

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

317

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June 16, 1977

- Department of Welfare #52 - Determining Welfare Per Diem Rates for Providers of Services for Mentally Retarded Residents.

ADOPTED

EXHIBIT C

REGULATIONS

OF THE

MINNESOTA DEPARTMENT OF PUBLIC WELFARE FOR DETERMINING

WELFARE PER DIEM RATES FOR PROVIDERS

OF SERVICES FOR MENTALLY RETARDED RESIDENTS

DPW RULE 52

Revised January 1, 1977

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DPW 52 Regulations for Determining Welfare Per Diem Rates for Providers of Residential Services for the Mentally Retarded.

A. Applicability and Purpose

1. 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 prusuant to the procedures set out in Minnesota Statutes, Section 15.0412, of the Minnesota Administrative Procedures Act.

2. Objectives

The procedures embodied herein define a system for the determination of a per diem welfare rate for all residential facilities for the mentally retarded with more than four beds participating in the Medical Assistance and cost-of-care program, except state institutions that are governed by other state laws, that promotes efficiency and economy and treats all providers on a uniform basis. Facilities for the mentally retarded are defined as facilities licensed under the provisions of Minnesota Statutes, Section 252.28. Facilities which provide care to other than mentally retarded residents must comply with these regulations if mentally retarded persons account for more than 50 per cent of the facility population. Procedures have been defined to satisfy the State Plan for Medical Assistance and HEW Program Guide 19, which prescribe reasonable charge/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 requiring that the welfare rates be consistent with efficiency, economy, and quality of care.

The welfare rate-setting procedures included herein also recognize required residential classification and quality of care as defined by Department of Public Welfare licensing and federal certification standards, 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 costs incurred by prudent management including a return of capital through depreciation and earnings allowance, 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 costs through retroactive settlement.

B. Rate Determination

1. Method of Calculating Welfare Per Diem Rate

a. Historical rate. The method of calculating the per diem rate will be to determine reasonable costs for the most current fiscal year and divide by actual resident days according to reasonable cost provisions of D. and cost reporting regulations contained in C. . Such rate shall be based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than 10 beds.

b. Incentive factor. In no case will the historical rate so determined under B.1.a. be less than a comparable amount calculated for the previous year minus one-half of the difference. This provision shall not apply for rates for newly established providers under B.3.a.

c. Allowance for known cost changes.

(1) Future cost increase or decreases known as of the report filing date must be added to or deducted from the historical rate determined according to B.1.a. and b. Such adjustment will be restricted to the elements defined in B.1.c.(1)(a) through (k) and shall be the annualized cost effect of such cost changes exclusive of any portion of cost change included in the historical rate.

(a) Salary and wage changes to occur during the effective period of the welfare rate:

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

(ii) 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.

(b) Changes in facilities or equipment.

(d) The annualized cost effect of complying with federal,

state, or local laws and regulations on increased care or improved facilities.

(d) Taxes - payroll and property.

(e) Interest.

(f) Depreciation.

(g) Utilities and insurance.

(h) Food-cost changes based on the average cost for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate.

(i) The cost effect of reductions and expansions to program services approved by the Department of Public Welfare.

(j) The cost effect of changes in occupancy levels based on average occupancy for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate.

(k) Rental payments pursuant to a written lease.

(l) Unidentified cost increase equal to one per cent of the average historical cost per day for the metropolitan area as indicated in B.4.b.(3)

(2) Cost changes determined under this provision must be based upon facts and commitments in existence as of the filing date of the report. If the provider cannot substantiate the fact that such facts and written commitments did exist as of the filing date, the welfare rate will be subject to adjustment according to the provisions of B.2.c. and C.1.i. If known cost changes calculated under (a) through (k) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If actual cost increases exceed the known cost changes dtermined under (a) through (l) above, no adjustment in welfare rate will be made.

(d) Government grants for operations during the prospective rate period must be deducted from the welfare per diem rate either calculated in B.1.a.b., , and c, or elected in B.3.b.

2. Effective Date, Notifications, and Adjustments

a. 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 Regulations C.1. and E.2. are applicable. If the new rate results in a lower rate than the previous rate, the provider has 120 days after 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.

b. Notification of rate decision. A temporary rate notification consisting of the previous year's allowed historical cost per resident day plus 80% of the indicated allowed known cost changes per resident 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 rate determined under these regulations as well as the effective date of such rate. Included in this notification will be a detailed statement of the reason for any difference between the rate requested by the provider and the rate determined.

c. Adjustment for error or omissions. All rates determined according to DPW Rule 52 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 C.1.i. --. Such adjustments are limited to the three complete fiscal years preceding the date on which an audit commences. If the adjustment results in a payment from the provider payment shall be made by the provider within 120 days after the date on which the provider received 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.

3. Special Rate-Setting Procedures

a. New facilities.

(1) Required reports. Providers with newly constructed or established facilities can request an interim welfare rate. The provider must submit reports as required in B.1.a. for immediate future fiscal year forecast results.

(2) 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 provision of these regulations must be so stated, together with the reasons why the provider cannot comply.

(3) Interim-rate establishment. The Commissioner will establish an interim rate in accordance with Regulation B.1.b., retroactive to the first day on which 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 52 except B.1.b., 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 B.1.a., and C.1.j. Such rate shall be subject to retroactive upward or downward adjustment based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than 10 beds. Adjustments to the interim rate may be made at the option of the provider either at the end of the provider's first fiscal year or after six months of historical cost experience. The settlement must be based on at least six months of historical cost and statistical experience. Occupancy for the immediate fiscal year must be based on an annualization of the last three months of the interim fiscal year but not less than 90% occupancy.

4. Rate Limitations

a. Limitations 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 residential service will not exceed the normal provider's rate charged private residents for comparable residential 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 by federal laws or regulations that affect the Medical Assistance Program. Rates charged for respite beds must be identified as a private pay rate.

b. Over-all rate limitation. Welfare rates will be limited to a fifteen per cent increase over the previous welfare rate. The fifteen per cent limitation does not apply to the following cost changes identified under Section B.1.c.(1):

(1) Salaries and payroll-related costs for additional personnel, depreciation and interest expense for physical plant improvements or other fixed assets, and changes in licensed capacity insofar as these cost changes are incurred to meet minimum and immediate requirements imposed by federal, state, or local laws and regulation.

(2) Salary cost changes which exceed 6% of the historical salaries if the salary cost changes are reasonable and are required to bring facility salaries to the salary range of comparable facilities. The salary cost changes for top management compensation, the administrator, and additional personnel are excluded from this exception.

(3) Facilities that have a non-calendar year-end and have been previously subject to the rate limitation may adjust the rates to the new rate limitation if previously justified by the reports. The rate limitation will not apply to providers whose welfare rate request does not exceed $19.00 per resident day for facilities located in the 7-county metropolitan area and $16.00 per resident day for facilities located outside the stated metropolitan area.

5. Appeal Procedures

a. Scope of appeals procedures. These procedures describe the manner by which unresolved individual provider or county welfare board disputes that may arise about application of these regulations excluding regulation B.5. will be settled. Unresolved disputes are defined as those disagreements that cannot be resolved informally between the provider and the Department staff normally assigned responsiblity for administration, or the provider and a county welfare board.

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

c. 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.

d. Appeal procedure. If the provider and the Department's staff normally assigned responsibility for 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. The Examiner will review the dispute, request 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 does not permit the Commissioner to delegate his powers, final authority on disposition of disputes must be retained by the Commissioner.

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e. Effective date of resolved disputes. If the dispute is related to a change in the provider's rate, the amount in dispute will not be adjusted until final determination according to these appeal procedures is made. The total dollar amount due the provider or the program resulting from the resolved disputes will be subject to the payment provision of B.2.c.

f. Findings and conclusions. Any findings, conclusions, or opinions of the Hearings Examiner about any appeal will be made available to the provider and will become part of the Department record.

C. Reports

1. General Reporting Requirements and Submittal Procedures

a. Required reports. Except as provided by B.3.b., 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:

(1) General provider information and statistical data.

(2) Financial statements consisting of a comparative balance sheet, statement of changes in equity, and comparative statement of earnings or operations.

(3) Reports of historical costs and known changes together with supporting calculations and worksheets.

(4) Rate determination worksheets.

(5) All other data relevant to justification or support of the welfare rate as deemed necessary by the Commissioner or designated representative.

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. Providers who have major program changes approved by the Department of Public Welfare may submit an amended report to show the change in costs due to the program change. The cost effect of the program change must be at least $2,000 for the remainder of the provider's

reporting period in order for him to submit an amended report.

b. 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 requirements. In a unique situation such as the use of government 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.

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

d. Report certification.

(1) Reports required in regulation C.l.a. ~ 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.

(2) 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 C.l.a. ~.

e. Reporting deadlines and extensions.

(1) Deadlines. Required reports shall be submitted directly to the Department within three calendar months after the close of the provider's normal fiscal year.

(2) Report deadline exceptions. The Commissioner may grant exceptions to the reporting deadline for just cause. A routine extension of 60 days will granted when a written request is receive by the Department prior to the reporting deadline.

f. Penalties.

(1) Report preparation and submittal. The penalty for non-

compliance with Regulations C.1.a. 1. and C.1.e. 4. 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.

(2) 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:

(a) Immediate adjustment of the welfare rate, along with retroactive recovery of funds incorrectly paid to the provider.

(b) Termination of the provider contractual agreement.

(c) Prosecution under applicable federal and Minnesota statutes.

g. 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 C.1.f.(1) or(2). may be applied to ensure compliance with this provision.

h. Application of reasonable cost principles. Reports required by C.1.a. must be prepared in accordance with reasonable cost principles in D.

i. Amended Reports. Providers may file amendments to previously filed reports when mathematical errors or omissions are uncovered or when federal or state minimum wage law changes occur unexpectedly. The cost changes to comply with minimum wage laws will be limited to the wage increases required to meet the minimum standards of federal or state wage laws. 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.

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

a. Charges from related organizations. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related 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 not be greater than the outsider's price; however, sales to outsiders must constitute at least 25 per cent of its sales.

b. 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 titled individuals and other corporate charges or costs allocated to [illegible] facility must represent the cost of services actually rendered and be identified according to the type of service provided.

3. Definitions

a. Cost categories. Costs used for rate-setting purposes and related to resident care are to be grouped according to major cost categories used in required reports. Such categories are defined as follows:

(1) Resident-living. All directly identifiable personnel costs associated with residential service. Personnel costs to be included are the salaries of the director of residential living, supervisors of residential-living staff, and residential-living staff.

(2) Developmental services. All directly identifiable costs of developmental services, such as training, rehabilitation, and social services not separately reimbursed according to C.3.a.(10).

(3) Health services. All directly identifiable costs related to health services not separately reimbursed according to C.3.b.(10). Costs will include personnel, purchased services, and supplies.

(4) Resident-related services. All directly identifiable costs of resident-related services, such as recreation, religion, arts, and crafts, and leisure time activities not separately reimbursed according to C.3.a.(10). Costs will include personnel, purchased services, and supplies.

(5) Food services. All directly identifiable costs of normal and special diet food, including food preparation and serving. Personnel costs to be included in dietary costs are the salaries of dieticians, chefs, cooks, dishwashers, and all other employees assigned to the kitchen and dining room.

(6) 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.

(7) 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.

(8) 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.

(9) 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 benefits 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 C.3.a.

(10) Miscellaneous nonreimbursable services and expenses.

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

(b) 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:

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

(ii) Oxygen at prevailing prices.

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

(c) Also included in this section will be costs associated with operating activities financed by restricted or unrestricted gifts or grants from private or public funds. Costs deemed unallowable under section of the rule can be identified as offsets from such gifts or grants.

(d) All costs classified in C.3.a.(10) are not allowable for purposes of determining a per diem rate under these regulations.

b. Resident days.

(1) General definition. For purposes of determining a per diem rate, a resident day is defined as a day for which full and normal billings were rendered.

4. Cost-Allocation Procedures

a. General provisions for all providers.

(1) Costs will be classified in accordance with categories defined in Regulation C.3.a.

(2) Classification of costs to cost categories C.3.a. will involve one or more of the following steps:

(a) 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.

(b) Other costs that cannot be classified to cost categories through use of procedure C.4.a.(2)(a) will be classified in the administrative category.

(3) 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 C.3.a.(10).

b. Allocation of non-allowable personal expenses for owners living in the facility. Allocation procedures are defined in the following sections and must be applied in the order stated for personal expenses included in the expenses of the facility.

(1) Food services.

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

(b) Cost allocation based on actual resident days.

(2) Laundry and linen, housekeeping, and plant operations and maintenance.

(a) Cost allocation based on actual resident days.

(3) Depreciation, interest, and real estate and personal property taxes.

(a) Allocations based on the ratio of square feet of floor space devoted to personal use.

(b) Cost allocation based on actual resident days.

c. Allocation of costs for providers of care other than mentally retarded services or nursing homes. Reasonable cost allocations must be made for costs associated with care other than mentally retarded services or nursing home.

D. Reasonable Cost Principles

1. General Provisions

a. Reasonable costs. Costs to be allowable for rate-setting purposes must satisfy the following over-all criteria:

(1) They must be necessary and ordinary costs related to resident care.

(2) They must be costs that prudent and cost-conscious management would pay for a given item or service.

b. Costs not allowable. Costs that relate to management inefficiency, unnecessary care or facilities, and activities not related to the MR field are not allowable.

c. Reasonable compensation. Reasonable compensation of individuals employed in the facility is an allowable cost, provided that 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 workers.

d. Substance over form. The cost effect of transactions that are conceived for the purpose of circumventing the regulations contained in DPW Rule 52 will be disallowed under the principle that the substance of the transaction shall prevail over form.

e. 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 B.1.a.

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

g. Annual review of cost limitations. The Commissioner shall review annually the depreciation basis limitation (D.3.b.[illegible]) 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.

h. Application of principles and specific limits. The reasonable cost principles defined in D.1. apply to all reported costs and have been specifically defined for certain cost elements in D.2. through D.5.

i. Top-Management compensation limitation. Top management compensation includes that of administrators, board of directors and all other individuals receiving compensation as executives. The compensation must also be justified under the provisions of Section D.1.c. of the rule. The annual compensation will be determined according to the total number of licensed beds per facility as follows:

Number of Beds	Cumulative Annual Bed Compensation
1-30	$435
31-60	240
Over 60	180

For facilities of [illegible] beds or less the administrator's salary may be allocated between varied functions performed by the administrator if justified through review of personnel complement by licensing personnel. The maximum compensation limitation shall be $35,000 per facility.

For each full percentage point increase in the Comsumers price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the month of October, 1974 and October, 1975, new series index (1967 = 100), the annual compensation limitation shall be increased by one per cent. The increase, if any, generated by this formula shall be affected on January 1, 1976. 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. General and Administrative Expenses.

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

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 are reasonable.

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 facilities and programs for the rendering of resident-care services.

d. Social, fraternal, and other organizations. Costs incurred in connection with memberships in all organizations not included in D.2.c. are not allowable.

e. Travel and automobile. These expenses are not an allowable expense unless they are related to activities of managing the facility.

f. Entertainment. These expenses are not allowable costs.

g. Advertising. Costs incurred in connection with maintaining or maximizing occupancy are allowable.

h. Pension plans and profit sharing. 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 resident care or, 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 C.3.b.-e. 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 resident population in areas of the living unit, recreation rooms, lounges, etc. The costs of these services when located in a resident's private accommodation are not allowable.

l. Non-competitive 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 residents must be capitalized as a deferred charge. Costs in the form of amortization will be recognized as allowable costs over a period of no less than 60 consecutive months beginning with the month in which the first resident is admitted for care. Examples of these costs are wages paid for services rendered more than 30 days 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 resident 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 D.5.a.

p. Charitable contributions. These are not allowable costs.

3. Depreciation.

a. Basis for depreciation calculation.

(1) Cost. Historical cost of facilities shall be the basis for calculating depreciation as an allowable cost, except as provided by D.3.a.(2).

(2) Change in ownership of facilities. In a case in which a change in ownership of a facility occurs, and the new owner's investment is greater than the old owner's investment, if a bona fide sale is established by the new owner, the basis for depreciation will be adjusted as follows:

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

(i) The portion of the purchase price properly allocable to depreciable facilities.

or

(ii) The appraised value of the depreciable facilities calculated under the reproduction-cost-depreciated method.

(b) In the case of a partial change in ownership, as defined below, the basis for calculating depreciation shall be determined according to provision of D.3.a.(2)(, 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 exceeds 20 per cent. Any increase allowed by this section will then be adjusted according to D.3.a.(6).

(3) 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 D.3.a.(2)(b).

(4) 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 D.3.a.(2)(a)(ii), 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, property, or the services. In the instance of the exception stated, the net book value to the donor shall be the basis for the donee.

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

(6) Recapture of depreciation resulting from sale of facility. The sale of depreciable property, or substantial portion thereof, at a price in excess of the cost of the property as reduced by accumulated depreciation used for purposes of computing allowable costs was greater than the actual economic depreciation.

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

(i) 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 52.

(ii) The gross recapture amount as determined in aa. above shall be allocated to fiscal periods from the effective date of DPW Rule 52 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 52. The amount allocated to each period shall be divided by the total actual resident days in that period, thereby determining a resident day cost for the period. The total net recapture shall then be determined by multiplying the actual welfare days times the resident-day cost for each fiscal period.

(iii) The total net recapture amount determined according to (ii) 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 D.3.a.(2).

(b) The net recapture amount so determined in (iii) 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.

(7) Gains and losses on disposition of 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. Abandonment losses will be limited to five cents per resident day annually; however, any excess over this limitation can be carried forward to future years.

b. Limitations.

(1) The total basis of depreciable facility assets shall not exceed an average of $14,820 per bed for licensed beds built or purchased after January 1, 1974. The Commissioner may waive this limitation if the facility is deemed to be necessary and no alternative comparable facility is available. This limitation will be adjusted annually beginning January 1, 1976 according to a construction index as determined by the Commissioner.

(2) In no instance can accumulated depreciation calculated in accordance with D.3. exceed the basis defined in D.3.a.

(3) Accumulated depreciation as of the beginning of the first fiscal year covered by this regulation shall be calculated retroactively using the useful lives defined in D.3.c. and D.3.d.

(4) Regardless of the applicability of the limitation stated in D.3.b.(1). above, depreciation on investments in facility modifications and new equipment will be allowed if they

were required by local, state or federal requirements.

c. Depreciation rates for new facilities and equipment. Depreciation shall be calculated using the basis determined under D.3.a., applying the following useful life schedule:

Building - 35 year.

Building improvements (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years).

Land improvements - 20 years.

Equipment - five years.

Vehicle - four years.

d. Other useful lives.

(1) Depreciation rates 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 D.3.c.

(2) Leasehold improvements. The useful life of the improvement or the remaining term of the lease, including renewal periods, shall be used, whichever is shorter.

e. 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 B.5.a.(7)) exceed the total depreciation allowance calculated in accordance with D.3.. In such an instance, 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 five years for equipment. Accumulated depreciation cannot exceed the basis defined in D.3.a.

f. 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 grant was that it be repaid through operating revenue of the facility.

g. Non-Depreciable Assets. Liability assets that are not depreciable include but are not restricted to:

(1) Land. Includes the land owned and used in provider operations. Included in the cost of land are 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.

(2) Goodwill. Includes amounts that result from purchase of property or stock in excess of determinable value as determined in D.3.a.(2).

h. 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 five cents per resident-day annually.

4. Leased Facilities or Equipment.

a. Rental charges. Rental charges incurred by a provider through reasonable bona fide leases between unrelated parties are includable in allowable costs unless:

(1) Rental charges result from a sale, lease-back arrangement, or lease with option to buy at a price less than anticipated value.

(2) Rental charges are paid to a related or controlled organization. If either D.4.a.(1) or D.4.a.(2) exists, the provisions of D.4.b. will be applied.

b. Allowable costs in lieu of disallowed rental charges. If rental charges are not allowed, the provider will be allowed depreciation computed in accordance with D.3. as if the disallowed transaction had not occurred. In addition, the provider will be allowed the reasonable cost of the facility assumed by the lessor such as interest on capital indebtedness up to 65 per cent of net allowable assets, taxes, insurance, other costs, and earnings allowance provided by D.5.b., and D.5.d., if applicable.

c. Limitation. Allowable rental charges are subject to the investment per bed limitations of D.5.b.(1)(a), 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 Trust Fund obligations as of the effective date of the lease.

5. Cost of Capital

a. Interest

(1) Interest expense is an allowable cost and will be classified as follows:

(a) 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 purchased fixed assets related to providing residential care as defined in D.3.b.(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.

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

(2) Interest income will be a deduction from interest allowable under provision D.5.a.(1)(a) or D.5.a.(1)(b). Interest income on restricted funds will not be deducted from interest expense. Restricted funds are defined as all unexpended donated funds carried by the facility that are restricted for other than operating costs. The operating or building funds cannot be included as part of restricted funds for this purpose.

(3) 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 loans between operating and building funds is not allowable.

(4) 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 resident care.

(5) Allowable interest limitation for proprietary providers. Because of provision of D.5.b.4 for proprietary providers, the allowable interest expense defined in D.5.b.(1)(a) shall not exceed the provider's average interest rate times 65 per cent of net allowable assets as defined in D.5.b.(1)(a).

b. Earnings allowance for proprietary providers.

(1) Determination of allowance. An allowable cost for rate setting purposes is a reasonable 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:

(a) Net allowable fixed assets employed will include actual cost of land, land improvements, buildings and equipment minus cumulative depreciation calculated in accordance with regulation D.3. and further limited to $1,000 in excess of the limitations provided in D.3.b.(1).

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

(c) The after-tax rate of return allowed on capital provided by owners, calculated on the basis of D.5.b.(1)(a) and D.5.b.(1)(b), will be ten per cent.

(d) 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.

(e) 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 six per cent of this amount.

c. Minimum cost of capital allowance for providers. Notwithstanding the provision of D.5.a.(5) and D.5.b., the cost of capital allowance shall be no less than the combination of:

(1) Actual interest on capital indebtedness.

(2) An earnings amount determined by multiplying resident days for a fiscal year, or part thereof if a short period report is being filed, by 35 cents.

E. Effective Date of DPW Rule 52 Revisions

1. All revisions of this revised DPW Rule 52 shall take effect beginning with reports covering fiscal years ending after November 30, 1976.

2. Providers may request by letter, no later than March 31, 1977, a revised rate as affected only by Section (II.D.2.)B.4.b. of the rule. The revised rate may be effective as of January 1, 1977.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 16 1977 1:45 pm
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
6/16 1977
WARREN SPANNAUS, ATTORNEY GENERAL
BY
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

Revised January 1, 1977

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

Address Reply to:
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155
TELEPHONE (612) 296-6671

May 24, 1977

Michael B. Miller, Esq.
Special Assistant Attorney General
Department of Administration
50 Sherburne Ave.
St. Paul, Minnesota 55155

Dear Mr. Miller:

Enclosed are the hearing documents for Department of Public Welfare Rule No. 52. These documents are being submitted to you for your approval for form and legality.

Please notify my office when you have approved these rules, or if you have any questions or need additional information.

Very truly yours,

PAUL G. ZERBY
Deputy Attorney General

PGZ/pas

Enc.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Deputy Attorney General Paul G. Zerby, do hereby declare that I have examined proposed Rule 52 and all related documents and that, based upon them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Paul G. Zerby

PAUL G. ZERBY

Dated: May 23, 1977

DP[redacted]7-028-SM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 52 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING REGULATIONS FOR DETERMINING WELFARE PER DIEM RATES FOR PROVIDERS OF SERVICES FOR MENTALLY RETARDED RESIDENTS.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on February 11, 1977, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Department of Public Welfare on March 10, 1977; and

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has met all requirements of Minn. Stat. §15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 19th day
of May, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 52 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING REGULATIONS FOR DETERMINING WELFARE PER DIEM RATES FOR PROVIDERS OF SERVICES FOR MENTALLY RETARDED RESIDENTS.

AFFIDAVIT OF MAILING

SUSAN WILFORD, being first duly sworn, deposes and says:

That on the 7th day of January, 1977, 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.

Susan Wilford

Subscribed and sworn to before me this
7 day of January, 1977.

Margaret Holt

Dept Exhibit No. H
File No.
Date

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JAN 17 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 52 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING REGULATIONS FOR DETERMINING WELFARE PER DIEM RATES FOR PROVIDERS OF SERVICES FOR MENTALLY RETARDED RESIDENTS

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

SUSAN WILFORD, being duly sworn on oath deposes and says:
1) That she is an employee of the Department of Public Welfare, Executive Division of the State of Minnesota.

2) That on the 6th day of January, 1977, she went to the Secretary of State's office for the State of Minnesota 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 M.S. 15.0412.

3) That on the 6th day of January, 1977, 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.

Susan Wilford

Subscribed and sworn to before me this 6 day of January, 1977.
Notary Public, Ramsey County
Minnesota. My Commission expires
Sept. 22, 1977,

Dept Exhibit No. F
File No.
Date

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JAN 17 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Amendment of Minn. Rule 52 Governing the Determination of Welfare Per Diem Rates for Providers of Residential Services for the Mentally Retarded

STATEMENT OF NEED

The above-captioned rule is an existing rule promulgated pursuant to Minn. Stat. § 15.0412 of the Minnesota Administrative Procedures Act. The rate methodology embodied in the rule was established to provide a fair reimbursement formula to vendors of residential services for mentally retarded persons and to provide an adequate system of accountability of public funds expended annually for such services. The rate methodology is a prospective formula based on historical costs from the most recently-completed fiscal year as adjusted for selected budgeted cost changes anticipated to occur in the following fiscal year. There is no reimbursement of actual costs through retroactive settlement with the exception of newly-established or newly-constructed facilities which operate on an interim rate for their first fiscal period based on an absence of historical cost data. This rate-setting rule was necessary since welfare clients have been the sole and/or major users of such facilities.

It is necessary for Section A.2., entitled "objectives", to be amended since varied sources of funding, besides the Medical Assistance Program, are utilized to pay for the provided services.

It is necessary to amend Section B.1.a. to limit the occupancy divisor which governs the per diem rate when divided into total allowable costs to no less than 80% of licensed capacity in order to maintain the welfare rates within reasonable ranges commensurate with this agency's legislative appropriation for these program services.

It is necessary to amend Section B.2. to further clarify this agency's interpretation of the word "commitments" to mean "written commitments". Such interpretation has been deemed reasonable through an appeal decision rendered by the Office of Hearing Examiners. Without written evidence of the commitments the state agency is unable to determine the appropriateness of the requested cost changes.

It is necessary to delete from Section B.2.c. the designation of "county welfare board(s)" since the county welfare agencies are not the sole payors of these program services.

It is necessary to delete Section B.3.b. since the flat rate has not proved to be conducive to a cost and budgeting system as advocated under other provisions of this rule. Secondly, the flat rate has not been utilized enough to warrant its continued existence.

Dept'$ Exhibit No. I
File No.
Date

It is necessary to add Section B.4.b.(1) in clarification of this agency's allowance of the specific costs which are necessary and reasonable to meet minimum and immediate requirments imposed by governmental agencies. It has been this agency's experience over the three years of the rule's existence that governmentally-required changes occur in the cost items of additional employment personnel and physical plant improvements; likewise a governmentally-required change does occur in the licensed capacity of the facilities necesitating an adjustment to the reported resident days for utilization in the rate determination computation.

It is necessary to add Section B.4.b.(2) in order for some existing facilities to increase their salaries to the salary ranges of comparable facilities, such as, newly-constructed or newly-established facilities which establish employment salaries at ranges in excess of existing facilities. These existing facilities cannot compete with such ranges due to the over-all rate limitation. This provision, if applied reasonably by those facilities in need of such provision, will effectuate reasonable and comparable salary ranges for all facilities. It is intended that this provision for equalization of facilities' salaries will exist for at least one year, but no more than two years because equalization should reasonably occur in that time period.

It is necessary to delete from Section D.1.i. the provision of "compensation for no more than 60 cumulative employment hours per week" since the provision could not be readily administered due to difficulty of monitoring. Rather, it is necessary to add to this section of the rule a substitute provision which reiterates the reasonable compensation principle of Section D.1.c. and thereby leaves the determination of the performance of "necessary functions" to an administrative discretion of this agency.

It is necessary to delete from Section D.1.i. the provision of limiting the top-management compensation of an individual or group of individuals to $35,000 in total based on the cumulative number of beds under common ownership. In selected cases this provision did appear to be too restrictive. A reasonable alternative is to allow each licensed facility to receive top-managment compensation according to the cumulative annual bed compensation formula as conditioned by the reasonable compensation provision of Section D.1.c.

It is necessary to amend Section E. to reflect the effective date of the aforementioned changes to the rule. Since calendar year-end providers represent the largest reporting group, it would be reasonable and consistent to make January 1, 1977 the effective date of such changes.

COMMISSIONER OF PUBLIC WELFARE

Dated: January 14, 1977

Vera J. Likins

VERA J. LIKINS

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JAN 17 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE VERA J. LIKINS
COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Amendment of Minn. Rule 52 Governing the Determination of Welfare Per Diem Rates for Providers of Residential Services for the Mentally Retarded

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase of the Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, and in support thereof the Department of Public Welfare will introduce the following evidence:

Testimony will be presented explaining the various proposed changes to the rule, the conditions which led to the need for the proposed changes, and problems in interpretation of the present rule which are clarified in the proposed changes.

We may call one or more of the following expert witnesses to testify:

James J. Hiniker, Deputy Commissioner
Department of Public Welfare

Mr. Hiniker may explain the agency's rate-setting authority and responsibility to the State Legislature for the accountability of public funds.

Robert J. Rau, Audit Director
Department of Public Welfare

Mr. Rau may explain each rule change and show why it is necessary and reasonable in the rate-setting process.

Thomas L. Neumann, Auditor
Department of Public Welfare

Mr. Neumann may supplement Mr. Rau's comments regarding the necessity and reasonableness of the changes to the rate-setting process.

We intend to introduce the following documentary evidence:

- Statistical data to support 80% occupancy limitation;
- Schedule to support reported cost changes to meet minimum and immediate requirements of governmental agencies;
- Rule 52 Appeal Hearings' issues and decisions as rendered by the Appeal Committee.

Exhibit No.
File No.
Date

Dept Exhibit No. J
File No.
Date

- Rule 52 Appeal Hearings' issues and decisions as rendered by the Office of Hearing Examiners;

We will be citing the following statutes:

- Minnesota Statutes, Chapter 15
- Minnesota Statutes, Chapter 256B, (1974)
- Public Law 92-603, Section 249 (a)

COMMISSIONER OF PUBLIC WELFARE

Dated: January 14, 1977

Vera J. Likins

VERA J. LIKINS

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OFFICE OF HEARING
EXAMINERS

EXHIBIT A

Rules as Proposed

DPW 52 Regulations for determining welfare per diem rates for [Intermediate Care Facilities/Mentally Retarded] providers [under the Title XIX Medical Assistance Program] of residential services for the mentally retarded.

A. Applicability and purpose.

1. Authority.

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

2. Objectives.

The procedures embodied herein define a system for the determination of a per diem welfare rate for all [ICF/MR] residential facilities for the mentally retarded with more than four beds participating in the Medical Assistance and cost-of-care program, except state institutions that are governed by other state laws, that promotes efficiency and economy and treats all providers [of ICF/MR care] on a uniform basis. [ICF/MR] Facilities for the mentally retarded are defined as facilities licensed under the provisions of Minn. Stat. § 252.28. [ICF/MR] Facilities which provide care to other than mentally retarded residents must comply with these regulations if mentally retarded persons account for more than 50 per cent of the facility population. Procedures have been defined to satisfy the State Plan for Medical Assistance and HEW Program Regulation Guide 19, which prescribe reasonable charge/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 (Minn. Stat. § 256B.04, subd. 2) while at the same time establishing cost limitations to satisfy federal requirements requiring that the welfare rates be consistent with efficiency, economy, and quality of care.

The welfare rate-setting procedures included herein also recognize required residential classification and quality of care as defined by Department of Public Welfare licensing and federal certification standards, established effective

Dept's Exhibit No. A
File No. DPW-77-028-SM
Date

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 costs incurred by prudent management including a return of capital through depreciation and earnings allowance, 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 costs through retroactive settlement.

B. Rate determination.

1. Method of calculating welfare per diem rate.

a. Historical rate. The method of calculating the [ICF/MR provider] per diem rate will be to determine reasonable costs for the most current fiscal year and divide by actual resident days according to reasonable cost provisions of D. and cost reporting regulations contained in C. Such rate shall be based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than 10 beds.

b. Incentive factor. In no case will the historical rate so determined under B.1.a. be less than a comparable amount calculated for the previous year minus one-half of the difference. This provision shall not apply for rates for newly established providers under B.3.a.

c. Allowance for known cost changes.

(1) Future cost increase or decreases known as of the report filing date must be added to or deducted from the historical rate determined according to B.1.a. and b. Such adjustment will be restricted to the elements defined in B.1.c.(1) (a) through (k) and shall be the annualized cost effect of such cost changes exclusive of any portion of cost change included in the historical rate.

(a) Salary and wage changes to occur during the effective period of the welfare rate:

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

(ii) 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.

(b) Changes in facilities or equipment.

(c) The annualized cost effect of complying with federal, state, or local laws and regulations on increased care or improved facilities.

(d) Taxes — payroll and property.

(e) Interest.

(f) Depreciation.

(g) Utilities and insurance.

(h) Food-cost changes based on the average cost for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate.

(i) The cost effect of reductions and expansions to program services approved by the Department of Public Welfare.

(j) The cost effect of changes in occupancy levels based on average occupancy for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate.

(k) Rental payments pursuant to a written lease.

(l) Unidentified cost increase equal to one per cent of the average historical cost per day for the metropolitan area as indicated in B.4.b.

(2) Cost changes determined under this provision must be based upon facts and commitments in existence as of the filing date of the report. If the provider cannot substantiate the fact that such facts and written commitments did exist as of the filing date, the welfare rate will be subject to adjustment according to the provisions of B.2.c. and C.1.i. If known cost changes calculated under (a) through (k) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If actual cost increases exceed the known cost changes determined under (a) through (l) above, no adjustment in welfare rate will be made.

(d) Government grants for operations during the prospective rate period must be deducted from the welfare per diem rate either calculated in B.1.a., b, and c, or elected in B.3.b.

2. Effective date, notifications, and adjustments.

KEY: New rules and material proposed to be added to an existing rule are printed in boldface. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

a. 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 C.1. and E.2. are applicable. If the new rate results in a lower rate than the previous rate, the provider has 120 days after 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.

b. Notification of rate decision. A temporary rate notification consisting of the previous year's allowed historical cost per resident day plus 80% of the indicated allowed known cost changes per resident 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 rate determined under these regulations as well as the effective date of such rate. Included in this notification will be a detailed statement of the reason for any difference between the rate requested by the provider and the rate determined.

c. Adjustment for error or omissions. All rates determined according to DPW 52 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 C.1.i. Such adjustments are limited to the three complete fiscal years preceding the date on which an audit commences. If the adjustment results in a payment from the provider [to the county welfare board(s), the provider will have up to] payment shall be made by the provider within 120 days after the date on which the provider received written notification of the adjustment. If the adjustment results in a payment [from the county welfare board(s)] to the provider, payment shall be made within 45 days after the date of receiving written notice of the adjustment.

3. Special rate-setting procedures.

a. New facilities.

(1) Required reports. Providers with newly constructed established facilities can request an interim welfare rate. The provider must submit reports as required in B.1.a. for immediate future fiscal year forecast results.

(2) 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 provision of these regulations must be so stated, together with the reasons why the provider cannot comply.

(3) Interim-rate establishment. The Commissioner will establish an interim rate in accordance with B.1. retroactive to the first day on which 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 52 except B.1.b. 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 B.1.a. and C.1.j. Such rate shall be subject to retroactive upward or downward adjustment based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than 10 beds. Adjustments to the interim rate may be made at the option of the provider either at the end of the provider's first fiscal year or after six months of historical cost experience. The settlement must be based on at least six months of historical cost and statistical experience. Occupancy for the immediate fiscal year must be based on an annualization of the last three months of the interim fiscal year but not less than 90% occupancy.

[**b.** Election of flat rate for small providers. Providers with a capacity of 16 or fewer licensed beds may annually elect to receive a flat per diem rate for providing required care of welfare residents instead of receiving a rate by complying with reporting requirements of C.1. These rates will be reviewed and adjusted annually, if warranted, by the Commissioner through policy bulletins. All facilities under common ownership or management must accept either the flat rate for all facilities or file cost reports for each facility. The flat rate for all regions will be $9.00 per resident day effective January 1, 1976 and will expire at the end of each provider's current fiscal year. Reports under II.A.1. will then be required with exceptions to reporting requirements under III.A. based on written request from provider and approval for such exceptions from the Commissioner.]

4. Rate limitations.

a. Limitations 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 residential service will not exceed the normal provider's rate charged private residents for comparable residential 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 by federal laws or regulations that affect the Medical Assistance Program. Rates charged for respite beds must be identified as a private pay rate.

b. Over-all rate limitation. Welfare rates will be limited to a fifteen per cent increase over the previous welfare rate. The fifteen per cent limitation does not apply to [minimum, immediate requirements imposed by federal, state, and local laws and regulations as] the following cost changes identified under Section B.1.c.(1):

(1) Salaries for additional personnel, depreciation and interest expense for physical plant improvements or other fixed assets, and changes in licensed capacity insofar as these cost changes are incurred to meet minimum and immediate requirements imposed by federal, state, or local laws and regulations.

(2) Salary cost changes which exceed 6% of the historical salaries if the salary cost changes are reasonable and are required to bring facility salaries to the salary range of comparable facilities. The salary cost changes for top management compensation, the administrator, and additional personnel are excluded from this exception.

c. Facilities that have a non-calendar year-end and have been previously subject to the rate limitation may adjust the rates to the new rate limitation if previously justified by the reports. The rate limitation will not apply to providers whose welfare rate request does not exceed $19.00 per resident day for facilities located in the 7-county metropolitan area and $16.00 per resident day for facilities located outside the stated metropolitan area.

5. Appeal procedures.

a. Scope of appeals procedures. These procedures describe the manner by which unresolved individual provider or country welfare board disputes that may arise about application of these regulations excluding regulation B.5. will be settled. Unresolved disputes are defined as those disagreements that cannot be resolved informally between the provider and the Department staff normally assigned responsibility for administration, or the provider and a county welfare board.

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

c. 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.

d. Appeal procedure. If the provider and the Department's staff normally assigned responsibility for 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. The Examiner will review the dispute, request 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 does not permit the Commissioner to delegate his powers, final authority on disposition of disputes must be retained by the Commissioner.

e. Effective date of resolved disputes. If the dispute is related to a change in the provider's rate, the amount in dispute will not be adjusted until final determination according to these appeal procedures is made. The total dollar amount due the provider or the country resulting from the resolved disputes will be subject to the payment provision of B.2.c.

f. Findings and conclusions. Any findings, conclusions, or opinions of the Hearings Examiner about any appeal will be made available to the provider and will become part of the Department record.

C. Reports.

1. General reporting requirements and submittal procedures.

a. Required reports. Except as provided by B.3.b., 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:

(1) General provider information and statistical data.

(2) Financial statements consisting of a comparative balance sheet, statement of changes in equity, and comparative statement of earnings or operations.

(3) Reports of historical costs and known changes together with supporting calculations and worksheets.

(4) Rate determination worksheets.

(5) All other data relevant to justification or support of the welfare rate as deemed necessary by the Commissioner or designated representative.

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

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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. Providers who have major program changes approved by the Department of Public Welfare may submit an amended report to show the change in costs due to the program change. The cost effect of the program change must be at least $2,000 for the remainder of the provider's reporting period in order for him to submit an amended report.

b. 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 requirements. In a unique situation such as the use of government 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.

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

d. Report certification.

(1) Reports required in regulation C.1.a. 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.

(2) 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 C.1.a.

e. Reporting deadlines and extensions.

(1) Deadlines. Required reports shall be submitted directly to the Department within three calendar months after the close of the provider's normal fiscal year.

(2) Report deadline 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.

f. Penalties

(1) Report preparation and submittal. The penalty for noncompliance with C.1.a. and C.1.e. 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.

(2) 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:

(a) Immediate adjustment of the welfare rate, along with retroactive recovery by the county welfare board of funds incorrectly paid to the provider.

(b) Termination of the provider contractual agreement.

(c) Prosecution under applicable federal and Minnesota statutes.

g. 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 C.1.f. (1) or (2) may be applied to ensure compliance with this provision.

h. Application of reasonable cost principles. Reports required by C.1.a. must be prepared in accordance with reasonable cost principles in D.

i. Amended reports. Providers may file amendments to previously filed reports when mathematical errors or omissions are uncovered or when federal or state minimum wage law changes occur unexpectedly. The cost changes to comply with minimum wage laws will be limited to the wage increases required to meet the minimum standards of federal or state wage laws. 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.

2. Special provisions for multi-home providers and providers involved in other business activities.

a. Charges from related organizations. Cost applicable to services, facilities, and supplies furnished to the provider by organizations related 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 not be greater than the outsider's price; however, sales to outsiders must constitute at least 25 per cent of its sales.

b. 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 titled individuals and other corporate charges or costs allocated to an ICF/MR facility must represent the cost of services actually rendered and be identified according to the type of service provided.

3. Definitions.

a. Cost categories. Costs used for rate-setting purposes and related to resident care are to be grouped according to major cost categories used in required reports. Such categories are defined as follows:

(1) Resident living. All directly identifiable personnel costs associated with residential service. Personnel costs to be included are the salaries of the director of residential-living, supervisors of residential-living staff, and residential-living staff.

(2) Developmental services. All directly identifiable costs of developmental services, such as training, rehabilitation, and social services not separately reimbursed according to C.3.b.(10).

(3) Health services. All directly identifiable costs related to health services not separately reimbursed according to C.3.b.(10). Costs will include personnel, purchased services, and supplies.

(4) Resident related services. All directly identifiable costs of resident-related services, such as recreation, religion, arts, and crafts, and leisure time activities not separately reimbursed according to C.3.b.(10). Costs will include personnel, purchased services, and supplies.

(5) Food services. All directly identifiable costs of normal and special diet food, including food preparation and serving. Personnel costs to be included in dietary costs are the salaries of dieticians, chefs, cooks, dishwashers, and all other employees assigned to the kitchen and dining room.

(6) 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.

(7) 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.

(8) 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.

(9) 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 C.3.a.

(10) Miscellaneous nonreimbursable services and expenses.

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

(b) 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:

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

(ii) Oxygen at prevailing prices.

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

(c) Also included in this section will be costs associated with operating activities financed by restricted or unrestricted gifts or grants from private or public funds. Costs deemed unallowable under Section D. of the rule can be identified as offsets from such gifts or grants.

(d) All costs classified in C.3.a.(10) are not allowable for purposes of determining a per diem rate under these regulations.

b. Resident days.

(1) General definition. For purposes of determining a per diem rate, a resident day is defined as a day for which full and normal billings were rendered.

4. Cost-allocation procedures.

a. General provisions for all providers.

(1) Costs will be classified in accordance with categories defined in C.3.a.

(2) Classification of costs to cost categories C.3.a. will involve one or more of the following steps:

(a) 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.

(b) Other costs that cannot be classified to cost categories through use of procedure C.4.a. (2) (a) will be classified in the administrative category.

(3) Adjustments for costs otherwise reimbursed. Recorded costs will be reduced for costs related to other activities not subject to rate determination as defined in C.3.a.(10).

b. Allocation of non-allowable personal expenses for owners living in the facility. Allocation procedures are defined in the following sections and must be applied in the order stated for personal expenses included in the expenses of the facility.

(1) Food services.

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

(b) Cost allocation based on actual resident days.

(2) Laundry and linen, housekeeping, and plan operations and maintenance.

(a) Cost allocation based on actual resident days.

(3) Depreciation, interest, and real estate and personal property taxes.

(a) Allocations based on the ratio of square feet of floor space devoted to personal use.

(b) Cost allocation based on actual resident days.

c. Allocation of costs for providers of care other than ICF/MR or nursing homes. Reasonable cost allocations must be made for costs associated with care other than ICF/MR or nursing home.

D. Reasonable cost principles.

1. General provisions.

a. Reasonable costs. Costs to be allowable for rate-setting purposes must satisfy the following over-all criteria:

(1) They must be necessary and ordinary costs related to resident care.

(2) They must be costs that prudent and cost-conscious management would pay for a given item or service.

b. Costs not allowable. Costs that relate to management inefficiency, unnecessary care or facilities, and activities not related to the MR field are not allowable.

c. Reasonable compensation. Reasonable compensation of individuals employed in the facility is an allowable cost, provided that 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 workers.

d. Substance over form. The cost effect of transactions that are conceived for the purpose of circumventing the regulations contained in DPW 52 will be disallowed under the principle that the substance of the transaction shall prevail over form.

e. 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 B.1.a.

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

g. Annual review of cost limitations. The Commissioner shall review annually the depreciation basis limitation D.3.b. 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.

h. Application of principles and specific limits. The reasonable cost principles defined in D.1. apply to all reported costs and have been specifically defined for certain cost elements in D.2. through D.5.

i. Top-Management compensation limitation. Top management compensation includes that of administrators, board of directors and all other individuals receiving compensation as executives. [The annual compensation for rate-setting purposes will be limited to compensation for no more than 60 cumulative employment hours per week and] **The compensation must also be justified under the provisions of Section D.1.c. of the rule. The annual compensation** will be determined according to the total number of licensed beds per facility as follows:

Number of Beds	*Cumulative Annual Bed Compensation*
1-30	$435
31-60	240
Over 60	180

For facilities of 30 beds or less the administrator's salary may be allocated between varied functions performed by the administrator if justified through review of personnel complement by licensing personnel. The maximum compensation limitation shall be $35,000 **per facility.**

[If an individual or group of individuals are included in the definition of top management compensation and own and/or operate more than one facility, the total compensation for an individual or group of individuals shall be computed based on the cumulative number of beds in all facilities and shall be limited in total of $35,000.]

2. General and administrative expenses.

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

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 are reasonable.

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 ICF/MR facilities and programs for the rendering of resident-care services.

d. Social, fraternal, and other organizations. Costs incurred in connection with memberships in all organizations not included in D.2.c. are not allowable.

e. Travel and automobile. These expenses are not an allowable expense unless they are related to activities of managing the ICF/MR facility.

f. Entertainment. These expenses are not allowable costs.

g. Advertising. Costs incurred in connection with maintaining or maximizing occupancy are allowable.

h. Pension plans and profit sharing. 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 resident care or, 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 C.3.b. 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 resident population in areas of the living unit, recreation rooms,

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lounges, etc. The costs of these services when located in a resident's private accommodation are not allowable.

1. Non-competitive 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 residents must be capitalized as a deferred charge. Costs in the form of amortization will be recognized as allowable costs over a period of no less than 60 consecutive months beginning with the month in which the first resident is admitted for care. Examples of these costs are wages paid for services rendered more than 30 days 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 resident 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 D.5.a.

p. Charitable contributions. These are not allowable costs.

3. Depreciation.

a. Basis for depreciation calculation.

(1) Cost. Historical cost of ICF/MR facilities shall be the basis for calculating depreciation as an allowable cost, except as provided by D.3.a.(2).

(2) Change in ownership of facilities. In a case in which a change in ownership of an ICF/MR facility occurs, and the new owner's investment is greater than the old owner's investment, if a bona fide sale is established by the new owner, the basis for depreciation will be adjusted as follows:

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

(i) The portion of the purchase price properly allocable to depreciable ICF/MR facilities. or

(ii) The appraised value of the depreciable ICF/MR facilities calculated under the reproduction-cost-depreciated method.

(b) In the case of a partial change in ownership, as defined below, the basis for calculating depreciation shall be determined according to provision of D.3.a.(2) (a), 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 exceeds 20 per cent. Any increase allowed by this section will then be adjusted according to D.3.a.(6).

(3) 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 D.3.a.(2) (b).

(4) 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 D.3.a.(2) (a) (ii), 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, property, or the services. In the instance of the exception stated, the net book value to the donor shall be the basis for the donee.

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

(6) Recapture of depreciation resulting from sale of facility. The sale of depreciable ICF/MR property, or substantial portion thereof, at a price in excess of the cost of the property as reduced by accumulated depreciation used for purposes of computing allowable costs was greater than the actual economic depreciation.

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

(i) The gross recapture amount will be the lesser of the actual gain on the sale or the depreciation after the effective date of DPW 52.

(ii) The gross recapture amount as determined in (i) above shall be allocated to fiscal periods from the effective date of DPW 52 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 52. The amount allocated to each period shall be divided by the total acutal resident days in that period, thereby determining a resident day costs for the period. The total net recapture shall then be determined by multiplying the actual welfare days times the resident-day cost for each fiscal period.

(iii) The total net recapture amount determined according to (ii) 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 D.3.a.(2).

(b) The net recapture amount so determined in (iii) 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.

(7) Gains and losses on disposition of 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. Abandonment losses will be limited to five cents per resident day annually; however, any excess over this limitation can be carried forward to future years.

b. Limitations.

(1) The total basis of depreciable ICF/MR facility assets shall not exceed an average of $14,820 per bed for licensed beds built or purchased after January 1, 1974. The Commissioner may waive this limitation if the facility is deemed to be necessary and no alternative comparable facility is available. This limitation will be adjusted annually beginning January 1, 1976 according to a construction index as determined by the Commissioner.

(2) In no instance can accumulated depreciation calculated in accordance with D.3. exceed the basis defined in D.3.a.

(3) Accumulated depreciation as of the beginning of the first fiscal year covered by this regulation shall be calculated retroactively using the useful lives defined in D.3.c. and D.3.d.

(4) Regardless of the applicability of the limitation stated in D.3.b. (1) above, depreciation on investments in facility modifications and new equipment will be allowed if they were required by local, state or federal requirements.

c. Depreciation rates for new facilities and equipment.

Depreciation shall be calculated using the basis determined under D.3.a., applying the following useful life schedule:

Building — 35 year.

Building improvements [depreciated over the remaining life of the principal asset or useful life, but not less than 15 years].

Land improvements — 20 years.

Equipment — five years.

Vehicle — four years.

d. Other useful lives.

(1) Depreciation rates 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 D.3.c.

(2) Leasehold improvements. The useful life of the improvement or the remaining term of the lease, including renewal periods, shall be used, whichever is shorter.

e. 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 B.5.a. (7)] exceed the total depreciation allowance calculated in accordance with D.3. In such an instance, 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 five years for equipment. Accumulated depreciation cannot exceed the basis defined in D.3.a.

f. 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 grant was that it be repaid through operating revenue of the facility.

g. Non-Depreciable assets. ICF/MR facility assets that are not depreciable include but are not restricted to:

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(1) Land. Includes the land owned and used in provider operations. Included in the cost of land are 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.

(2) Goodwill. Includes amounts that result from purchase of property or stock in excess of determinable value as determined in D.3.a.(2).

h. 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 five cents per resident-day annually.

4. Leased facilities or equipment.

a. Rental charges. Rental charges incurred by a provider through reasonable bona fide leases between unrelated parties are includable in allowable costs unless:

(1) Rental charges result from a sale, lease-back arrangement, or lease with option to buy at a price less than anticipated value.

(2) Rental charges are paid to a related or controlled organization. If either D.4.a.(1) or D.4.a. (2) exists, the provisions of D.4.b. will be applied.

b. Allowable costs in lieu of disallowed rental charges. If rental charges are not allowed, the provider will be allowed depreciation computed in accordance with D.3. as if the disallowed transaction had not occurred. In addition, the provider will be allowed the reasonable cost of the facility assumed by the lessor such as interest on capital indebtedness up to 65 per cent of net allowable assets, taxes, insurance, other costs, and earnings allowance provided by D.5.b. and D.5.d., if applicable.

c. Limitation. Allowable rental charges are subject to the investment per bed limitations of D.5.b.(1) (a), 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 Trust Fund obligations as of the effective date of the lease.

5. Cost of capital.

a. Interest.

(1) Interest expense is an allowable cost and will be classified as follows:

(a) 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 purchased fixed assets related to providing residential care as defined in D.4.b.(.A). The form of indebtedness will include mortgages, bonds, notes, and debentures, when the principal is repaid over a period in excess of one year.

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

(2) Interest income will be a deduction from interest allowable under provision D.5.a.(1) (a) or D.5.a.(1) (b). Interest income on restricted funds will not be deducted from interest expense. Restricted funds are defined as all unexpended donated funds carried by the facility that are restricted for other than operating costs. The operating or building funds cannot be included as part of restricted funds for this purpose.

(3) 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 loans between operating and building funds is not allowable.

(4) 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 resident care.

(5) Allowable interest limitation for proprietary providers. Because of provision of D.5.b. for proprietary providers, the allowable interest expense defined in D.5.b.(1) (a) shall not exceed the provider's average interest rate times 65 per cent of net allowable assets as defined in D.5.b.(a) (a).

b. Earnings allowance for proprietary providers.

(1) Determination of allowance. An allowable cost for rate setting purposes is a reasonable 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 pro-

prietary providers. The earnings allowance will be determined individually for each provider, considering the following factors:

(a) Net allowable fixed assets employed will include actual cost of land, land improvements, buildings and equipment minus cumulative depreciation calculated in accordance with regulation D.3. and further limited to $1,000 in excess of the limitations provided in D.3.b.(1).

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

(c) The after-tax rate of return allowed on capital provided by owners, calculated on the basis of D.5.b.(a) (a) and D.5.b.(1) (b), will be ten per cent.

(d) 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.

(e) 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 six per cent of this amount.

c. Minimum cost of capital allowance for providers.

Notwithstanding the provision of D.5.a.(5) and D.5.b., the cost of capital allowance shall be no less than the combination of:

(1) Actual interest on capital indebtedness.

(2) An earnings amount determined by multiplying resident days for a fiscal year, or part thereof if a short period report is being filed, by 35 cents.

E. Effective date of DPW 52 revisions.

1. All revisions of this revised DPW 52 [except provision IV.C.2.a.] shall take effect beginning with reports covering fiscal years ending after November 30, [1975] 1976.

2. Providers may request by letter, no later than March 31, [1976] 1977, a revised rate as affected only by Section [II:D.2.] B.4.b. of the rule. The revised rate may be effective as of January 1, [1976] 1977.

KEY: New rules and material proposed to be added to an existing rule are printed in boldface. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

RECEIVED
JAN 12 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULE 52 OF THE DEPARTMENT OF PUBLIC WELFARE
GOVERNING REGULATIONS FOR DETERMINING WELFARE
PER DIEM RATES FOR PROVIDERS OF SERVICES FOR
MENTALLY RETARDED RESIDENTS

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in Room A, Veterans Service Building, 20 West 12th Street, at Columbus Avenue, St. Paul, Minnesota on February 11, 1977 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

/s/ Vera J. Likins
VERA J. LIKINS, Commissioner

Date: January 4, 1977

Dept's Exhibit No. B
File No.
Date

RECEIVED
JAN 12 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 52 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING REGULATIONS FOR DETERMINING WELFARE PER DIEM RATES FOR PROVIDERS OF SERVICES FOR MENTALLY RETARDED RESIDENTS.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room A, Veterans Service Building, 20 West 12th Street, at Columbus Avenue, St. Paul, Minnesota on February 11, 1977 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written material may be submitted by mail to Steve Mihalchick, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8112, either before the hearing or within 20 days after the close of the hearing.

The proposed rule, if adopted, would clarify the original rule intent to establish a rate methodology for the providers of residential services for the mentally retarded. The rate methodology would require an occupancy factor of no less than 80% for facilities of more than 10 beds. The rate methodology would also require cost changes to be substantiated in written commitments and any overpayments or underpayments would be made directly between the provider and the administrator of the source of governmental funding for the particular provider. The rate methodology would include two exceptions to the overall maximum rate limitation. The rate methodology would also require a limitation to top management compensation. The rate methodology would be effective for cost reporting periods beginning in calendar year 1977. Copies of the proposed rule are now available and one free copy may be obtained by writing to Jacqueline Bouvaird, Audits Division, Department of Public Welfare, Centennial Office Building, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minnesota Stat. §256B.04 Subd.2. A "Statement of Need" explaining why the agency feels the proposed rule is necessary and a "Statement of Evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minnesota Stat. §10A.01, Subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative actions, such as the promulgation of this rule, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Vera J. Likins

VERA J. LIKINS, Commissioner

Dated: December 28, 1976

Dept's Exhibit No. C
File No.
Date