DPW Rule 49 would be of benefit to providers, we strongly believe that the only regulation which would provide any general benefit would be the changes to rule 4914b. (and here benefits would appear to be limited only to those providers receiving maximum rates). Many of the changes appear to be undesirable, arbitrary, unfair and, in many cases, illegal. We would strongly urge that these proposed changes be reconsidered consistent with the comments contained in this letter and with other comments made at the time of the public hearing by witnesses who testified thereat.

Perhaps the proposed changes to DPW Rule 49 could be reconsidered when a hearing is held on the matter of an earnings allowance or return for non-proprietary health care facilities equal to that of proprietary facilities with an appropriate deduction to reflect the fact that non-profit facilities do not pay real estate taxes. You may recall that we have petitioned for such a hearing under cover letter of December 11, 1975, on behalf of the Minnesota Association of Health Care Facilities. We have not yet received your response to this petition but would expect to have your response within the next couple of days.

If you have any questions about the matters contained in this letter please do not hesitate to contact the undersigned. Thank you.

Very truly yours,

BROEKER AND BACHMAN

By John M. Broeker
John M. Broeker

JMB:jp
cc: Mr. James Hiniker
Mr. Robert Rau
Ms. Sue Connors
Mr. Jack Brose
Mr. Harry Lemieux
Mr. J. I. Green
Mr. Jerry Galas
Mr. Robert Sundberg
MAHCF Executive Committee

TRANSMITTAL - MESSAGE SLIP

TO	LOCATION
Service to Broeker, Bachman	
DATE	**TIME**
FROM	**LOCATION**

TRANSMITTAL ACTION	CALL OR VISIT
☐ Review and see me	NAME
☐ Review and return	
☐ Prepare reply for my sig.	FROM
☐ Reply and send me copy	
☐ For your approval	PHONE NO.
☐ For your information	
☐ For signature	☐ Called
☐ As we discussed	☐ Was here to see you
☐ As you requested	☐ Please call
☐ Take appropriate action	☐ Will call again

Numbers wrong

MESSAGE FF:

① #2 - finding n/ based on testimony

② #3 - 501 - problematic

③ #4 - 24 mos. exception n/ in rule
finding differs from rule

④ #5 - No discussion of 10-11 2/ year
see T. 18

⑤ #7 - Rule as adopted is much broader than clarification

#[redacted] FF says "action to have limitations deleted." - they object.
They want = exceptions or treatment of facilities
#10 - "prevailed" - rule is opposite of FF
#11 - no text. goes to Fed rights. as to eff., qual. of care
#12 - should have deleted retro-activity -

4/7/72
2:30 pm

Adequate time

Rules Appeal

Kay Brennan
John Brecher
Barb Gill
MBM

I. Procedural objections - John Brecher →
A. 15.0412 sub 4 - appear presentation - none here or inadequate →
1. 4914b - change favored (Cont: T.1 - 50 ¢ is arbitrary)

* w/draw 49-II-B-3 3rd sentence starting "If" →

2. 4914(c)(3) - "clarifying rule" - actually substantive + w/supported

3. 4914 (c)(5) - no justification
4. 4915 (b)-(g) - no affirm showing of why H/E law had to be accommodated by these rules.
5. 4915 h (now f) - w/supp. -
6. 4931 (a)(5) - w/supp. (subst. change)
7. 4931 (a)(5) - T. 2 "clarification" - makes subst. change in that does are public record - w/existing practice in general - w/supp. —
8. 4933 (d)(17) T. 3 - "restatement of pres. practice - w in present rule -
9. 4935 (d)(3) - w/actually supp. - by statute or rule
to go from 180 to 100 days -
↳ see also 4913 (b) - would apply this exception only to skilled care facilities.
- w/just clarification
10. 4951 (b) w/addressed @ hearing - retroactive application of previous rule

check to see if changed in rule as adopted ←

B. AG Regt -
Statement of Need - recitation of statement of necessity - to general

QED w/ written statement after hearing suffices as effective presentation - see 15.0412 sect 4.

II Findings of Fact. no oral test. (see #2 - John Boehm says wrong) (see #5 - is subject data discussed at hearing)

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OF COUNSEL
CURTIS L. STINE

April 8, 1976

Mr. Michael B. Miller
Special Assistant Attorney General
Department of Administration
State Administration Building
Saint Paul, Minnesota 55155

Re: In the Matter of Proposed Amendments to Rule 49 of the Minnesota Department of Public Welfare Subject to Hearing - December 30, 1975

Dear Mr. Miller:

This letter is a follow-up to our meeting of Wednesday, April 7, 1976 wherein we voiced our objections to various aspects of Department of Public Welfare Rule 49 on the basis of "form and legality", the basis for your review of the rule under Minn. Stat. §15.0412. At the time of our meeting we voiced several substantive objections already raised to Commissioner Likins of the Department of Public Welfare by letter of January 19, 1976. A copy of this letter was provided to you. During the meeting we discussed several additional objections with you. The purpose of this letter is to raise further objections to the form and legality of those amendments to Rule 49 proposed at the time of the public hearing based on the Statement of Need and Findings of Fact, which were not provided to us until yesterday, and which we had not had the opportunity to review until last evening.

With respect to Finding of Fact No. 2, concerning an exception to the maximum rate for providers of short-term skilled care, it is true that there was oral and written testimony that short-term care may be applicable to intermediate care levels. However, the Department makes a finding allegedly based on such oral and written testimony that "short-term care is not characteristic of lesser care levels and that therefore there is no need for an exception to the maximum at these levels." There was absolutely no testimony to support such a finding at the public hearing as required by law:

> "At the public hearing the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the rule . . . ." [Emphasis supplied.]

No such presentation was made "at the public hearing" herein. The only testimony on this point showed that the Department of Public Welfare had no information on the relationship between short-term care and intermediate care facilities. See page 43 of Transcript. In fact, it was stated at the public hearing that the Department of Public Welfare should do an extensive investigation into whether or not the facts would support the proposition that lesser care patients require a high degree of rehabilitation or care. See page 44 of Transcript. There is no showing in the record of facts to support the Department's position.

Finding of Fact No. 3 relates to the inclusion of a 50¢ per patient day increase in the maximum welfare determination. This Finding of Fact states that nursing home providers suggested the amount of 50¢ per patient day as a projected acceptable amount. The only testimony given by a provider, however, was to the effect that 75¢ per day was a more realistic amount. See page 46 of Transcript. The amount chosen was "arbitrary", as specifically stated by Mr. James Hiniker of the Department of Public Welfare. See page 1 of Transcript. To make a regulation based upon unknown and arbitrary factors is per se illegal. The Department has made its findings not on facts presented and contained in the public record, but rather on its own arbitrary decision.

Finding of Fact No. 4 relates to maximum rate exceptions for newly-constructed facilities. In its Finding of Fact, the Department does not base its finding upon any oral or written testimony, but merely states that facilities may obtain an exception to the maximum rate for a full 24 months. This Finding of Fact is defective in a number of respects. Initially, it does not state the basis upon which the Department made its finding, other than the mere statement that "the Department finds . . . ." Secondly, the regulation does not state that an exception is to be secured for a "full" 24 months, but rather that the exception shall not exceed 24 calendar months. Thus, the Finding of Fact as stated by the Department is inconsistent with the regulation as it is written.

The salary increase exception from the maximum welfare rate is discussed in Finding of Fact No. 5. The Department allegedly proposed this amendment "based on statistical knowledge that inflation is increasing by 10% to 11% per year." Upon careful review of the Transcript, there is no statement, much less evidence, in the Transcript relating to the Department's statistical knowledge stated in these percentages. The Department apparently bases its findings on "statistical studies" which were never presented at the public hearing. Furthermore, the Department makes the finding that the

amendment is necessary to "enhance the accountability of public funds." Once again, there is no testimony relating to how this amendment would achieve the stated result. We see no relationship between the stated purpose and the amendment.

Finding of Fact No. 7 concerns the Department's authority to request and retain documents relating to changes in ownership of a facility. The Department makes a finding, without stating where the support for such finding is located, that the Department needs such records because they "reflect the financial transactions underlying the change in ownership." According to the testimony of Mr. Hiniker, this particular change in the regulation was merely a clarification rather than a substantive change. However, such is not the case in that records are currently not required by regulation or statute to be kept in the files of the Department. While Minn. Stat. §256B.27 may allow the Department of Public Welfare to require certain reports and information in the determination of a welfare rate for a facility, that statute does not state that such records must or may be kept in the files at the Department. This matter is presently in litigation in Ramsey County District Court.

Finding of Fact No. 9 relates to exemptions for hospital attached Medicare-certified facilities. While it is true that there was written and oral testimony objecting to the special exemption for hospital attached facilities, the undersigned takes strong objection to the Department's characterization of this testimony as "an attempt to have the limitations deleted for all facilities, and thus undermine the Department's mechanism for accountability of public funds." There is no basis for such a statement in the testimony presented. The testimony did not go to the removal of limitations for all facilities, but rather stated that an exemption for hospital attached facilities was not warranted. Furthermore, there was no testimony on behalf of the Department establishing that the proposed exemption for hospital attached facilities would "satisfy the federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care."

Similar objections are raised with respect to Finding of Fact No. 11. The Department therein makes a finding that the redefinition of a short-term stay will be done to "satisfy the federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care." Furthermore, the Department makes a finding that the purpose of the amendment "is to insure the quality of rehabilitative care rendered, not to save money." Instead, the testimony of the Department by Mr. Robert Rau related solely to cost savings and not to quality of care. Thus, the Department's findings cannot be substantiated or based upon the hearing record.

Finally, with respect to Finding of Fact No. 12, the Finding of Fact indicates that the Department will not make the implementation of the amendments retroactive to January 1, 1976. As indicated yesterday by Ms. Barbara Gill of the Attorney General's staff assigned to the Department of Public Welfare, Rule 49 as sent to the Attorney General's office did contain the requirement that certain amendments be made retroactive. Therefore, the regulations must be returned to the Department of Public Welfare for further action.

The Statement of Need filed for the hearing clearly is not consistent with Atty. Gen. 302(g). The statement filed herein was clearly general and did not address the specific need for each of the regulations involved.

Please consider the comments contained herein along with the comments contained in our letter of January 19, 1976, and with those made in your office yesterday. We would be happy to elaborate on these further if you so desire.

Very truly yours,

BROEKER AND BACHMAN

By _____
John M. Broeker

JMB:gsr

cc: Ms. Barbara Gill
Mr. Jack Brose
Mr. Harry Lemieux
Mr. J. I. Green
Mr. Jerry Galas
Mr. Robert Sundberg
MAHCF Executive Committee

November 25, 1975

Proposed Changes to DPW Rule 49

4912c. All rates determined ... preceding the date an audit commences. If a change in ownership and/or management occurs between the audited fiscal period and date of welfare rate adjustment, the overpayment or underpayment will be applicable to the current ownership and/or management. If the adjustment ... written notice of the adjustment.

4913b. Providers who qualify for exception under 4939d.3. will have lesser care rates determined as if the maximum rates of 4914b. did apply to the skilled rate determination.

4914b. Maximum Rate. Individual welfare rates for varying levels of care will be subject to a maximum of 125 percent of regional average costs plus known cost changes. The maximum rate calculation will also include an amount of $.50 per patient day for compliance with certification standards requiring medical director and various consultant services.

4914c.3. Provision 4914b. will not apply .. for the first two immediate fiscal years, but not to exceed 24 calendar months.

4914c.5. Provision 4914b. will not apply to ~~those salary cost changes~~ salary increases projected under 4911c.1.(a) which exceed ~~6%~~ 8% of the historical salaries if the salary cost ~~changes~~ increase ~~are~~ is reasonable and ~~are~~ is required to bring facility salaries to the salary range of comparable facilities. The salary cost ~~changes~~ increases for top management compensation and for additional staff are excluded from this exception. This provision will terminate for reporting periods ending after November 30, 1976. Individual facility welfare rate determinations effective January 1, 1977 may include the dollar amount exception of provision 4914c.5. which was established by the provider's 1976 DPW Rule 49 cost report submittal. This fixed allowance will terminate on December 31, 1977.

4915b. Appeals Examiner. Unresolved disputes will be heard by a staff person from the State of Minnesota's Hearings Examiner Office.

~~4915c. Compensation of committee members. Members of the Appeals Committee shall be compensated for time and expenses incurred in performance of required duties.~~

~~4915d. Frequency of committee meetings and hearings. The Appeals Committee will meet at least quarterly at a predetermined time and place to hear and determine disputes.~~

~~4915b. Composition of appeals committee. Unresolved disputes will be ... term of appointment.~~

4915e.c. Time limit. The provider .. new per diem rate.

4915f.d. Appeal Procedure. If the provider and the Department's staff normally assigned responsibility for the administration or the provider and a county welfare board cannot agree to a settlement of the dispute, then each party will submit in writing the facts, arguments and any other appropriate data to the ~~Appeals Committee~~ Hearings Examiner within 60 days of the department's notification of the new per diem rate. The ~~Committee~~ Examiner will review the dispute and may require additional information or analyses to be submitted by the Department or the provider, and then recommend to the Commissioner disposition of the dispute. Because existing state law ... from the other party.

4915g.e. Effective date of resolved disputes. If the dispute ... provision of 4912c.

4915h.f. Findings and conclusions. Any findings, .. the preceding quarter. Amended reports under regulation 4921i. are not acceptable from non-appealing providers for retroactive benefit of a appeal decisions.

4921a.5. Other relevant data may be required by the Commissioner to support a welfare rate request. If such data are not provided within 30 days of the request, the Commissioner must calculate a rate, making whatever assumptions deemed appropriate to arrive at the rate in the absence of the requested data.

4921a.8. If a change in ownership occurs, the new owner must submit a copy of the purchase agreement and any other documents related to the change in ownership.

4923c.3. Bed reservation rate. All days for which billings have been rendered to reserve a bed during a patient's temporary absence from the facility should be counted as actual patient days for welfare rate determination.

4924c. The nursing care limitation under 4932a. and the investment per bed limitation under 4934b.1. will be waived when the Medicare cost allocation factors result in these limitations being exceeded.

4933d.17. Legal fees. Costs incurred for litigation against governmental agencies in which the governmental agencies prevail are not allowable costs.

4939d.3. ~~Skilled care facilities which have a patient population with an annual average length of stay of 180 days or less.~~ The Commissioner may grant a waiver of this capacity calculation

and allow a skilled welfare rate based on actual patient days for facilities which have a skilled patient population with an average length of stay of 100 days or less. The average length of stay is determined by dividing the actual patient days for the historical fiscal year by the total discharges for the historical fiscal year.

4951 Effective date of DPW Rule 49 revisions.

a. All revisions .. fiscal years ending after ~~July 31, 1974~~ November 30, 1975.

~~b. Providers may request, by letter, no later than December 31, 1974, a revised rate as affected only by sections 4911c.1. (i) and 4914c.3. through 5. The revised rate may be effective as of September 1, 1974.~~

4951b. Providers who previously qualified for welfare rate determination under provision 4939d.3. must reapply for the revised provision for welfare rate determination effective January 1, 1976.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the Matter of Proposed Amendments to Rule 49 of the Minnesota Department of Public Welfare Regulating Welfare Per-Diem Rates for Nursing Home Providers Under the Medical Assistance Program.

ORDER FOR HEARING

The Commissioner of the Minnesota Department of Public Welfare deems it necessary to consider adoption of amendments to the above captioned rule pursuant to the authority vested in her by Minnesota Statutes 1974, as amended.

NOW, THEREFORE, IT IS ORDERED this 26th day of November, 1975, that a public hearing on the proposed rule captioned above be held in Room D, Minnesota Veterans Service Building, Columbus Avenue (between Wabasha and Iglehart), St. Paul, Minnesota 55155, on December 30, 1975, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning this rule.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

JAMES J. HINIKER
Deputy Commissioner
Department of Public Welfare

Dated: November 26, 1975

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the Matter of Proposed Amendments to Rule 49 of the Minnesota Department of Public Welfare Regulating Welfare Per-Diem Rates for Nursing Home Providers Under the Medical Assistance Program.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 15.0412, subd. 4 (1974), as amended, regarding the above-entitled matter, in Room D, Minnesota Veterans Service Building, Columbus Avenue (between Wabasha and Iglehart), St. Paul, Minnesota 55155, on Tuesday, December 30, 1975, commencing at 9:00 a.m., and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed amendments to Minn. Rule DPW 49, by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

Under Minnesota Statutes 10A.01, subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as promulgation of amendments to this rule, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual. (The State Ethics Commission is located at Room 410, State Office Building, St. Paul, Minnesota.)

The proposed amendments to Minn. Rule DPW 49 relate to: Allowance for known cost changes; effective dates, notifications and adjustments; special rate-setting procedures; rate limitations; appeal procedures; definitions; cost allocation procedures; general and administrative expenses; facility utilization incentives; and effective date of the aforementioned Minn. Rule DPW 49 revisions.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Commissioner Vera J. Likins, Minnesota Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota 55155, within 20 days following conclusion of the hearing. If the person submitting a written document cannot be present to read his statement at the hearing, the document will be entered into the record. For those persons wishing to submit written statements or exhibits, it is requested that at least three (3) copies of each statement, exhibit or summary be furnished at the hearing. It is suggested that to save time and avoid duplication, those organizations or associations sharing common viewpoints or interests in these proceedings join together where possible and present a single statement on behalf of such interests.

Copies of the proposed amendments to Minn. Rule DPW 49 are now available and may be obtained by writing: Robert J. Rau, Director, Audit Division, Minnesota Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing.

DATED: November 26, 1975

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

James J. Hiniker

JAMES J. HINIKER
Deputy Commissioner

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

EDNA DAHN, being duly sworn on oath, deposes and states:

1. That she is an employee of the Department of Public Welfare of the State of Minnesota.

2. That on the 26th day of November, 1975, she went to the Minnesota Secretary of State's office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statutes, 15.0412 (1974), as amended.

3. That on the 26th day of November, 1975, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Edna Dahn
EDNA DAHN

Subscribed and sworn to before me
this 26th day of November, 1975.

Lorraine C. Pfeiffer
LORRAINE C. PFEIFFER
Notary Public, Dakota Co. Minn.
My Commission Expires Sept. 29, 1979

LORRAINE C. PFEIFFER
Notary Public, Dakota Co. Minn.
My Commission Expires Sept. 29, 1979

PLEASE NOTE:

If you intend to supplement this list with other lists when mailing a hearing notice, please compare lists and eliminate duplicate notices.

Thank you.

ALSO
NOTIFY ALL INTERESTED STATE DEPARTMENTS; BOARDS AND COMMISSIONS
AND
PLEASE SORT OUT INTEROFFICE MAIL FROM LABELS

PUBLIC WELFARE

Allin, Kent, Welfare Advocacy Unit, 370 Selby Ave., St. Paul 55102
Blade, Joe -Mpls Star, 425 Portland Ave.,Mpls.

Community Mental Health Board of the Northern Pines Mental Health Center, 103-105 1st St. S.E., Little Falls 56345
Curtis, Dr. E.Louis, Prof.Education, U of M., Morris 56267

Deephaven Montessori School, Inc. 188 So. Circle A Drive, Wayzata 55391

Goldberg, Paula, 5315 James Ave. S., Mpls. 55419

Kurtz, Mrs. Kirsten, Mn. Nurses' Assn., 1821 Univ. Ave.,St. Paul, 55104

Legal Aid Society, 501 Park Ave., Mpls. 55415

Local #34, AFSC & ME, Box 2016, Commerce Sta., Mpls.55415

Lutheran Soc.Service,Attn.H.L.Paulsen, 2414 Park Ave S.,Mpls. 55404

Minneapolis & Hennepin County Mental Health Clinic,619 S. 5th St.,MPls., 55415
Minn.Ass'n for Ed. Young Children,373 So.Griggs-MidwayBldg,1821 Univ.St.Paul55104
Minnesota Legislative Comm. of Blind, 1605 Eustis, St. Paul 55108

Minn. State Pharmaceutical Ass'n., 2388 Univ. Ave. St.Paul 55104

Moratzka, Timothy, 1304 Vermillion St., Hastings 55033

Neff, Dr. Walter S., Virginia 55792

Northland Mental Health Center, 415 S. Pokegema, Grand Rapids 55744

Public Relief, BD. of Public Welfare, Attn.Dir.Jensen, 250 S. 4th St.,Mpls.5541

Sister Letitia M. Close, B.V.M., 415 Summit Ave., St.Paul 55102

Southwestern Mental Health Center, 306 N. McKenzie St., Luverne 56156
Upper Mississippi Mental Health Center, Attn: Dr. Howard C.Reid,510Beltrami Av. Bemidji

Veterans' Affairs, Veterans Service Bldg., St. Paul 55155

Welfare Rights Organization,% Stephen Parsons, 1118 Newton Av.No.Mpls.55411

West Central Mental Health Center, 323 W. 6th St., Willmar 56201

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SWEITZER R L HONEYWELL IN
2701 4TH AVE S
MPLS MN
55408

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VILLAGE OF WOODBURY-F.STRONG
561 TOWER DRIVE
NEWPORT MN
55055

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WALD JEAN
5746 SANDER DR
MPLS MN
55417

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WELLINGTON R R SKELLY OIL
PO BOX 1650
TULSA OK
75102

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WILCOX J PATRICK
1220 NORTHERN FED BLDG
ST PAUL MN
55102

WILSON R GARY PPG INDUSTR
1 GATEWAY CENTER
PITTSBURGH PA
15222

WIS FEEDER PIG MARKET CO-

FRANCIS CREEK WI

WYANT CLINTON W ATTY

ATKIN MN
56431

PORTER LYLE O
TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

POR
321
MPL
554

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

PRO
IVO
CIN
452

RAD
418
ST
551

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

RAUENHORST CORP-C ANDERSON
7900 XERXES S. S-2200
MPLS MN
55431

REA
% M
BRA
564

REID DAVID H
5633 WASHBURN AVE S
MPLS MN
55410

REINO O LAINE 3M COMPANY
3M CENTER
ST PAUL MN
55101

REN
300
ST
551

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROE
175
ST
551

ROBERTS CAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

RUD
118
CLO
557

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SAT
375
ST
551

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

ST
122
ST
551

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCH
302
ST
551

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCH
20
ROC
559

SCHWINN ROBT.P.
1400 SCO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SCH
21
ST
551

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SMERIKA WN.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SMITH MICHAEL
1423 NEWTON AVE N
MPLS MN
55411

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

SODERMAN ANTHONY
152 S PLAZA BLDG
MPLS MN
55416

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

SWANSON DALE
P O BOX 339
FOREST LAKE MN
55025

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TIMESAVERS INC ATT R S VOLD
5270 HANSON COURT
MPLS MN
55422

TOUCHE ROSS & CO K H STOCKE
780 NORTHSTAR CNTR
MPLS MN
55402

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VOSS REV GORDON O
11120 NE 7TH ST
BLAINE MN
55434

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOS H
4510 W 77TH ST STE 235
MPLS MN
55435

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
55101

WESTIN CHAS W
220 MEDICAL ARTS BLDG
DULUTH MN
55802

WHITING RALPH
555 WABASHA SUITE 204
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LIB.
2100 SUMMIT AVE.
ST.PAUL MN
55105

WILEY ENTERPRISES
101 5TH AVE SE
OSSEO MN
55369

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MUELLER SHIRLEY A
787 W COTTAGE AVE
ST PAUL MN
55117

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NEDELL HAROLD - MEINEKE
6300 W LOOP S SUITE 200
BELLAIRE TX
77401

NEREN MADONNA
376 NEAL AVE S
AFTON MN
55001

NO SUB MONTESSORI-S SADDLER
2487 HELEN COURT
NO ST PAUL MN
55109

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN
55402

PETERSON JOHN W
510 NW BK BLDG
ST PAUL MN
55101

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PORTER DAVID
3212 LONGFELLOW AVE S
MPLS MN
55407

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

PROCTOR&GAMBLE L THEOHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER ROBT SPRINGSTED I
813 OSBORN BLDG
ST PAUL MN
55102

RADMAN RICHARD-LABOR TEMPLE
418 AUDITORIUM
ST PAUL MN
55102

RANALLO CLARENCE
800 CENTRAL AVE N E
MPLS MN
55413

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RENQUIST ARTHUR NSP CO
414 NICOLLET MALL
MPLS MN
55401

ROE DAVID
175 AURORA
ST PAUL MN
55103

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

RUDY FLOYD
118 AVE C
CLOQUET MN
55720

SATHRE, HARVEY
375 MARION STREET
ST PAUL MN
55103

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEW
50 S 9TH ST
MPLS MN
55402

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SENATE COUN OFF ROOM 24
STATE CAPITOL
ST PAUL MN
55101

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA C
600 2ND ST
HUDSON WI
54016

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOOD R BLOOMINGTON HLTH D
10200 PENN SO
BLOOMINGTON MN
55431

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MUCK THOS R
160 STATE OFF BLDG
ST PAUL MN
55155

NASS GEO V HENN CO GEN HOSP
5TH AND PORTLAND AVE
MPLS MN
55415

NATL CAR RENTAL ATT D MIT
5501 GREEN VALLEY DR
MPLS MN
55437

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXA
RM 340 717 DELAWARE SE
MPLS MN
55414

NYQUIST DEAN A
3707 53RD PL N.
BROOKLYN CTR MN
55429

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OLOFSON ARTHUR MBO & MAINC
927 SOO LINE BLDG
MPLS MN
55402

OSTRUM DONALD E
PO BOX 33163
COON RAPIDS MN.
55433

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN
55401

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN
55416

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MPLS CHAMBER COMM TRANSP
15 S 5TH ST
MPLS MN
55402

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN AFL-CIO, L O LA SHO
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

SSN

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MINN COMMUNITY DEVELOP SE
512 ROSSMOR BLDG
ST PAUL MN
55101

SY

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

ICE

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

ENN

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN SOCIETY ARCHITECTS A
NW NATL BK BLDG
ST PAUL MN
55101

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE CAPITOL EMP UN
PO BOX 3215
ST PAUL MN
55165

TEM

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MIDLAND GLASS- HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN WATERSHED DIST'S

ADA MN
56510

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN HWYS MANAGEMENT SERVICE
407 HWY BLDG
ST PAUL MN
55101

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

KIMBALL ROBERT
647 CAPITOL SQ BLDG
ST PAUL MN
55101

KJRVIK DIANE
4302 POWELL HALL U OF M
MPLS MN

KNAPP J A
RM 3 CAPITOL
ST PAUL MN
5515

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNVDSON ROBT
4375 BROWNDALE AVE
MPLS MN
55424

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

KROON H CLIFTON
210 E WALNUT
MANKATO MN
56001

LANAHAN E F - SIBLEY CO
184 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SERV
717 DELAWARE ST SE
MPLS MN
55440

LIBBEY LEONARD
BOX 17011 NOKOMIS STA
MPLS MN
55417

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MCFADDEN G H DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MERRITT GRANT POLLUTION CONT
1935 W CO RD 32
ROSEVILLE MN
55113

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

LAKE SUPERIOR INDUSTRIAL
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANSING & OAKES
400 SIBLEY ST
ST PAUL MN
55101

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEAGUE WOMEN VOTERS OF MI
555 WABASHA
ST PAUL MN
55102

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANKATO STATE STUDENT ASSN
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
1100 SUPERIOR AVE
CLEVELAND OH
44114

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MECCA
867 GRAND AVE
ST PAUL MN
55105

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV AVE
ST PAUL MN
55104

METROPOLITAN COUNCIL LIBR
300 METRO SQUARE
ST PAUL MN
55155

FARRELL FRANK BUR NOR
RM 1180 176 E 5TH ST
ST PAUL MN
55101

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FLADLAND CLINTON MN L&P BUR
796 RAYMOND AVE
ST PAUL MN
55114

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FORBES GORDON MINN RRS ASSN
203 HANOVER 480 CEDAR
ST PAUL MN
55101

FORSBERG AGR SERV
518 SUMMIT AVE
NEW ULM MN
56073

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

FREDRIKSON BYRON ET AL
47TH FLR IDS CENTER M
PLS MN
55402

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GEO A HORMEL & CO LAW DEPT
PO BOX 800
AUSTIN MN
55912

GEORGE K GRANSE CO
1477 SELBY AVE
ST PAUL MN
55104

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

GUSTAFSON DAN-LABOR TEMPLE
312 CENTRAL
MPLS MN
55414

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HANFT PHILIP M
1200 ALWORTH BLDG
DULUTH MN
55802

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HENTHORN GARY WOODSTOCK
7365 LANDAU DR
BLOOMINGTON MN
55438

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEIM PAUL
1320 SOO LINE BLDG
MPLS MN
55402

HICHINGER-MARK PLANNING
421 WABASHA ST
ST PAUL MN
55102

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HOLEY GEO AERONAUTICS
DOWNTOWN AIRPORT
ST PAUL MN
55107

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

HULTMAN WARREN R
C/O BARBAROSSA R3
OSSEO MN
55369

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

HUTCHISON R.M. ANOKA CO.COMP
COURT HOUSE
ANOKA MN
55303

ILLINGWORTH ROBT C
6750 FRANCE AVE S
MPLS MN
55435

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

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STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the matter of Proposed Amendments to Rule 49 of the Minnesota Department of Public Welfare Regulating Welfare Per-Diem Rates for Nursing Home Providers Under the Medical Assistance Program.

AFFIDAVIT OF MAILING

Gloria A. Johnson, being first duly sworn, deposes and says:

That on the 28th day of November, 1975, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Gloria A. Johnson

Subscribed and sworn to before me
this 28th day of November, 1975.

Lorraine C. Pfeiffer

LORRAINE C. PFEIFFER
Notary Public, Dakota Co. Minn.
My Commission Expires Sept. 29, 1979

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Amendment of Rule 49 of the Minnesota Department of Public Welfare Regulating the Determination of Welfare Per-Diem Rates for Providers of Nursing Home Care.

STATEMENT OF NEED

The above-captioned matter relates to the amendment of Minn. Rule DPW 49, an existing rule of the Minnesota Department of Public Welfare. The last time Minn. Rule DPW 49 was amended was September 1, 1974.

Amendment of Minn. Rule DPW 49 is necessary in order to redefine allowable cost principles and welfare rate determination procedures for the providers of nursing home care. It is proposed that the rate determination provisions be amended for the method of calculating the welfare per diem rate, the special rate setting procedures, the rate limitations and the appeal procedures. It is proposed that the reporting provisions be amended for the general reporting requirements, for the definitions relating to the cost categories under such reporting requirements and for the cost allocations. Additionally, it is proposed that the reasonable cost principles be amended for the general and administrative expenses and the facility utilization incentives. Based on the aforementioned changes it is further proposed that the implementation procedures be amended to reflect the effective date of the revisions.

Amendment of Minn. Rule DPW 49 also is necessary for the proper accountability of public funds as established by this rate-setting rule. Likewise, other revisions are necessary in order to enhance the daily reimbursement to providers of the aforementioned services.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Vera J. Likins

VERA J. LIKINS
Commissioner

Dated: December 18, 1975

REGULATIONS

OF THE

MINNESOTA DEPARTMENT OF PUBLIC WELFARE

FOR DETERMINING

WELFARE PER DIEM RATES FOR NURSING HOME PROVIDERS

UNDER THE

TITLE XIX MEDICAL ASSISTANCE PROGRAM

DPW RULE 49

Revised March 1, 1976

DPW 49 Regulations for Determining Welfare Per-Diem Rates for Nursing-Home Providers Under the Title XIX Medical Assistance Program.

I. Applicability and Purpose

A. Authority

This regulation is enacted pursuant to the statutory authority vested in the Commissioner of Public Welfare pursuant to Minnesota Statutes, Section 256b.27 to require reports, information and audits, and pursuant to Minnesota Statutes Section 256B.04, Subdivision 2, to promulgate rules and regulations for carrying out and enforcing the provisions of Minnesota Statutes, Chapter 256B. This regulation is further promulgated pursuant to the procedures set out in Minnesota Statutes, Section 15.0412, of the Minnesota Administrative Procedures Act.

B. Objectives

The procedures embodied herein define a system for the determination of a per-diem welfare rate for all nursing homes participating in the Medical Assistance Program that promotes efficiency and economy and treats all providers of nursing home care on a uniform basis. Facilities that provide care to other than nursing patients must comply with these regulations if nursing-home patients account for 50 per cent or more of the facility population.

Procedures have been defined to satisfy the State Plan for Medical Assistance and HEW Medical Services Administration Program Regulation Guide 19, which prescribe reasonable charges/cost-related rate-setting methods. The rate-setting procedures have also been defined to comply with the state statute that requires that cost differences between individual providers be recognized (Minnesota Statutes, Section 256B.04, Subdivision 2) while at the same time establishing cost limitations to satisfy federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care.

The welfare rate-setting procedures include herein also recognize required level and quality of care as defined by all governmental entities (including, but not limited to federal, state and local entities), establish effective accountability over the disbursement of Medical Assistance appropriations, and provide for a regular review mechanism for rate changes.

While the rate-setting procedures are intended to compensate the provider for the reasonable cost incurred by prudent management, including a return of capital through depreciation, they are not intended to provide funds for financing working capital needs or purchase of facilities. It is not intended that the regulations provide for reimbursement of actual cost through retroactive settlement.

II. Rate Determination

A. Method of Calculating Per Diem Rate

1. Historical rate. The method of calculating the nursing-home provider per-diem rate for skilled, ICF I, and ICF II facilities will be to determine reasonable costs for the most current fiscal year and divide by adjusted patient days according to reasonable cost provisions of IV and cost-reporting regulations contained in III.

2. Incentive factor. In no case will the historical rate so determined under II.A.1. be less than the historical rate calculated for the previous year minus one-half of the difference. This provision shall not apply for rates for newly established providers under II.C.1., rates set be applying exceptions provided by IV.H.4. and flat rates established under II.C.5. For multi-level providers this provision will be applied to the facilities average historical rate.

3. Allowance for known cost changes

a. Future cost increases or decreases that are in accordance with the reasonable cost principles of IV.A., known as of the report filing date, must be added to or deducted from the historical rate determined according to II.A.1. and 2. Such adjustment will be restricted to the elements defined in II.A.3.a.(1) through (8) and shall be the annualized cost effect of such cost changes exclusive of any portion of the cost change included in the historical rate.

(1) Salary and wage changes to occur during the effective period of the welfare rate.

(aa) Future changes according to labor contracts, board resolutions, written policies, or minimum wage laws.

(bb) Changes that are in effect as of the end of the fiscal period covered by the historical cost portion of the welfare per-diem rate.

(2) Changes in facilities or equipment.
(3) The annualized cost effect of complying with federal, state, or local laws and regulations and Department of Public Welfare announced policies on care or facilities.
(4) All taxes except for income taxes.
(5) Interest.
(6) Depreciation.
(7) Utilities and insurance.
(8) Rental payments pursuant to a written lease.
(9) Raw food cost increase computed initially by multiplying $1.20 times one-half the percentage increase in the wholesale price index for raw food during calendar 1973. The initial increase is $.14. For reports covering periods ending December 31, 1974 or later, this cost increase shall be calculated as follows:
   (aa) Calculate the percentage increase in the wholesale price index for raw food for the period December through November.
   (bb) If the increase is greater than that computed for the prior year, add the difference to (aa).
   (cc) If the increase is less than that computed for the prior year, subtract the difference from (aa).
   (dd) Multiply one half of the resulting figure times the sum of $1.20 plus all of the annual increases allowed pursuant to this section.
(10) Unidentified cost increases equal to one per cent of the facility's historical cost portion of the welfare rates or one per cent of the regional (II.D.2.) average historical cost portion of the welfare rate, whichever is lower.

b. Cost changes determined under this provision must be based upon facts and commitments in existence as of the original filing date of the report (III.A. 5.a.). If the provider cannot substantiate that such facts and commitments did exist as of the filing date, the welfare rate will be subject to adjustment according to II.B.3. If known cost changes calculated under (1) through (8) above do not in fact occur, the welfare rate will similarly be subject to adjustment under II.B.3. If actual cost increases exceed the known cost changes determined under (1) through (9) above, no adjustment in welfare rate will be made.

B. Effective date, notifications and adjustments.

1. Effective date. A new per-diem rate determined by the Department will be effective the first day of the month following the provider's normal fiscal year-end except in instances in which penalty provisions of regulation III.A.6. are applicable. If the new rate results in a lower rate than the previous rate, the provider has 120 days from the original filing date in which to pay back any difference received during the period the new rate was to be effective. If the new rate results in a higher rate than the previous rate, payment shall be made to the provider within 45 days after receiving notification of the rate adjustment.

2. Rate Notifications. A temporary rate notification consisting of the previous year's allowed historical cost per patient day plus 80% of the indicated allowed known cost changes per patient day will be issued and paid on receipt of the report. The Commissioner will notify the provider in writing and the respective county welfare boards of the final rate determined under these regulations and the effective date of such rate. Included in the notification will be a detailed statement of the reason for any difference between the rate requested by the provider and the rate determined.

3. Adjustments for errors or omissions. All rates determined according to DPW Rule 49 may be subject to adjustment as a result of errors or omissions determined through audit of the provider's accounting and statistical records or by amended reports as provided by III.A.9. Such adjustments are limited to the three complete fiscal years preceding the date an audit commences. If a change in ownership and/or management occurs between the audited fiscal period and date of welfare rate adjustment, the overpayment or underpayment will be applicable to the current ownership and/or management. If the adjustment results in a payment from the provider to the county welfare board(s), the provider will have up to 120 days from the date the provider receives written notification of the adjustment. If the adjustment results in a payment to the provider, payment shall be made within 45 days after the date of receiving written notice of the adjustment.

C. Special Rate Setting Procedures

1. Newly constructed facilities

a. Required reports. Providers with newly constructed facilities may request an interim welfare rate. Providers who increase the facility's capacity by at least 50% may at their option be considered in this classification. The provider must submit reports as required in III.A.1. for the immediate future fiscal year forcast results.

b. Report compliance. Reports will comply with all applicable sections of these regulations governing cost finding, reporting, and allowable costs to the extent feasible in the individual circumstances. Noncompliance with any provisions of these regulations must be so stated together with the reason why the provider cannot comply.

c. Interim rate establishment. The Commissioner will establish an interim rate in accordance with regulations II.A. retroactive to the first day a Medical Assistance recipient is placed in the home. Such rate shall be subject to retroactive upward or downward adjustment in accordance with all provisions of DPW Rule 49 except II.A.2. on the basis of first cost report covering actual results for the period to which the rate has been applied. Adjustments to the interim rate will be in accordance with II.B.1. and III.A.9.

2. Rates for lesser care levels in facilities without certification classification.
Providers who provide care to welfare recipients requiring less care than the care level to which the provider is certified will receive a per diem rate as follows:

a. ICF I care per diem rate in a skilled nursing-care facility will not exceed 85 per cent of the established skilled nursing-care rate for that facility.

b. ICF II per diem rate in an ICF I facility will not exceed 60 percent of the established ICF I rate for that facility.

c. ICF II care per diem rate in a skilled nursing-care facility will not exceed 50 percent of the established skilled nursing-care rate for that facility.

This provision shall be applied in conjunction with III.C.3.b. Providers who qualify for exception under IV.H.4.c. will have lesser care rates determined as if the maximum rates of II..D.2. did apply to the skilled rate determination.

3. Private room rate. A private room rate of 115 per cent of the established welfare per diem rate for the applicable care level in an individual home shall be allowed for a Medical Assistance recipient when deemed a medical or other necessity for the individual patient or as the patient's condition affects others; such condition must be determined by the attending physician and approved by the county welfare board. This provision, together with the provisions of IV.H.4. shall apply only to facilities applying for a Certificate

of Need after August 15, 1972.

4. Care classification additions. Providers who add certified care classifications may file an amended report under III.A. that includes known cost changes associated with care classification additions to obtain a welfare per diem rate for care not previously provided. At the provider's option he may accept the lesser care rates under II.C.2. in lieu of filing reports according to this provision.

5. Election of flat rate for small providers. Providers with a capacity of less than 30 licensed beds may annually elect to receive a flat per diem rate for providing required care of welfare patients by filing a flat rate report in lieu of receiving a rate complying with reporting requirements of II.A. and otherwise being subject to provisions of DPW Rule 49. The flat rate for skilled, ICF I, and ICF II for each region or group of regions as defined in II.D.2. shall be the regional average rates as determined from filed reports before the maximum rate limitation and excluding rates for providers electing the flat rate. These rates will be adjusted annually through policy bulletins.

   Such an election must be filed within reporting deadline provided by III.A.5., or be subject to penalty provisions of III.A.6. Such rates elected by providers will be in effect for one year.

6. Incidental welfare rate. Providers may elect to receive a flat rate under II.C.5. for care of welfare recipients if welfare recipients account for less than twenty per cent of the certified capacity of the home.

D. Rate Limitations

1. Limitation based on private pay rates or relevant federal or state laws and regulations. Notwithstanding any other provisions of these regulations, the established provider rates for nursing-home care will not exceed the normal provider's rate charged private patients for comparable nursing-care services. This rate limitation shall be applied when the welfare rate is anticipated to exceed the private pay rate for a comparable time period. Welfare rates may further be limited to federal laws or regulations that affect the Medical Assistance Program.

2. Maximum rate. Individual welfare rates for varying levels of care will be subject to a maximum of 125 percent of regional average costs plus known cost changes exclusive of this limitation and flat rates under II.C.5. The maximum rate calculation will also include an amount of $.50 per patient day for compliance with certification standards requiring medical director and various consultant services. Regions will be those areas designated by the Governor for regional planning and economic-development purposes. Regions may be combined when deemed appropriate by the Commissioner as announced through policy bulletins. The regional averages will be calculated separately for proprietary, non-proprietary and hospital-attached facilities except the regional average costs for hospital-attached facilities shall be included in the regional average calculation for non-proprietary free-standing facilities. The maximum-rate limitations will be adjusted annually through policy bulletins. The regional averages will be determined by the Commissioner, using all available information from reports that indicate a fiscal-year end during a calendar year and will be applied to rates that become effective during the second succeeding calendar year. Facilities that have a non-calendar-year end and have been previously subject to the maximum rates may adjust the rates to the new maximum rates if previously justified by the reports.

c. Maximum rate exceptions.

a. Welfare per diem rates in excess of the maximum rate limitation will be allowed in the initial year to the extent that the welfare rate requested includes cost increases required to increase wages to the minimum standards of federal or state wage laws.

b. Provision II.D.2. will not apply to homes that qualify for exception under IV.H.9.c. or facilities licensed under DPW Rule 80.

c. Provision II.D.2. will not apply to providers with newly constructed facilities or providers who increase the facility's capacity by 50% for the first two immediate fiscal years, but not to exceed 24 calendar months.

c. Welfare per diem rates in excess of the maximum rate limitation will be allowed to the extent of 85 per cent of the first $2.00 per patient day over the maximum welfare rate when total allowable costs are divided by actual patient days or 93 per cent of total capacity patient days, whichever is greater.

e. Provision II.D.2. will not apply to salary increases projected under II.A.3.a.(1) which exceed 8% of the

historical salaries if the salary cost increase is reasonable and is required to bring facility salaries to the salary range of comparable facilities. The salary cost increases for top management compensation and for additional staff are excluded from this exception. This provision will terminate for reporting periods ending after November 30, 1976. Individual facility welfare rate determinations effective January 1, 1977 may include the dollar amount exception of provision II.D.3.e. which was established by the provider's 1976 DPW Rule 49 cost report submittal. This fixed allowance will terminate on December 31, 1977.

4. Minimum rate. The minimum welfare per diem rates will be 75 per cent of the regional average as defined in II.D.2.

E. Appeal Procedures

1. Scope of appeals procedures. These procedures describe the manner by which unresolved individual provider or county welfare board disputes that may arise concerning application of these regulations excluding regulation II.E. will be settled. Unresolved disputes are defined as those disagreements which cannot be resolved informally between the provider and the Department staff normally assigned responsibility for administration, or the provider and a county welfare board.

2. Appeals Examiner. Unresolved disputes will be heard by a staff person from the State of Minnesota's Hearings Examiner Office.

3. Time limit. The provider, or the county, has 30 days to appeal from the date of the Department's notification of the new per diem rate.

4. Appeal Procedure. If the provider and the Department's staff normally assigned responsibility for the administration or the provider and a county welfare board cannot agree to a settlement of the dispute, then each party will submit in writing the facts, arguments and any other appropriate data to the Hearings Examiner within 60 days of the Department's notification of the new per diem rate. The Examiner will review the dispute and may require additional information or analyses to be submitted by the Department or the provider, and then recommend to the Commissioner disposition of the dispute.

Existing state law does not permit the Commissioner to delegate his powers, final authority on disposition of disputes must be retained by the Commissioner. Unless otherwise agreed to by the parties, neither the Department nor the provider may introduce exhibits at the appeal hearing unless a copy has been provided to the other party at least 14 days prior to the hearing date or five days after receipt of an exhibit from the other party if it is in direct response to the exhibit received from the other party.

5. Effective date of resolved disputes. If the dispute is related to a change in the provider's rate, the new per diem rate will prevail until final determination according to these appeal procedures is made. The total dollar amount due the provider or the county resulting from the resolved disputes will be subject to payment provision of II.B.3.

6. Findings and conclusions. Any data, findings, conclusions, or opinions of the Hearings Examiner and any department data in regard to any provider appeal will be made available to the provider and will become part of the Department record. The Department will prepare quarterly a summary of the decisions of the Hearings Examiner rendered during the preceding quarter. Amended reports under regulation III.A.9. are not acceptable from non-appealing providers for retroactive benefit of a appeal decisions.

III. Reports

A. General Reporting Requirements and Submittal Procedures.

1. Required Reports. Except as provided by II.C.5. and 6., to receive a per diem rate for providing care to welfare recipients, the provider must submit reports covering the provider's normal fiscal year conforming to the uniform accounting system defined in forms supplied by the Department. Reports, supporting documentation, and worksheets will consist of the following:
   a. General provider information and statistical data.
   b. Financial statements consisting of a comparative statement of earnings or operations.
   c. Reports of historical costs and known cost changes together with supporting calculations and worksheets.
   d. Rate-determination worksheets.
   e. Other relevant data may be required by the Commissioner to support a welfare rate request. If such data are not provided within 30 days of the request, the Commissioner must calculate a rate, making whatever assumptions deemed appropriate to arrive at the rate in the absence of the requested data.

f. A complete statement of fees and charges.
g. The names of all persons other than mortgage companies owning any interest in the facility including stockholders with an ownership interest of ten per cent or more of the facility.
h. If a change in ownership occurs, the new owner must submit a copy of the purchase agreement and any other documents related to the change in ownership.

Specific report formats and preparation instructions will be contained in a provider manual prepared and revised periodically by Department personnel. Copies of said manual will be made available to all interested parties through the Documents Section of the Department of Administration. Newly established providers or providers who change their fiscal year must file short-period reports if the period covered is more than five months.

2. Method of accounting. The accrual basis of accounting in accordance with generally accepted accounting principles shall be the only method acceptable for purposes of satisfying reporting requiements. In a unique situation, such as the use of governmental providers, the use of the accrual basis of accounting may not be applicable. In such an instance, the Commissioner may permit the provider to use a cash or modified cash basis of accounting if the provider can establish that no difference in rate would result.

3. Records. The provider, where applicable, will maintain statistical and accounting records to support information in no less detail than that required by III.A.1. required reports. The provider shall also make available federal and state income tax returns upon request of Department personnel.

4. Report certification.
   a. Reports required in regulation III.A.1. will be accompanied by a certification of (1) the majority owner defined as the person having over 50 per cent effective ownership, or the chief financial officer if there is no majority owner, and (2) the administrator or the chief operating executive. If reports have been prepared by someone other than the above individual, a separate statement signed by the preparer shall be included stating the terms of the preparer's employment.
   b. If the provider has either audited or unaudited financial statements prepared by an independent public accountant, such statements must be submitted as a part of reports required by III.A.1.

5. Reporting deadlines and extensions.
   a. Deadlines. Required reports shall be submitted directly to the Department within three calendar months after the close of the provider's normal fiscal year.
   b. Report deadlines exceptions. The Commissioner may grant exceptions to the reporting deadline for just cause. A routine extension of 60 days will be granted when a written request is received by the Department prior to the reporting deadline.

6. Penalties.
   a. Report preparation and submittal. The penalty for non-compliance with Regulation III.A.1. and III.A.5. will be to reduce the reimbursement rate to 80 per cent of the rate then in effect on the first day of the fourth calendar month after the close of the provider's normal fiscal year. This penalty is not to apply for minor errors and omissions on reports. If the required reports are subsequently submitted, retroactivity of the established rate will be limited to the first day of the month following the month in which acceptable reports are received, unless retroactivity to a prior date is otherwise designated by the Commissioner.
   b. False reports. Incorrect or false information supplied by the provider on required reports resulting in overpayments to the provider will result in one or more of the following:
      (1) Immediate adjustment of the welfare rate, along with retroactive recovery by the county welfare board of funds incorrectly paid to the provider.
      (2) Termination of the provider contractual agreement.
      (3) Prosecution under applicable federal and Minnesota statutes.
7. Audits. All reports will be subjected to desk audit and may be subjected to field examination of supporting records and compliance with regulations by state and federal auditors or auditing firms under contract to the state. If such audits reveal inadequacies in provider record keeping and accounting practices, the Commissioner may require that the provider engage competent professional assistance to properly prepare required reports. Penalties of III.A.6.a. or b. may be applied to ensure compliance with this provision.
8. Application of reasonable cost principles. Reports required by III.A.1. must be prepared in accordance with reasonable cost principles in IV.

9. Amended reports. Except as provided in II.A.3.b., providers may file amendments to previously filed reports when errors or omissions are uncovered or when federal or state minimum wage laws changes occur unexpectedly or when long term labor contracts expire and are renegotiated subsequent to the reporting deadline in III.A.5.a. The cost change omissions to comply with minimum wage law changes or labor contracts will be limited to the wage increases required to meet the minimum standards of federal or state wage laws or reasonable labor agreements. Such changes in the welfare per diem rate must result in at least a five cent per patient day or $2,000 adjustment, whichever is less, for each annual period. The payment and period covered by this provision are governed by II.B.3.

B. Special Provisions for Multi-home Providers and Providers Involved in Other Business Activities.

1. Reporting exceptions. Providers who operate several homes or who are engaged in activities other than nursing care may not be able to comply with the required reports referred to in III.A.1. In that case, the provider must indicate reasons for noncompliance.

2. Charges from related organizations. Costs applicable to services, facilities, and supplies furnished to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. If the related organization in the normal course of business sells services, facilities or supplies to the outsiders, the cost to the provider shall be the outsider's price; however, sales to outsiders must constitute at least 25 per cent of its sales.

3. Cost allocation of top-management salaries and management fees. The allocated portion of compensation for the chairman of the board, directors, presidents, or other similarly individuals allocated to an individual nursing home shall be subject to the limitation provided in regulation IV.C.1. Other corporate charges or costs allocated to a nursing home must represent the cost of services actually rendered and be identified as to the type of service provided.

C. Definitions

1. Care definitions. The following care classifications are used in cost reporting required by these regulations. The definitions of these terms included in DPW Rule 47 and appropriate federal regulations governing Title XIX are hereby adopted.
   a. Skilled Nursing Home (Skilled)
   b. Intermediate-Care Facility I (ICF I)
   c. Intermediate-Care Facility II (ICF II)

2. Cost categories. Costs used for rate-setting purposes and related to patient care are to be grouped according to major cost categories used in required reports. Such categories are defined as follows:
   a. Nursing - All directly identifiable costs associated with nursing care defined in III.C.1. In general, these include bedside care; administration of medications, irrigations, and catheterizations; application of medications, dressings, or bandages; rehabilitative nursing techniques; and definition of modified diets, as well as other treatments prescribed by a physician that require professional or technical knowledge, skills, and judgment as possessed by a professional nurse. Included are comfort medications, medical supplies, devices, and other routine supplies not separately reimbursed as listed in Regulation III.C.2.h. Personnel costs to be included in nursing are the salaries of the director of nursing, supervising nurses, registered professional nurses, licensed practical nurses, nurses aides, orderlies and attendants (ICF II care only). The salaries or fees of physicians performing consulting services not reimbursed by separate fee schedule are also to be included in this cost category.
   b. Dietary - All directly identifiable costs of normal and special diet food including food preparation and serving. Personnel costs to be included in dietary are the salaries of dieticians, chefs, cooks, dishwashers, and all other employees assigned to the kitchen and dining room.
   c. Laundry and linen - All directly identifiable costs of linen and bedding, laundering, and laundry supplies. Personnel costs to be included in laundry are the salaries of laundry employees, seamstresses, laundrymen, and ironers.
   d. Housekeeping - All directly identifiable costs of housekeeping, including cleaning and lavatory supplies. Personnel costs to be included are the

salaries of housekeepers, maids, and other cleaning personnel.

e. Plant operation and maintenance - All directly identifiable costs for maintenance and operation of the buildings and grounds, including fuel, electricity, water, supplies and parts to repair and maintain equipment and facilities, and tools. Personnel costs to be included are the salaries of engineers, painters, heating-plant employees, plumbers, electricians, carpenters, and watchmen.

f. Other care-related services - All directly identifiable costs of other services, such as recreational activities, religion, rehabilitation, arts and crafts, and social services.

g. General and administration - All directly identifiable costs for administering over-all activities of the facility, including business-office functions, travel expense, motor vehicle operating expense, telephone charges, office supplies, advertising, licensing fees, and professional services. Personnel costs are the salaries of administrators, assistant administrators, accounting personnel, and all clerical personnel. Also included in administration are fringe benefit costs of all employees, such as employment taxes, health insurance, pensions, and life insurance; also included are other costs not otherwise classified under definitions in III.C.2.

h. Miscellaneous nonreimbursable services and expenses -

(1) All directly identifiable cost of functions normally reimbursed by charges to patients, employees, or outsiders, such as the operating costs of a pharmacy, beauty shop, or coffee and gift shop are included here.

(2) Also included are specific costs that may be incurred by the provider and reimbursed separately according to a fee schedule. These include but are not limited to the following:

(aa) Services provided by licensed medical, therapeutic, or rehabilitative practitioners.

(bb) Oxygen at prevailing prices.

(cc) Wheel-chair alterations for specific Medical Assistance recipients.

(3) Also included in this section will be costs associated with operating activities financed by gifts or grants from private or public funds.

(4) All costs classified in III.C.2.h. are not allowable for purposes of determining a per diem rate under these regulations.

3. Patient days.
   a. General definition. For purposes of determining a per diem rate, a patient day is defined as a day for which full and normal billings were rendered.
   b. Special care rates. Facilities that provide care to a patient requiring less care than the care level to which the facility is certified may adjust lesser-care patient days for rate-calculation purposes as follows:

Level of Care Provided	Certification	
	Skilled	ICF I
Skilled	1.00	N/A
ICF I	.85	1.00
ICF II	.50	.60

The lesser care patient day adjustment cannot exceed 15 per cent of actual patient days. This limitation may be waived temporarily to accommodate a transition period during which the provider obtains the proper facility certification.

   c. Bed reservation rate. All days for which billings have been rendered to reserve a bed during a patient's temporary absence from the facility should be counted as actual patient days for welfare rate determination.

C. Cost Allocation Procedures.

1. General provisions for all providers.
   a. Costs will be classified in accordance with categories defined in Regulation III.C.2. and, if applicable, by care level defined in Regulation III.C.1.
   b. Classification of costs to cost categories III.C.2. will involve one or more of the following steps:
      (1) Direct identification, without allocation, which will be accomplished in the routine classification of transactions when costs are recorded in the books and records of the provider.
      (2) In instances in which individuals have multiple duties, the person's salary cost will be allocated to categories III.C.2. on the basis of management's estimate of time spent on various activities. This procedure will not be applied to administrators or other chief executives' salaries in facilities with 60 or more licensed beds.
      (3) Other costs that cannot be classified to cost categories through use of procedure III.D.1.b.(1) and III.D.1.b.(2) will be classified in the administrative category.

c. Adjustments for costs otherwise reimbursed. Recorded costs will be reduced for costs related to other activities not subject to rate determination as defined in regulation III.C.2.h.

d. Non-Allowable cost adjustments. Recorded costs will be adjusted when such costs exceed reasonable cost principles defined in IV of these regulations. All adjustments will be footnoted with the applicable regulation number. Costs previously excluded by III.C.2.h. will not require further adjustment.

2. Specific care level allocation procedures for multi-level providers. Cost allocation procedures are necessary to determine costs among different care level facilities. Allocation procedures are defined in the following sections and will be applied in the order stated except where noted otherwise. Regardless of method selected, a reasonable identification of costs to care level must result.

a. Nursing care - Any combination of allocation procedures (1), (2), and (5) below can be used as long as the result is a reasonable approximation of actual costs incurred by care level.

(1) Direct identification (without allocation) in the routine classification of transactions when costs are recorded in the books and records of the provider (e.g. invoice and time record account classifications).

(2) Cost allocation on the basis of regularly validated time or cost studies.

(3) Remaining costs (e.g. nursing supervisor, supplies, etc.) not classified under methods (1) or (2) above will be allocated on the ratio of costs identified to care levels (using (1) and/or (2) above), one care level to another.

(4) If methods (1), (2), or (3) above cannot be used, costs will be allocated on the basis of actual patient days weighted by the ratio of maximum allowable nursing care and attendant hours as defined in regulation IV.B.

b. Dietary.

(1) Cost allocation on the basis of regularly validated time or cost studies.

(2) Cost allocation based on the number of meals served.

(3) Cost allocation based on the actual patient days.

c. Laundry and linen, housekeeping, and plant operation and maintenance.
The following allocation procedures can be applied to individual department costs or the combination of these three departments at the option of the provider.
(1) Same as III.D.2.a.(2) - time or cost supplies.
(2) Allocation on the ratio of square feet of floor space devoted directly to each care level.
(3) Same as III.D.2.a.(3) - patient days.

d. Other care related services
(1) Same as III.D.2.a.(2) - time or cost study.
(2) Same as III.D.2.a.(3) - patient days

e. General and administration - Cost allocation on the ratio of the combined cost by care level determined for categories III.D.2.a. through d. and f.

f. Depreciation, interest and real estate and personal property taxes.
(1) Location of equipment when determinable.
(2) Same as III.D.2.c.(2) - square feet.
(3) Same as III.D.2.b.(3) - patient days. This allocation procedure must be used if actual patient days in any care level exceeds certified capacity patient days.

g. Earnings allowance - Cost allocation on the ratio of the combined cost by care level determined for categories III.D.2.a. through d. and f.

3. Hospital attached facilities. Costs between hospitals and attached facilities must be allocated by the "Medicare Worksheet B" using Medicare allocation factors for the following three cost groups:
a. All expense classifications without depreciation, administration and general.
b. Depreciation.
c. Administration and general.

The nursing care limitation under IV.B.1. and the investment per bed limitation under IV.D.2.a. will be waived when the Medicare cost allocation factors result in these limitations being exceeded.

IV Reasonable Cost Principles

A. General Provisions

1. Reasonable costs. Costs to be allowable for rate setting purposes must satisfy the following over-all criteria:
a. They must be necessary and ordinary costs related to patient care.
b. They must be costs that prudent and cost-conscious management would pay for a given item or service.

2. Costs not allowable - Costs that relate to management inefficiency, unnecessary care or facilities, and activities not common and accepted in the nursing care field are not allowable.

3. Reasonable compensation. Reasonable compensation of individuals employed in the facility is an allowable cost, provided the services are actually performed in a necessary function and the costs reported are actually incurred. To be reasonable the compensation allowance must be such an amount as would ordinarily be paid for comparable services by comparable facilities. To be necessary the function must be such that had the individual not rendered the services, the facility would have had to employ another person to perform the services. The function must also be pertinent to the operation and conduct of the facility. Where the services are rendered on less than a full-time basis, the allowable compensation should reflect an amount proportionate to a full-time basis. Compensation shall include payment to individuals as well as to organizations of non-paid workers that have arrangements with the provider for the performance of services by non-paid worker.

4. Substance over form. The cost effect of transactions that are conceived for the purpose of circumventing the regulations contained in DPW Rule 49 will be disallowed under the principle that the substance of the transaction shall prevail over form.

5. Costs due to changes in federal or state requirements. Costs incurred to comply with changes in federal or state laws and regulations on increased care and improved facilities are allowable costs for purposes of determining a historical per-diem rate under II.A.1.

6. Reduction in costs. Purchase discounts, allowances, and refunds are a reduction of the cost of whatever was purchased.

7. Annual review of cost limitations. The Commissioner shall review annually the dollar limitations for top management compensation limitation IV.C.1. and depreciation basis limitation(IV.D.2.) and adjust the limitations accordingly if justified by current data. The data used as a basis for this determination shall be made available to all providers.

8. Application of principles and specific limits. The reasonable cost principles defined in IV.A. apply to all reported costs and have been specifically defined for certain cost elements in IV.B. through IV.H.

B. Nursing Care and Attendant Limitations

1. Nursing care. Nursing-care costs will be limited by a maximum number of nursing hours per patient day as follows:

Skilled - 2.9 hours
ICF I - 2.3 hours

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under IV.H.4.c. or facilities licensed under DPW Rule 80.

2. Attendants (ICF II facilities only). Reasonable costs for attendants in ICF II facilities will be limited to one hour per patient day. If the actual average attendant hours per patient day exceeds this limit, the reasonable cost limitation will be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per patient day for the year times the actual cost per patient day.

C. General and Administrative Expenses

Reasonable cost criteria for general and administrative expenses are as follows:

1. Top-management compensation limitation. Top-management compensation includes that of owners, administrators, president, chairman of the board, board members, or other individuals receiving compensation as executives but not performing duties of a department head. Compensation includes the costs of non-cash compensation such as residences, salaries, and deferred compensation except IRS qualified pension or profit sharing plans. The average annual cost limitation for rate-setting purposes on compensation is determined according to the average number of combined licensed nursing-home and boarding-care beds according to the following schedule:

Number of Beds	Cumulative Annual Compensation Per Bed Limitation
First 50	$264
Next 51-100	132
Over 100	66

The minimum annual compensation limitation is $10,000 or actual compensation, whichever is less, and the maximum shall be $35,000. For each full percentage point increase in the consumers price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the months October, 1973, and October, 1974, new series index (1967=100), the accumulation annual compensation per paid limitation listed above shall be increased by one percent. The increase, if any, generated by this formula shall be affected in January 1, 1974. Similar calculations shall be made for each successive year using the October indices for two successive years with the increases beginning effective the following January.

2. Assistant Administrator. Reasonable compensation of assistant administrators is not subject to the limitation in IV.C.1.

3. Other management services. The costs of other directors' fees, unidentified management fees, and physician compensation for performing administrative functions are allowable to the extent that such costs together with compensation of top management do not exceed the limitations defined in IV.C.1.

4. Other general and administrative costs.
   a. Owners life insurance. The costs of premiums are not allowable.
   b. Personal expenses. Personal expenses of owners or employees, such as homes, boats, airplanes, vacation expenses, etc., are not allowable costs. The costs of residences for administrators and key staff are allowable costs if such costs together with other compensation do not exceed the limitations of IV.A.3. and IV.C.1.
   c. Professional, technical, or business-related organizations. These costs are allowable if their function and purposes can be reasonably related to the development and operation of nursing facilities, patient-care facilities, and programs for the rendering of patient-care services.
   d. Social fraternal, and other organizations. Costs incurred in connection with memberships in all organizations not included in IV.H.4.c. are not allowable.
   e. Travel and automobile. These expenses are not an allowable expense unless they are related to activities of managing the nursing home.
   f. Entertainment. These expenses are not allowable costs.
   g. Advertising. Costs incurred in connection with maintaining or maximizing occupancy are allowable.

h. Pension and profit-sharing plans. Contributions to either an Internal Revenue Service approved pension or profit-sharing plan, but not both, are allowable costs.

i. Employee education costs, orientation, and on-the-job training. Costs relating to providing improved patient care of, where required by state law, are allowable costs. If part or all of these costs are reimbursed by private or public funds, only the excess of cost over reimbursed funds are allowable costs. All such costs should be included in respective cost categories, III.C.2. unless not identifiable.

j. Training programs for non-employees. Costs of training programs conducted for non-employees other than for volunteers are not allowable.

k. Telephone, television, and radio service. These are allowable costs where furnished to the general patient population in areas of provider day rooms, recreation rooms, lounges, etc. The cost of these services when located in a patient accommodation is not allowable.

l. Noncompetitive agreement. Costs of these agreements are not allowable.

m. Pre-opening costs. One time pre-opening costs of new facilities incurred prior to admittance of patients must be capitalized as a deferred charge. Costs in the form of amortization will be recognized as allowable costs over a period no less than 120 consecutive months beginning with the month in which the first patient is admitted for care. Examples of these costs are wages paid prior to the opening of the facility. Construction financing, feasibility studies, and other costs related to construction must be depreciated over the life of the building.

n. Bad debts. Amounts considered to be uncollectible patient accounts are not allowable costs.

o. Fund-raising costs. Costs incurred for such purpose including advertising, promotional, or publicity costs are not allowable in the year in which they are incurred except in the form of amortization as allowed by IV.F.1.

p. Charitable contributions. These are not allowable costs.

q. Legal fees. Costs incurred for litigation against governmental agencies in which the governmental agencies prevail are not allowable costs.

D. Depreciation

1. Basis for depreciation calculation.

a. Cost. Historical cost of nursing facilities shall be the basis for calculating depreciation as an allowable cost, except as provided by IV.D.1.b.

b. Change in ownership of facilities. In a case in which a change in ownership of a nursing-home facility occurs, and the new owner's investment, if a bona fide sale is established by the new owner, the basis for depreciation will be adjusted as follows:

(1) In the case of a complete change in ownership, the basis for calculating depreciation will be the lower of:

(aa) The portion of the purchase price properly allocable to depreciable nursing home facilities; or

(bb) The appraised value of the depreciable nursing home facilities calculated under the replacement cost, depreciated method.

(2) In the case of a partial change in ownership, as defined below, the basis for calculating depreciation shall be determined according to provision of IV.D.1.b.(1) the case of a complete change in ownership except that all relevant figures will be placed on a scale proportionate to the percentage of ownership change. For purposes of this provision, a partial change in ownership occurs only in the case of an organization with ten or fewer owners, after the change in ownership, and when the ownership change exceed 20 per cent. Any increase allowed by this section will then be adjusted according to IV.D.1.f.

c. Redemption of ownership interests. In a case in which the remaining owners establish the fact that a bona fide redemption of an ownership interest has occurred,the basis for calculating depreciation will be increased by the excess, if any, of the redemption price over the former owner's investment. The adjusted basis shall be determined by applying the provision of IV.D.1.b.(2).

d. Donated assets. The basis of donated assets, except for donations between providers or related parties, shall be fair market value defined as the price that an able buyer would pay a willing seller in an arms-length sale or appraised value defined in IV.D.1.b.(1)(bb), whichever is lower. An asset is considered donated when the provider acquires the asset without making any payment for it in the form of cash, pro-

perty, or services. In the instance of the exception stated, the net book value to the donor shall be the basis for the donee.

e. Subsequent acquisitions. The basis for calculating depreciation may be increased for the actual cost of equipment additions or facility modification or renovation.

f. Recapture of depreciation resulting from sale of facility. The sale of depreciable nursing-home property, or substantial portion thereof, at a price in excess of the cost of the property as reduced by accumulated depreciation calculated in accordance with IV.D. indicates the fact that depreciation used for purposes of computing allowable costs was greater than the actual economic depreciation.

(1) The amount of the recapture will be determined as follows:

(aa) The gross recapture amount will be the lesser of the actual gain on the sale or the depreciation after the effective date of DPW Rule 49 (November 1, 1972).

(bb) The gross recapture amount as determined in (aa) above shall be allocated to fiscal periods from November 1, 1972, through the date of sale. The gross recapture amount shall be allocated to each fiscal period in the same ratio as depreciation amounts claimed under DPW Rule 49. The amount allocated to each period shall be divided by the total actual patient days in that period, thereby determining a patient-day cost for the period. The total net recapture shall then be determined by multiplying the actual welfare days times the patient-day cost for each fiscal period.

(cc) The total net recapture amount determined to (bb) above will be reduced by one per cent for each month of ownership since the date of acquisition of the facility. The net recapture paid to the State of Minnesota is includable in the new owner's basis for depreciation subject to the provisions of IV.D.1.b.

(2) The net recapture amount so determined in (cc) above will be paid by the new owner to the State of Minnesota within a time period agreed to by the Commissioner and the new owner. The time period should effectuate an orderly payment schedule and must not exceed two years after the date of sale.

g. Gains and losses on disposition equipment. Gains and losses on the sale or abandonment of equipment are includable in computing allowable costs. A gain shall be an offset to depreciation expense to the extent that such gain resulted from depreciation reimbursed under these regulations. Gains or losses on trade-ins should be reflected in the asset basis of the acquired asset. Losses will be limited to five cents per patient day annually; however, any excess over this limitation can be carried forward to future years.

2. Limitations

a. The total basis of depreciable nursing-facility assets shall not exceed an average of $13,000 per bed for licensed beds in two or more beds per room and $19,500 per bed for licensed private rooms built or purchased after January 1, 1974. This limitation will be adjusted annually beginning January 1, 1975 according to a construction index as determined by the Commissioner. The depreciable basis for licensed beds built or purchased prior to January 1, 1974 shall not exceed an average of $11,000 per bed for licensed beds in two or more beds per room and $16,500 per bed for licensed private room which satisfy the certificate of need provision of II.C.3. However, the depreciable basis for licensed private rooms built prior to August 15, 1972 shall not exceed an average of $16,500 per bed for a maximum of 5% of licensed beds.

b. In no instance can accumulated depreciation calculated in accordance with IV.D. exceed the basis defined in IV.D.1.

c. Accumulated depreciation as of the beginning of the first fiscal year covered by this regulation shall be calculated retroactively using the useful life concept defined in III.D.3. and IV.D.4.

d. Regardless of the applicability of the limitation stated in IV.D.2.a. above, depreciation on investments in facility modifications and new equipment will be allowed if they were required by governmental requirements.

3. Depreciation rates for new facilities and equipment. Depreciation shall be calculated using the basis determined under IV.D.1. applying one of the "useful life" schedules defined in IV.D.3.a. or IV.D.3.b.

a. Building - 35 years
Major building improvements (depreciated over the remaining life of the principal asset of useful life, but not less than 15 years).
Land improvements - 20 years
Equipment - 10 years
Vehicle - 4 years

b. American Hospital Association depreciation guidelines.

4. Other useful lives
   a. Depreciation rate for used facilities and equipment. The useful life shall be assigned by the provider considering the individual circumstances; however, the useful life will not be shorter than one-half of the useful life provided by IV.D.3.a. or IV.D.3.b.
   b. Leasehold improvements. The useful life of the improvement or the remaining term of the lease, including renewal periods, shall be used, whichever is shorter.

5. Depreciation method. The straight-line method of depreciation should be used except, at the option of the provider when the principal payments on capital indebtedness (as defined in IV.F.1.a.) exceed the total depreciation allowance calculated in accordance with IV.D. In such instances, depreciation may be increased to equal principal payments on capital indebtedness amortized over actual amortization periods, however, the amortization period cannot be less than 20 years for building and six years for equipment. Accumulated depreciation cannot exceed the basis defined in IV.D.1.

6. Facilities financed by public funds. Depreciation will not be allowed on the portion of facilities financed by federal, state or local appropriations or grants unless the intent of such appropriation or grantwas that to be repaid through operating revenue of the facility.

7. Non-depreciable assets. Nursing-facility assets that are not depreciable include but are not restricted to:
   a. Land. Includes the land owned and used in provider operations included in the cost of land and the costs of permanent roadways and grading of a non-depreciable nature, the cost of curbs and sidewalks whose replacement is not the responsibility of the provider, and other land expenditures of a non-depreciable nature.
   b. Goodwill. Includes amounts that result from purchase of property or stock in excess of determinable value as determined in IV.D.1.b.

8. Capitalization vs. expense. Expenditures for equipment that has a useful life of more than one year shall be capitalized except that the provider may show as expenses small equipment purchases normally capitalized if such items do not exceed two cents per patient-day annually.

Estimated Useful Life of Land Improvements, Buildings, and Fixed Equipment

Land Improvements

Item	*Years*
Fencing	
Brick or stone	25
Chain link	20
Wire	10
Wood	15
Flagpoles	20
Paving (including roadways, walks, and parking)	
Asphalt	10
Concrete	15
Gravel	5
Retaining walls	25
Shrubs, lawns, and trees	10
Signs	10
Underground sewer and water lines	20
Yard lighting	20

Buildings

Boiler houses	30
Garages	
Masonry	25
Wood frame	15
Masonry, reinforced concrete frame	40
Masonry, steel frame (fireproofed)	40
Masonry, wood frame	30
Residences	
Masonry	30
Wood frame	25
Storage buildings	20

Fixed Equipment

Building Services Equipment	
Central television antenna systems	10
Clock systems	15
Electric lighting and power feed wiring	20
Conduit and wiring	20
Fixtures	15
Switch gear	20
Transformers	20
Elevators	
Dumbwaiter	20
Freight	20
Passenger, high speed, automatic	20
Passenger, other	20
Heating, ventilating, and air conditioning systems	20
Air conditioning systems (all equipment and units)	
Large—over 20 tons	15
Medium—5 to 15 tons	12
Small—under 5 tons	8
Boilers	20
Compressors, air, under 5 HP	15
Compressors, air, 7½ HP and over	15
Condensate tanks	20
Condensers	15
Controls	20
Coolers and dehumidifiers	15
Cooling towers	
Metal	15
Wood	15
Duct work	20
Fans, air handling and ventilating	15
Filters	15
Furnaces, domestic type	20
Incinerator, indoor	20
Oil storage tanks	20
Piping	20
Precipitators	15
Pumps	15
Radiators, cast iron	25
Radiators, finned tube	20
Unit heaters	15
Nurse call systems	20
Oxygen, gas, air piping	20
Paging systems	15
Plumbing, composite	20
Fixtures	20
Piping	25
Pumps	15
Water heaters	15
Water storage tanks	20
Sewerage, composite	25
Piping	25
Sump pumps and sewerage ejectors	15
Sprinkler and fire protection systems	20
Fire alarm systems	20
Fire pumps	20
Sprinkler system	25
Tanks and towers	20
Telephone systems	20
Vacuum cleaning system	20
Other Fixed Equipment	
Built-in benches, bins, cabinets, counters, shelving	20
Conveying systems	15
Generator sets	25
Hoods, fume	20
Sinks and drainboards	20
Sterilizers (built-in)	20

Estimated Useful Lives of Individual Items of Major Movable Equipment

Item	*Years*
Accounting/bookkeeping machines	8
Adding machines	10
Addressographs	15
Air conditioners (window)	10
Ambulance	4
Analyzers, gas	10
Anesthesia units	15
Audiometers	10
Auto-analyzers	10
Autoclaves	20
Automobiles, delivery	4
Automobiles, passenger	4
Autoscalers, ionic	10

Item	Years
Bain Maries	15
Balances	15
Basal metabolism units	10
Bassinets, heated	10
Baths, paraffin	15
Baths, water, laboratory	15
Beds, electric	15
Beds, manual	15
Benches, metal, wood	20
Bins, metal, wood	20
Biochemical analysis units, micro	10
Blanket dryers	15
Blanket warmers	15
Bleach tanks	15
Blood clot timer units	15
Blood counters	10
Blood processing units	15
Boilers, copper	10
Bottle washers	10
Breathing units, positive pressure	10
Broilers	10
Buffer, electric	20
Cabinets, metal and wood	15
Cabinets, solution	10
Calculators	8
Cameras	20
Canopies, ventilating, ironer	10
Cardiographs	10
Cardioscopes	10
Carts, food/tray, heat-refrig.	10
Cash registers	15
Cassette changers	15
Centrifuges	15
Chairs, dental	20
Chairs, metal and wood	15
Chairs, specialist	15
Chairs, wheel	10
Check protectors	12
Chloridometer-titrators, automatic	10
Chromatographs, gas	5
Cobalt, radioactive	10
Coffee grinders	12
Coldpack units, floor	12
Collators, electric	15
Collectors, silver, automatic	10
Colorimeters	15
Compressors, air	10
Cookers, pressure, food	20
Cookers, starch	20
Coolers, walk-in, free standing	10
Copiers	15
Counters, food service	10
Counters, radiation	10
Croupettes	10
Crushers, syringe	10
Cutters, cloth, electric	10
Cutters, food	10
Defibrillators	15
Dental treatment units	20
Desks, metal and wood	10
Diathermy units	10
Dictating equipment	10
Dish sterilizers	10
Dishwashers	15
Disinfectors	20
Distilling apparatus	15
Driers, clothes	10
Driers, hair	10
Driers, sonic	15
Drills, press	15
Drying ovens, paint shop	15
Duplicators	10
Electrocardiographs	10
Electroencephalographs	10
Electrophoresis units	10
Electrosurgical units	15
Emery wheels, electric	20
Examining tables, metal and wood	15
Extractors, laundry	7
Floor scrubbing machines	7
Floor waxing machines	10
Fluoroscopes	15
Folders, flatwork	12
Food choppers	15
Frames, turning	10
Fryer, deep fat	20
Furnaces, laboratory	10
Glove conditioners	10
Glove driers	10
Glove powdering machines	10
Glove testers	15
Graphotypes	10
Griddles	15
Grinder bench	10
Grinder, coffee	10
High frequency apparatus with diathermy	15
Homogenizers	15
Hubbard tanks	12
Hydrocollators, floor	10
Ice cream freezers	10
Ice cream storage cabinets	10
Ice cube making equipment	15
Illuminator units, multifilm	15
Incubators	15
Incubators, laboratory	15
Ironers, flatwork	15
Jointer/planers, electric	10
Kettle, steam jacketed	10
Kilns	10
Kymographs	10
Ladders	10
Lamps, deep therapy	15
Lamps, emergency	10
Lamps, infrared	10
Lamps, mercury quartz	20
Lathes	4
Lawnmowers, power	15
Lights, delivery	10
Lights, examining	15
Lights, operating	20
Lights, portable, emergency	15
Linen markers	15
Linen tables	10
Loaf molding equipment	15
Looms	

Item	Years
Mailing machines	12
Marking machines	15
Meat choppers	10
Meters, pH	10
Microfilm units	15
Microprojectors	20
Microscopes	15
Mixers, commercial type	15
Oscilloscopes	15
Oven, baking	15
Oven, paraffin	10
Oven, roasting	15
Ovens, sterilizing	10
Oxygen tents, motors, and trucks	10
Paint spray booth	15
Paint spraying machines	15
Paper balers	20
Peelers, potato	15
Peelers, vegetable	15
Photometers	10
Photrometers	10
Physicians' in-and-out registers (portable)	15
Pianos	15
Planers and shapers, electric	15
Polishers, floor	10
Polishing and buffing machines	10
Presses, laundry	15
Projection machines	15
Pulmotors	10
Pumps, vacuum and pressure	15
Radiographic-fluoroscopic combination	10
Refrigerators, commercial type	12
Respirators	10
Respirometers	10
Resuscitators	10
Rinsers, sonic	10
Saws, bench, electric	15
Scales, counter, platform, postal	10
Scales, laundry	20
Scanners, isotope	10
Scintillation scalers	10
Seriographs, automatic	10
Serological baths	15
Sewing machines	15
Shaking machines	10
Sharpeners, microtome knife	15
Shears, squaring, floor	20
Slicers, bread	10
Slicers, meat	10
Snow blowers	10
Spectrometers	10
Spectrophotometers	10
Steamer, vegetable	10
Sterilizers, movable	20
Stoves	15
Stoves, heating	10
Suction pump	10
Tables, autopsy	20
Tables, examining	15
Tables, metal and wood	20
Tables, obstetrical	20
Tables, operating	20
Tables, refrigerated	12
Tables, therapy	15
Tanks, hot water	15
Tanks, paraffin	15
Tanks, soap	15
Tents, oxygen	10
Time recording equipment	10
Tissue processors	10
Toasters, commercial type	10
Tractors	10
Transcribing equipment	10
Tray conveyors	15
Trucks, hot food	10
Tumblers	15
Typewriter, electric	5
Typewriter, manual	8
Ultraviolet units	15
Urns, coffee	10
Urns, milk	10
Vacuum cleaners	10
Ventilating fans	15
Vibrators	10
Volumetric, blood gas apparatus	10
Waffle irons, commercial type	10
Wall washing	10
Warmers, dish	15
Warmers, food	15
Washing machines, commercial type	15
Water baths	15
Water coolers—bottle type, fountain type	10
Water purifiers and softeners	15
Whirlpool baths	15
X-ray developing tanks	10
X-ray film driers	10
X-ray film processors	10
X-ray machines, deep therapy	10
X-ray machines, mobile	10
X-ray machines, superficial therapy	10

E. Leased Facilities or Equipment

1. Rental charges. Reasonable rental charges incurred by a provider through a lease entered into an arms length transaction are includable in allowable costs. Unless:
   a. Rental charges result from a sale, lease-back arrangement, or lease with option to buy at a price less than anticipated value.
   b. Rental charges are paid to a related or controlled organization. If either IV.E.1.a. or b. exists, the provisions of IV.E.2. will be applied.

2. If rental charges are not allowed, the rate of the provider will be determined as for any other provider as though the lease did not exist. In this case allowable costs would include both costs of the lessor and the lessee.

3. Rental charges incurred on leases entered into before the effective date of these regulations are includable as allowable costs except as provided in parts a. and d.

4. Limitation. Allowable rental charges are subject to the investment per bed limitations of IV.F.2.a.(1) determined by calculating the present value of lease payments exclusive of real and personal property taxes and other costs assumed by the lessor. Interest rates used in capitalizing lease payments shall be the mortgage rate of the lessor or, if the mortgage rate is not available, 2.15 percentage points above the interest rate of Federal Hospital.

   Insurance Fund obligations as of the effective date of the lease. The formula for determination of this provision is as follows:

   Present value of lease = Lease payment per period x present value factor per period.

   Investment per bed = Present value of lease ÷ Licensed Beds.

   The Present value factor can be determined from annuity tables according to the present worth of $1 per period for the term of the lease.

F. Cost of Capital

1. Interest
   a. Interest expense is an allowable cost and will be classified as follows:
      (1) Interest on capital indebtedness includes amortization of bond premium and discount and

related financing costs. Capital indebtedness is defined as any loan that is applied to purchase fixed assets related to providing nursing care as defined in IV.F.2.a.(1). The form of indebtedness will include mortgages, bonds, notes, and debentures, when the principal is repaid over a period in excess of one year.

(2) Other interest for working capital and operating needs that directly relate to providing nursing care is an allowable cost. The form of indebtedness will include, but not limited to, notes, advances, and various types of receivable financing the principal of which will be generally repaid within one year.

b. Interest income will be a deduction from interest allowable under provision IV.F.1.a.(1) or IV.F.1.a.(1). Interest income on restricted funds will not be deducted from interest expense. Restricted funds are defined as all unexpended donated funds carried by the institution that are restricted for other than operating costs. The operating or building funds cannot be included as part of restricted funds for this purpose.

c. Interest rate. The interest rate incurred must not be in excess of what a borrower would have had to pay in an arms-length transaction in the money market when the loan was made. When a non-proprietary provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund is allowable at a rate not to exceed the interest rate the fund is currently earning. Interest on liens between operating and building funds is not allowable.

d. Construction interest. Interest cost incurred during and related to construction must be capitalized as a part of the cost of the facility. The period of construction is considered to extend to the date the facility is put into use for patient care.

e. Allowable interest limitation for proprietary providers. Because of the provision of IV.F.2. for proprietary providers, the allowable interest expense defined in IV.F.1.a.(1) shall not exceed the providers average interest rate times 65 per cent of net allowable assets as defined in IV.F.2.a.(1).

2. Earnings Allowance for Proprietary Providers

a. Determination of allowance. An allowable cost for rate setting purposes is a return on capital provided by owners of proprietary facilities. The return will be applicable only to the portion of investment devoted to welfare recipients, and the return represents an earnings opportunity, not a

guarantee. This return does not represent an attempt to regulate the actual return realized by proprietary providers. The earnings allowance will be determined individually for each provider considering the following factors:

(1) Net allowable fixed assets employed will include actual cost of land, land improvements, buildings and equipment, less cumulative depreciation calculated in accordance with regulation IV.D. and further limited to $1,000 in excess of the limitations provided in IV.D.2.a.

(2) The amount of capital provided by owners will be assumed to be 35 per cent of net allowable fixed assets employed in providing nursing care.

(3) The after-tax rate of return allowed on capital provided by owners, calculated on the basis of IV.F.2.a.(1) and IV.F.2.a.(2), will be ten per cent.

(4) To obtain an after tax rate of return of ten per cent requires that the earnings allowance include an amount for average effective federal and Minnesota corporate income tax rates of 31.3 per cent to 54.24 per cent depending upon the tax bracket that would result from applying the rate of return to net allowable fixed assets.

(5) An additional earnings allowance will be allowed on the remaining 65 per cent of net allowable fixed assets not otherwise covered by capital indebtedness. The allowance will be 6 per cent of this amount.

3. Minimum cost of capital allowance. Notwithstanding the provision of IV.F.1.e. and IV.F.2., the cost of capital allowance shall be no less than the combination of:
   a. Actual interest on capital indebtedness, and
   b. An earnings amount determined by multiplying 93 per cent of capacity patient days for a fiscal year, or part thereof if a short period report is being filed, by thirty-five cents.

4. Minimum cost of capital allowance for non-proprietary providers and non-proprietary leased facilities. The cost of capital allowance for non-proprietary providers and leased facilities determined in IV.F.3.b. shall be reduced by the per-diem effect of facility utilization incentives under IV.H.1.

5. Minimum cost of capital allowance for proprietary leased facilities. The minimum cost of capital allowance for proprietary leased facilities determined in IV.F.3. and the facility utilization incentive determined in IV.H.1. will not exceed the aggregate cost per patient day of seventy-five cents plus disallowed interest.

G. Welfare

All directly identifiable costs associated exclusively with the welfare program and benefiting welfare patients exclusively will be calculated in a manner that results in an assignment of the incremental costs stated above wholly to welfare patients. Such costs may include reasonable expenditures for utilization review, preparation and processing of a cost statement under these regulations (limited to $500 for each reporting period on actual cost, whichever is less,) interest payments on federal or state loans taken to purchase or remodel equipment required for federal certification if it is clearly shown that these expenditures are associated exclusively with the welfare program and benefit welfare patients exclusively.

H. Facility Utilization Incentives

1. Capacity limitation. The allowable cost amount per day for depreciation, interest, property taxes, administration and earnings allowance will be calculated by dividing such allowable costs by 93 per cent of total capacity patient days for licensed beds. Facilities qualifying for the special care rate of III.C.3.b. may adjust the capacity limitation by the same formula. The capacity limitation cannot be reduced below 90 per cent of total capacity patient days for licensed beds.

2. Calculation of patient days. For purposes of calculating patient days at 93 per cent of licensed capacity and to assign a greater proportion of costs to private rooms, a factor of 1.5 times the number of licensed private beds will be used in determining the number of patient days. This provision shall apply only to facilities applying for a Certificate of Need after August 15, 1972.

3. Licensed bed capacity. Useable or operable bed capacity may be used for purposes of the calculation required by IV.H.1. and 2. if the provider can justify in writing, to the satisfaction of the Commissioner that licensed beds is an inappropriate measure of capacity.

4. Waiver of limitation. Providers may apply for a waiver of the provisions of IV.H.1. and 2. in the following instances:

a. For new facilities or facilities with major changes in capacity, that are applying for a certificate of need after the effective date of these regulations the Commissioner may grant a waiver of this capacity calculation and allow a rate based on anticipated actual patient days for the period through the end of the first full fiscal year.

b. In cases of extreme hardship, nursing homes not covered by IV.H.4.a. and having over 65 per cent welfare patient days may be granted an annual waiver by the Commissioner of this capacity calculation and be allowed a rate based on actual patient days. "Extreme hardship" will include a financial situation in which projected cash flow indicates the fact that debt and operating obligations cannot be met.

c. The commissioner may grant a waiver of this capacity calculation and allow a skilled welfare rate based on actual patient days for facilities which have a skilled patient population with an average length of stay of 100 days or less. The average length of stay is determined by dividing the actual patient days for the historical fiscal year by the total discharges for the historical fiscal year.

V. Implementation Procedures

A. Effective Date of DPW Rule 49 Revisions

1. All revisions of this revised DPW Rule 49 shall take effect beginning with reports covering fiscal years ending after March 31, 1976.

2. Providers who previously qualified for welfare rate determination under provision IV.H.4.c. must reapply for the revised provision for welfare rate determination effective May 1, 1976.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER

In the matter of the Proposed Adoption of Amendments to Rule 49 of the Minnesota Department of Public Welfare Governing the Determination of Welfare Per-Diem Rates for ICF/MR Providers.

FINDING OF FACTS

The above-entitled matter came on for hearing before a hearing officer duly appointed by the Minnesota Commissioner of Public Welfare on the 30th day of December, 1975, at 9:00 a.m., in Room D, Veterans Service Building, Columbus Avenue (between Wabasha and Iglehart), St. Paul, Minnesota, after proper notice required by Minn. Stat. 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard all of the testimony, having considered all of the evidence addressed and upon the records, files and proceedings herein, the Department finds the following:

1. Minn. Stat. 256B.04 (1974) authorizes the Commissioner of Public Welfare to promulgate official rules and regulations governing the Medical Assistance program, which includes welfare reimbursement to nursing homes providing services to welfare - eligible recipients.

2. There is need to amend Minnesota DPW Rule 49 to clarify the application of the short-term care exception to lesser care rates in those facilities which qualify as short-term skilled nursing homes. Rule 49 currently provides an exception to the maximum rate for providers of short-term skilled care. ("Short-term skilled care" providers are those providers who maintain patient length-of-stay materially below that normally attained by nursing home providers. The Department in the past identified stays of 180 days or less as short-term stays.) There was oral and written testimony that short-term care may be applicable to the intermediate care levels based on the need for rehabilitation by patients in these care classifications. The Department finds that short-term care is not characteristic of lesser care levels and that therefore there is no need for an exception to the maximum at these levels.

3. There is need to amend Minnesota DPW Rule 49 to include an amount of $.50 per patient day in the maximum welfare rate determination. This amount was suggested by nursing home

providers as the projected expense necessary to meet the costs for required medical consultative services. There was oral and written testimony that the projected expense was not accurately calculated and that only historical experience would determine the correct dollar amount. The Department finds that it is unknown whether consultant services will cost either more or less than $.50 per patient day. The Department further finds that an increase of this amount in the welfare maximum rate structure will alleviate the financial hardship of retaining the required consultant services through the prospective welfare rate mechanism.

4. There is need to amend Minnesota DPW Rule 49 to clarify the provision regarding maximum rate exceptions for newly-constructed facilities. The Department finds that such facilities may obtain an exception to the maximum rate for a full 24 mos. following the date of licensure and certification.

5. There is need to amend Minnesota DPW Rule 49 to alter the salary exception for the maximum welfare rate from 6% to 8% of the historical salaries. The Department proposed this amendment based on statistical knowledge that inflation is increasing by 10% to 11% per year. Therefore, a normal annual salary increase would more reasonably approximate 8% rather than 6%. The amendment will terminate the salary pass-through on January 1, 1978 since the Department has projected that comparable salaries will be paid statewide in nursing homes. There was oral and written testimony regarding these amendments to the maximum welfare rate structure. The testimony focused on a policy of evaluating historical experience to determine whether such amendments were required. The Department finds that this amendment to the rule is necessary to enhance the accountability of public funds. The Department finds, based on statistical studies, that the salary pass-through should relate to salary increases in excess of 8% and should end after calendar year 1977.

6. There is need to amend Minnesota DPW Rule 49 to delete the provision establishing an Appeals Committee to consider appeals, and to add a provision that appeals shall be heard by the Office of Hearing Examiners pursuant to Minn. Laws 1975, Chapter 380. There was oral and written testimony opposing the abolition of the Appeals Committee on the grounds that the Committee had acquired special expertise and valuable experience in hearing nursing home appeals. Testimony alleged that the newly established Office of Hearing Examiners need not be used for Rule 49 appeals. Based on advice of counsel, the Department finds that Minn. Laws 1975, Chapter 380 mandates that appeals brought under Minn. DPW Rule 49 be heard by the Office of Hearing Examiners.

7. There is need to amend Minnesota DPW Rule 49 to make explicit the Department's authority to request documents which relate to changes in ownership. The Department finds that such documents are needed for the welfare rate determination since they reflect the financial transactions underlying the change in ownership. There was oral and written testimony which objected to the proposed changes on the grounds that such documents would become part of the public file and be open for inspection under the Data Privacy Act. The Department finds that Minn. Stats. 256B.27 (1974) allows the Commissioner of Public Welfare to require reports, information and audits necessary for welfare rate determination and that the proposed amendment is therefore authorized by Statute.

8. There is need to amend Minnesota DPW Rule 49 to include a provision for counting bed reservation days as patient days for purposes of welfare rate determination. The Department has implemented a procedure for paying nursing homes for reserving welfare patient beds while the welfare recipient may be hospitalized or visiting relatives. Since the welfare rate determination is dependent on a calculation of facility costs divided by patient days and since this Department pays for reserved beds the Department finds that such reserved bed days should be included in the number of patient days the facility reports to the Department. Oral and written testimony supported the proposed change.

9. There is need to amend Minnesota DPW Rule 49 to exempt hospital-attached, Medicare-certified facilities from certain limitations of the rule. Previous cost reports indicated that some costs of these facilities were not being reimbursed under either the Medicare or Medicaid Programs since neither cost reimbursement formula covered such costs. An appeal decision from the former Appeal Board recommended an amendment to Rule 49 to alleviate this inequity. There was oral and written testimony in which the free-standing facilities objected to the special exceptions for hospital-attached facilities. The Department interprets this action as an attempt to have the limitations deleted for all facilities, and thus undermine the Department's mechanism for accountability of public funds. The Department finds that this amendment to the rule is based on Minnesota Stats., 256B.04, Subd. 2 (1974), which requires recognition of cost differences between individual providers while establishing cost limitations to satisfy the federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care.

10. There is need to amend Minnesota DPW Rule 49 to disallow certain legal fees which are incurred pursuant to litigation against the Departments of Health and of Public Welfare. The amendment

as proposed would disallow legal fees where the governmental agency prevailed. There was oral and written testimony objecting to the use of the word "prevail", and questioning its interpretation. The Department finds that a party shall be held to have "prevailed" when the ultimate decision is in its favor. The Department further finds that other states have similarly disallowed certain legal fees in their Medicaid rules, and that such a provision will discourage frivolous appeals.

11. There is need to amend Minnesota DPW Rule 49 to redefine a short-term stay in a skilled facility as a stay lasting 100 days. The existing Minnesota DPW Rule 49 defines a short-term stay as a stay lasting 180 days. Cost report statistics from reports submitted by short-term facilities indicated that the Department's intent as to short-term facilities would be better met by defining short-term stays as stays of no more than 100 days. There was oral and written testimony which questioned whether the Department was actually achieving cost savings by changing the provision. The Department finds that the purpose of the amendment is to insure the quality of rehabilitative care rendered, not to save money. The Department finds that this amendment of the rule is authorized by Stat. 256B.04, Subd. 2 (1974) which requires recognition of cost differences between individual providers while establishing cost limitations to satisfy the federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care.

12. There is need to amend Minnesota DPW Rule 49 to recognize the implementation of these amendments to the rule and to establish their effective date. There was oral and written testimony which objected to the retroactivity of that portion of the amendments which allowed a short-term stay with favorable welfare rate determination. The Department finds that retroactivity is not appropriate and that the proposed amendments shall be effective when filed with the Secretary of State.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

VERA J. LIKINS
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the matter of Proposed Adoption of Amendments to Rule 49 of the Minnesota Department of Public Welfare regulating the determination of welfare per-diem rates for nursing home providers.

ORDER ADOPTING RULE

The above-entitled matter came on for hearing before a hearing officer duly appointed by the Commissioner of Public Welfare on the 30th day of December, 1975, at 9:00 a.m. in Room D, Veterans Building, Columbus Avenue(between Wabasha and Iglehart), St. Paul, Minnesota, after proper notice required by Minn. Stat. S. 15.0412 (1974), as amended, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rule.

NOW, THEREFORE, IT IS ORDERED that this rule identified as DPW Rule 49 is adopted this 18th day of March, 1976, pursuant to authority vested in me by Minn. Stat. S. 246.69(a) (1974).

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Vera J. Likins

VERA J. LIKINS
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF PUBLIC WELFARE