

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Qur File #543

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9-25-79 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 10-15-79

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 10-5 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact Part of Order Adopting
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A.
17. Petition by Public, where applicable N.A.

ADMIN. [illegible] Our File No: 543

DEPARTMENT: Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : Arthur E. Noot
Commissioner
Department of Public Welfare
Attn: Paul Zerby

DATE: 10/5/79

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1232

SUBJECT: Rules as Approved ~~In~~ the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program, Rule 49.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

cc: Duane Harves
Marshall Whitlock
Melvin Goldberg

D.6. Cost of Capital

b. Investment allowance.

(1) Determination of allowance. Effective July 1, 1979 proprietary homes shall receive an investment allowance of 10.3 percent of the original value of the facility for depreciation purposes. For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance **shall** be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance effective for rates paid on August 1, 1977.

(2) For purposes of this section the following terms shall have the meaning given to them.

(a) Facility means the building in which a nursing home is located and all permanent fixtures attached to it. Facility does not include the land or any supplies and equipment which are not fixtures.

(b) Original value means the lesser of purchase price or appraised value at the time of purchase. Appraisals at the time of purchase shall be on the depreciated replacement cost basis. If a nursing home expands its facility or makes any other capital expenditure which increases the value of the facility, the cost of the expansion or capital expenditure shall be added to the original value. If the Department disputes the cost of the expansion or capital expenditure, it may request an appraisal and use the appraised value as the allowed cost.

(3) Allowance for leased facilities. Leased facilities shall receive an investment allowance not to exceed the greater of $.35 per the facility's 93% capacity patient days or the investment allowance of Section D.6.b.(1) for those fixed assets owned by the lessee facility.

APPROVED AS TO FORM AND LEGALITY

Oct. 5, 1979

WARREN SPANNAUS, ATTORNEY GENERAL

BY [signature]

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 5 1979
Joan Anderson Growe
Secretary of State

12:30 P.M.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program, Rule 49.	ORDER ADOPTING RULES

The above entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners on July 6, 1979 in Building 15 of the Minnesota Veterans Home, Minneapolis, Minnesota after proper notice as required by Minnesota Statutes Section 15.0412 was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At said hearing amendment to Minn. Rule DPW 49 (12 M.C.A.R. § 2.049) was proposed so that Rule 49 D.6.b. would read as follows:

> Section D.6.b. Investment Allowance.
>
> (1) Determination of Allowance. Effective July 1, 1979, proprietary homes shall receive an investment allowance of 10.3 percent of the original value of the facility for depreciation purposes. For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance shall be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance effective for rates paid on August 1, 1977.

Robert Rau, Audit Director, and Paul Zerby, Assistant Attorney General, appeared for the Department. Also present from the Department were Barbara Stromer, Assistant Commissioner, Richard Tester, Auditor, and Susan Stacey, Legal Intern in the Attorney General's Office. Seventeen persons attending the hearing signed the hearing register. The hearing continued

until all interested persons had an opportunity to be heard concerning the adoption of the proposed rule. Based upon the proceedings as indicated in the Report of the Hearing Examiner dated August 3, 1979, a copy of which is attached as Exhibit A hereto, the Hearing Examiner made Findings of Fact, Conclusions and Recommendations.

Pursuant to Minnesota Statutes § 15.0412, subd. 4, said Report was available to all affected persons for over ten days subsequent to the date of the Report.

After affording interested persons an opportunity to present written and oral statements, having reviewed all of the testimony, having considered all of the evidence adduced and the Report of the Hearing Examiner, and upon all of the proceedings and testimony and applicable statutory standards or criteria, and having determined the need for the above captioned rules and the reasonableness thereof,

NOW, THEREFORE, IT IS ORDERED:

1. The Findings of Fact of the Hearing Examiner are adopted and incorporated herein in full, provided however, such adoption and incorporation should not be construed to mean that arguments or assertions merely summarized in said Findings are accepted as relevant and correct.

2. Conclusions 1 and 2 of the Hearing Examiner are adopted and incorporated herein in full.

3. Conclusion 3 of the Hearing Examiner is adopted only insofar as it states:

> 3. . . . the Departments' proposal of 10.3% was shown to be reasonable.

4. Conclusions 4 and 5, the Hearing Examiner's first alternative recommendation, and the Hearing Examiner's memorandum are not adopted.

5. The Hearing Examiner's recommendation is adopted only insofar as he recommends that the Commissioner of Welfare

establish the investment allowance for nursing homes for the fiscal year beginning July 1, 1979 at 10.3%.

IT IS FURTHER ORDERED that the Commissioner hereby adopts the proposed amendment to Rule 49 of the Minnesota Department of Public Welfare as set forth above pursuant to the authority vested in me pursuant to Minnesota Statutes, Chapters 15, 256 and 256B.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

By _____
ARTHUR E. NOOT
Commissioner

Dated this 24 day of
August, 1979.

D.6. Cost of Capital

b. Investment allowance.

(1) Determination of allowance. ~~Proprietary homes where cost reports are received after January 1, 1977, shall receive an investment allowance of nine percent of the original value of the facility for depreciation purposes~~. Effective July 1, 1979 proprietary homes shall receive an investment allowance of 10.3 percent of the original value of the facility for depreciation purposes.

For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance shall be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance effective for rates paid on August 1, 1977.

(2) For purposes of this section the following terms shall have the meaning given to them.

(a) Facility means the building in which a nursing home is located and all permanent fixtures attached to it. Facility does not include the land or any supplies and equipment which are not fixtures.

(b) Original value means the lesser of purchase price or appraised value at the time of purchase. Appraisals at the time of purchase shall be on the depreciated replacement cost basis. If a nursing home expands its facility or makes any other capital expenditure which increases the value of the facility, the cost of the expansion or capital expenditure shall be added to the original value.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

September 5, 1979

Mr. Robert F. Rau, Director
Audit Division
Department of Public Welfare
4th Floor - Centennial Building
St. Paul, Minnesota 55155

Re: Rules Governing Per Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program, Rule 49. DPW-79-025-PE

Dear Mr. Rau:

Enclosed please find the documents which you submitted to us for review on the issue of substantial change together with the Report of the Chief Hearing Examiner, pursuant to Minn. Stat. § 15.052, subd. 4.

Yours very truly,

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Encs.



STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program, Rule 49.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Friday, July 6, 1979, in Building 15 of the Minnesota Veterans Home, Minneapolis, Minnesota.

Robert Rau, Audit Director, and Paul Zerby, Assistant Attorney General, appeared for the Department. Also present from the Department were Barbara Stroemer, Assistant Commissioner, Richard Tester, Auditor, and Susan Stacey, Legal Intern. Seventeen persons attending the hearing signed the hearing register. The hearing continued until all interested persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Department of Public Welfare shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. sec. 15.0412 within ten calendar days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On May 21, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On June 2, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 2119.

3. On May 30, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On June 4, 1979, the Department filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Affidavit of Additional Mailing
(g) The Statement of Need and Reasonableness.
(h) The Fiscal Impact Statement.
(i) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through July 13, 1979, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

STATUTORY AUTHORITY

6. Minn. Stat. sec. 256B.45 provides in relevant part:

> Subdivision 1. The state agency shall by rule establish an investment allowance for nursing homes. For the fiscal year beginning July 1, 1977, the allowance for proprietary homes shall be nine percent of the original value of the facility for depreciation purposes. . . . Beginning in 1978 the state agency shall, no later than May 1 of each year, conduct a public hearing pursuant to the rule making provisions of chapter 15 to determine the percentages to be used in the following fiscal year. There shall be no other cost of capital or profit allowance for proprietary homes.
>
> Subd. 2. For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance shall be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance.

DEPARTMENT PRESENTATION

7. The Department submitted a short, two-page Statement of Need and Reasonableness. The Department noted that it used economic figures from April, 1976 to January, 1979 to gauge the proposed rate change. The significance of the earlier date is that the statute setting the current 9% investment allowance was passed then; the significance of the later date is that those were the most recent figures available to the Department at the time they reviewed the investment allowance.

8. The Department reviewed various statistics on interest rates and security bonds. The following is a summary of the data reviewed:

	April 1976	January 1979	Point Change	Percent Change
U. S. Government Securities (3-5 year issues)	6.99	9.36	2.37	33.9
Home Mortgages				
(New)	8.67	9.93	1.26	14.5
(Existing)	8.85	10.07	1.22	13.8
Federal Hospital Insurance Trust Fund	7.125	8.413	1.288	18.1
Corporate Bonds	9.04	9.65	.61	6.7
Municipal Bonds				
(Bond Buyer)	6.55	6.61	.06	.9
(Std. & Poor's)	6.62	6.25	-.37	-5.6
U. S. Treasury Bonds	6.73	8.43	1.70	25.3
Average	7.57	8.59	1.02	13.5

The Department's narrative on this data is as follows:

> The review of these varied statistics indicated that a wide range of point change (2.37 to -.37) was incurred in the rates of interest and security bonds. MDPW elected to utilize the norm of change reflected by the average of other interest rates and security bonds as contained in the aforementioned agency review. Therefore, MDPW would propose a change of 1.3 points to the current investment allowance effective July 1, 1979.

9. Mr. Rau read a five-page statement at the hearing as the Department's presentation. Most of the statement concerned the history of the Rule 49 proceedings as relates to the determination of reimbursement rates by the Department to nursing homes. The "need for" and "reasonableness of" the proposed rule were supported by Mr. Rau as follows:

> On or about April 11, 1979 the Department of Public Welfare reviewed certain rates of interest according to available indicies for the purpose of determining the reasonableness of any change to the investment allowance rate of return. Since DPW Rule 49 has utilized the Federal Hospital Insurance Trust Fund in a separate provision of the rule (Section D.5.c.) and made reference to it in the original version of the rule (Section 4937 A.3. and A.5.), this resource for average rates of public debt was reviewed for point changes for the period April, 1976 through January, 1979. The indicated period reflects the time period from the passage of the law to the date of available data from the aforementioned resource. The average rates for such dates were 7.125 and 8.413 respectively and reflect a total point change of 1.288.
>
> Other interest rates and security bonds were reviewed as indicated in the agency's Statement of Need and Reasonableness. The point change for such other source data ranges from -.37 to 2.37. The time period for review of the point change was also April, 1976 through January, 1979.
>
> The Department of Public Welfare views the Federal Hospital Insurance Trust Fund as a reasonable instrument for review of the investment allowance rate of return. Based on the statistics procured for the period April, 1976 through January, 1979 the Department would propose to change the investment allowance rate of return from 9% to 10.3% in reflection of a 1.3 point change in the Federal Hospital Insurance Trust Fund. The agency believes that the increase is reasonable, that the effective date of July 1, 1979 coincides with

the July 1st effective date of the original promulgation and that all procedural matters have been met.

PUBLIC COMMENT

10. Mr. Henry Havir, representing the Metropolitan Senior Federation, challenged the Department's authority to conduct the hearing. First, Mr. Havir contended, the hearing must be conducted prior to May 1 of an upcoming fiscal year. Second, he contended, Minn. Stat. sec. 15.0412, requires that a rule only be effective after all of the procedural requirements have been completed, and thus, the rule cannot be made retroactively effective.

First National Bank of Shakopee v. Department of Commerce, 310 Minn. 127, 245 N.W.2d 861 (1976), controls the first issue raised by Mr. Havir. The court there, at 245 N.W.2d 864, restated the "'well-established rule of statutory construction that statutory provisions defining the time and mode in which public officers shall discharge their duties, and which are obviously designed merely to secure order, uniformity, system, and dispatch in public business, are generally deemed directory.'" Wenger v. Wenger, 200 Minn. 436, 274 N.W. 517 (1937); Vogle v. Grace, 5 Minn. 294 (Gil. 232) (1861). Minn. Stat. sec. 256B.45 directs the Department to conduct the hearing by May 1, but it does not mandate that the hearing shall be held by then or not at all. In light of several bills pending in the Legislature that could have significantly altered sec. 256B.45, the Department delayed the hearing until after the Legislature adjourned. But the Department cannot be charged with excessive delay since it filed preliminary documents for the hearing, as noted above in Finding 1, on the same day that the Legislature adjourned.

Minn. Stat. sec. 15.0412, subd. 4, provides in relevant part that:

> A rule shall become effective after it has been subjected to all requirements described in this subdivision and five working days after publication in the state register, as hereinafter provided, unless a later date is required by statutes or specified in the rule.

This is the language that Mr. Havir relies upon in asserting that the proposed change to the investment allowance cannot be made effective July 1, 1979. By itself, the statute clearly does support Mr. Havir's contentions. But the Administrative Procedures Act is a general statute which supplies a framework for many other specific enabling statutes. The APA and the enabling statute must be viewed together. Minn. Stat. sec. 256B.45 contemplates that the hearing will be held before May 1 of each year prior to the start of the upcoming fiscal year which starts July 1. Because the enabling statute contemplates the rate being set for an entire fiscal year, from July 1 to June 30, it seems more appropriate to let the specific intent of the enabling statute govern the general intent of the APA absent any sort of injustice or detriment to affected persons. Here, there is no detriment to affected individuals. Rather, the issue to be determined is the level of reimbursement to nursing homes in the form of an investment allowance by DPW.

11. The Department also submitted a letter, dated July 10, 1979, directed to Commissioner Arthur Noot, from George F. Perpich, Chairman of the Health, Welfare and Corrections Committee. The letter reads:

After giving some thought to the Department of Public Welfare's proposed hearings on the investment allowance for nursing home reimbursement, I would appreciate it if the Department would refrain from implementing any increase in the investment allowance percentage until the Rule 49 legislative proposals, now being studied by both House and Senate interim subcommittees and the special DPW task force, are in a firmer legislative package.

To now raise the allowable rate from nine percent to 10.3 percent will have an uncertain impact on the current legislative proposals under consideration and could possibly hinder such legislation from successful passage during the upcoming session, due to the uncertainty of the effect of such an action on the over-all reimbursement picture.

12. Robert W. McGovern, on behalf of the Minnesota Association of Health Care Facilities (MAHCF), presented a study done of 42 proprietary nursing homes which responded to mailed questionnaires. The 42 responses constitute 27% of the total number of proprietary facilities. The survey showed that the typical nursing home has a 70% mortgage with an interest rate of 8.2% and eight years of continuous ownership. Using these figures and the current 9% investment allowance, the owner receives a 9.3% allowance, 6.7% of which pays the interest on the mortgage, leaving the owner a 2.6% investment allowance. At the 10.3 proposed rate, the owner would receive a 3.9% allowance.

Using the percentage amount of the mortgage as a base, the following figures result:

Percent Mortgaged	30-40%	40-60%	60-80%	80-100%
Average interest rate	7%	8%	8.1%	8.5%
Average years of ownership	15	7	7	3
Actual investment allowance	10.0%	9.3%	9.3%	9.1%
Amount of allowance to pay interest	2.8%	4.6%	7.0%	8.5%
Owner's allowance	7.2%	4.7%	2.3%	.6%
Owner's allowance at 10.3 rate	8.5%	6.0%	3.6%	1.9%

Mr. McGovern summarized his testimony as follows:

Our study indicates that the net financial stability of a nursing home owner improves with the length of ownership and thereby decreasing mortgage on the nursing home. The graph also highlights that the new owner, or I should say new capital into the profession are faced with some very real problems in possible financial failure due to the current low Investment Allowance rate at 9.0% and the DPW proposed 10.3%. It is obvious that the typical new entrant into the profession is entering with mortgaged money. Those people with large available cash are not entering the profession due to the long time (up to 15 years) before they can see an equitable return on their investment. Without a more equitable Investment Allowance, new capital into the profession to meet the future long-term care needs of Minnesota senior citizens may not be available.

13. Rick E. Carter, on behalf of the MAHCF, presented graphs of several economic indicators to support the Association's contention that the proposed 10.3% figure was inadequate and not representative of the most recently available economic data. April, 1976 figures were compared to April, 1979 figures to assess the economic change since the 9% investment allowance became effective. The following chart shows the comparison made,

along with projected investment allowance amounts calculated by adding the point change onto 9% (column 4), and the percent of the change times 9% and added to 9% (column 6). The MAHCF contends that the second method is the most appropriate way to calculate what the true investment allowance should be.

	April 1976	April 1979	Point Change	Point Result	% Change	% Result
Federal Hospital Ins. Trust Fund	7.125	9.0 (March)	1.875	10.875	+26.3%	11.367
Minn. Mortgage Rate	8.75	10.50	1.75	10.75	+20%	10.8
Long-term Bonds	6.72	9.12	2.40	11.40	+35.7%	12.21
3-5 year Bonds	6.87	9.48	2.61	11.61	+37.99%	12.419
91-day bills	4.91	9.50	4.59	13.59	+93.48%	17.413
Public Utilities	9.00	9.92	.92	9.92	+10.22%	9.92
Industrial Bonds	8.78	9.37	.59	9.59	+6.719%	9.6047
Consumer Price Index	1.671	2.118	.447	9.447	+26.75%	11.4075
Corporate Bonds	8.89	9.65	.76	9.76	+8.855%	9.7693
Prime Rate	6.75	11.75	5.00	14.00	+75.07%	15.7563
Average				11.277		12.0666

Mr. Carter pointed out that although DPW relied solely on the Federal Hospital Insurance trust Fund to set the proposed rate, the most recent data was not used. Rather, the Department used January, 1979 figures as the basis for the proposed change and would not consider amending the rate change at hearing to reflect the recent upward trend. See Finding 8 as compared to the chart above.

14. The MAHCF also submitted the affidavit of economist Richard Kahan which analyzes the Rule 49 reimbursement system. Mr. Kahan speaks directly to the current 9% investment allowance stating that, "This provision for return on capital is discriminatory and detrimental to good planning and to the supply of nursing home beds in Minnesota and to the replacement of capital or renovation of the facilities." The total average estimated rate of return for nursing homes at the 9% rate is 3.07%. The MAHCF updated the Kahan affidavit to show that the effect of the proposed 10.3% rate would be a 4.365% rate of return. As the Kahan affidavit is dated October 6, 1978, it contains no opinion as to the adequacy of the proposed rate.

Also submitted by the MAHCF was a 1978 Statistical Study of Rate Setting Under DPW Rule 49 done by Minnesota Systems Research, Inc., which analyzes in detail cost and expense variables in Rule 49 reimbursement calculations.

15. John M. Broeker, Esq., of Broeker, Hartfeldt, Hedges and Grant, appeared on behalf of the MAHCF. Mr. Broeker raised the following concerns regarding the inadequacy of the investment allowance:

> (a) Section 5, subdivision 2, Chapter 282, 1976 Laws of Minnesota, permitted nursing homes to upgrade the value of their property every seven years for purposes of obtaining a higher investment allowance. However, the appraisal provision was repealed by Section 14, Chapter 326, 1977 Laws of Minnesota. In the past, DPW has argued in various forums that the appraisal provision has been effectively replaced by the additional years of ownership investment allowance created by Section 14, Chapter 326, 1977 Laws of Minnesota

(Minn. Stat. sec. 256B.45, subd. 2). This is simply not the case. The additional investment allowance is only 1% of the 9% for each year of ownership, to a maximum investment allowance totalling 11.25% after 25 years of ownership. Facilities would have fared significantly better under the appraisal law than they are faring with the additional years of ownership investment allowance.

(b) When the 9% investment allowance was created, nursing homes were permitted to charge non-welfare or private paying patients up to 10% more than charges for caring for welfare patients under the Medical Assistance program. See Section 8, Chapter 282, 1976 Laws of Minnesota. However, this 10% figure was retroactively reduced for many nursing homes by Section 17, Chapter 326, 1977 Laws of Minnesota, to the differential in effect on April 13, 1976. See Minn. Stat. sec. 256B.48, subd. 1(a). Furthermore, on July 1, 1978, the permissible private pay and welfare differential ceased to exist for nursing homes in the Medical Assistance program. See Minn. Stat. sec. 256B.48, subd. 1(a). In other words, nursing homes, to the extent that the 9% investment allowance was inadequate, were, in the past, permitted to make up this inadequacy through higher charges to private paying patients. This situation has changed as of July 1, 1978. Nursing homes no longer can avail themselves of the private pay differential cushion which existed when the 9% investment allowance was first enacted.

(c) Arguably, also, the 9% investment allowance has not been applied as intended by the Legislature because of DPW's narrow definition of "facility" for purposes of application of the 9% investment allowance. Also, many facilities have been subject to regional maximums which may have prevented payment of even the 9% investment allowance. DPW has treated the investment allowance as being part of the rate subject to regional maximums. This is inconsistent with Hearing Examiner recommendations which have been issued in the past in other Rule 49 rulemaking hearings. By subjecting the investment allowance to regional maximums, many facilities, in fact, do not get paid for investment allowances if such facilities are at or over regional maximums. For a more complete discussion on prior findings in regard to defining the terminology "fixture" and in regard to the issue of application of regional maximums to the investment allowance, see In the Matter of the Amendment to Rule 49 of the Minnesota Department of Public Welfare, DPW-77-018-SM, Report of Hearing Examiner, January 25, 1977; In the Matter of the Proposed Adoption of Rules of the Department of Welfare Per-diem Rates for Nursing Home Providers, Under Title XIX Medical Assistance Program, Rule 49, DPW-78-021-RH, Report of Hearing Examiner, January 18, 1978.

Mr. Broeker also argues that failure to raise the investment allowance in excess of the proposed 10.3% rate violates federal law because it is unreasonably low. He argues as follows:

> The Minnesota State Plan insofar as nursing homes are concerned is contained in Rule 49 for the most part. As such, Rule 49 must provide:
>
> > "[E]ffective July 1, 1976, for payment of the skilled nursing facility and intermediate care facility services provided under the plan on a reasonable cost-related basis, as determined in accordance with methods and standards which shall be developed by the State on the basis of cost-finding methods proved and verified by the Secretary." See 42 U.S.C. sec. 1396a(a)(13)(E).
>
> In regulations interpreting the above-cited section of federal law, the Secretary of the Department of Health, Education and Welfare issued regulations which define a reasonable cost-related rate of payment as a rate which will fully

compensate an efficiently run facility for its "actual allowable costs", that is, all expenses incurred in the provision of routine services and all expenses necessary in order to comply with state or federal licensing requirements. See 42 C.F.R. secs. 447.278-.284, .302. The regulations further require that, in order to be cost-related, rates for reimbursement must take into account economic trends during the period of the rates. See 42 C.F.R. sec. 447.303. With a rule which already does not pay the required expenses, with a limitation on the private pay rate, and with no opportunity to sufficiently recoup losses where an inadequate investment allowance is involved, clearly failure to adequately increase the investment allowance at the present time is unreasonable and is in violation of federal law. As with other parts of Rule 49, also, failure to gear the investment allowance to take into account economic trends violates federal law.

16. The Legislative Audit Commission made an evaluation of nursing home rates and financial operations under Rule 49 in late 1978 and early 1979. The report dealt specifically with the investment allowance and return on owner's equity. It reads, in part, as follows:

THE INVESTMENT ALLOWANCE AND RETURN

ON OWNERS' EQUITY

RECOMMENDATION: The present investment allowance should be replaced by a system which reimburses actual, reasonable interest costs and pays a fair rate of return on actual owners' equity.

RATIONALE:

1. The present system can result in the state paying more for costs of capital than may be necessary in that any positive difference between the investment allowance rate and actual interest rates accrues to a facility's owners.

2. The proposed system is more straightforward. It enables the actual rate of return on equity to be set directly for an equal base rate of return on equity across all proprietary nursing homes. At present the actual rate of return depends largely on when and at what interest rates a facility operator was able to borrow.

The primary goal in setting a rate of return on equity in a regulated industry is to provide a fair rate which attracts the right amount of capital to the industry. In this case, we want to assure that we have the right number of nursing home beds in Minnesota to serve the needs of our citizens. This should be kept in mind in setting the rate of return.

Since interest rates are mainly market-determined, any excess of the investment allowance rates over actual interest rates will accrue as a "windfall"-type gain to ownership. If the investment allowance rate is allowed to rise, this gain will increase. The proposed system will pay actual, reasonable interest plus a fair return on owners' equity.

* * *

The rate of return should be re-set periodically, probably annually, to reflect changes in capital market conditions. To be comparable to other rates available, the rate should be set as a rate earned after the payment of corporate income taxes. For ease of administration, the rate should be pegged to some continuously available capital market indicator, such as the interest rate on Government National Mortgage Association bonds or long-term U.S. Treasury Bonds.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

C O N C L U S I O N S

1. Due, timely and adequate notice of the hearing was properly served and published by the Department. All other substantive and procedural requirements have been fulfilled.

2. The Department has demonstrated its statutory authority to establish an investment allowance for nursing homes by rule. Minn. Stat. sec. 256B.45, subd. 1, not only provides the authority to establish the investment allowance but requires that it be done annually. Thus, the Agency has also demonstrated the need for the proposed rule.

3. Because it is apparent that an adjustment from the current 9% rate is necessary, the Department's proposal of 10.3% was shown to be reasonable. The data used by the Department to support the proposed increase does reflect a significant upward trend in the economic indicators.

4. Economic data presented at the hearing by the MAHCF would justify a substantial increase in the investment allowance for the fiscal year beginning July 1, 1979. The Examiner concludes that on the basis of the economic data and reports presented, the investment allowance should be set at 10.875%.

5. The memorandum which follows is hereby incorporated into the Conclusions herein.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

R E C O M M E N D A T I O N

That the Commissioner of Welfare establish the investment allowance for nursing homes for the fiscal year beginning July 1, 1979 at 10.875%.

In the alternative, that at least the 10.3% rate adjustment be adopted.

Dated this 3 day of August, 1979.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

by AMB

M E M O R A N D U M

This hearing is the second such rulemaking hearing pursuant to Minn. Stat. sec. 256B.45 designed to establish an investment allowance rate for nursing homes. The first hearing was held on May 26, 1978 before Hearing Examiner Steve M. Mihalchick. The Department had proposed, at that time, to continue the investment allowance at the rate of 9%. As a result of the hearing, Examiner Mihalchick recommended that the rate be set at 9.875%. See DPW-78-055-SM, Report issued July 13, 1978. However, the Department rejected that recommendation and continued the investment allowance at the rate of 9%.

As Examiner Mihalchick stated at page 14, "It seems that the most reasonable method of determining the investment allowance is to compare the most recent period for which sufficient economic data is available with the similar period at the time the legislature set the nine percent rate." The Department has supported its proposed rate with economic data through January, 1979. The MAHCF presentation included economic data through April, 1979, with the exception being a March, 1979 Federal Hospital Insurance Trust Fund figure (FHITF). The proposed rate would be in effect for the year July 1, 1979 through June 30, 1980.

Graphs supplied by the MAHCF show that all of the major economic indicators have exhibited a consistent upward trend since April, 1976. Almost all show an increase from January, 1979, to April, 1979. In concurrence with Examiner Mihalchick, "The Federal Hospital Insurance Trust Fund monthly figures are the most consistent with the general trend and should be the primary factor in determining . . . /the/ investment allowance." The MAHCF argues that the percent increase in the FHITF from April, 1976 to the present should be the appropriate measure for rate adjustment. However, this Examiner concludes, as did Examiner Mihalchick, that the more conservative point increase is the proper increment by which the investment allowance should be increased. Reasons for this policy decision include cost containment factors and the relief provided by Minn. Stat. sec. 256B.44, subd. 3, which allows nursing homes paying interest at a rate in excess of nine percent to be reimbursed for that excess up to a rate of 12%.

Clearly, the most reasonable approach to the investment allowance rate adjustment is to use the most recent FHITF figure and add the point change from April, 1976 to the present 9% rate. This would result in an investment allowance of 10.875%. The Department's use of January, 1979 FHITF figures has no other basis except for the fact that they were the latest figures available when the rule amendment was drafted. However, the burden of reasonableness has been met with the 10.3% figure if only because it is a substantial increase above the current 9% rate which has been shown to be inadequate. See Public Exhibit B.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik , being first duly sworn, deposes and says that on the 6th day of August , 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, DPW-79-025-PE upon the Commissioner of Public Welfare by handing to and leaving the same with Robert Rau, Audit Director, .

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 6th day of August , 1978.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

b. Investment allowance.

(1) Determination of allowance. ~~Proprietary homes where cost reports are received after January 1, 1977, shall receive an investment allowance of nine percent of the original value of the facility for depreciation purposes~~. Effective July 1, 1979 proprietary homes shall receive an investment allowance of 10.3 percent of the original value of the facility for depreciation purposes. For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance shall be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance effective for rates paid on August 1, 1977.

(2) For purposes of this section the following terms shall have the meaning given to them.

(a) Facility means the building in which a nursing home is located and all permanent fixtures attached to it. Facility does not include the land or any supplies and equipment which are not fixtures.

(b) Original value means the lesser of purchase price or appraised value at the time of purchase. Appraisals at the time of purchase shall be on the depreciated replacement cost basis. If a nursing home expands its facility or makes any other capital expenditure which increases the value of the facility, the cost of the expansion or capital expenditure shall be added to the original value.

If the Department disputes the cost of the expansion or capital expenditure, it may request an appraisal and use the appraised value as the allowed cost.

(3) Allowance for leased facilities. Leased facilities shall receive an investment allowance not to exceed the greater of $.35 per the facility's 93% capacity patient days or the investment allowance of Section D.6.b.(1) for those fixed assets owned by the lessee facility.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

AFFIDAVIT OF MAILING

DIANE LYNN HIRTE, being first dule sworn, deposes and says:

That on the 25 day of September, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached notice of submittal of the above-captioned rule to the Attorney General's Office for review for form and legality 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 who requested to be so notified at the public hearing.

Diane L. Hirte

Subscribed and sworn to before me

this 25 day of September

1979.

Margaret Nott

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULES OF THE DEPARTMENT OF PUBLIC WELFARE
GOVERNING PER DIEM RATES FOR NURSING HOME
PROVIDERS UNDER THE TITLE XIX MEDICAL
ASSISTANCE PROGRAM, RULE 49

To all Interested Persons:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, subdivision 4 and Rule HE 102, PLEASE TAKE NOTICE that the above-captioned rule(s) have been submitted to the Attorney General's Office on September 25, 1979 for review as to form and legality. Pursuant to Rule ATTYGEN 305, any person may question the legality of the above-captioned rule within ten (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rule, you should direct your comments to the Attorney General's Office, G-25 Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

If you are interested in determining what changes, if any, were made in the proposed rule after the hearing and before submission to the Attorney General you may contact Bob Rau, Department of Public Welfare, 1st Floor, Centennial Office Building, St. Paul, Minnesota 55155, (612) 296-2738.

Arthur E. Noot
Commissioner

State of Minnesota

Department of Public Welfare

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Public Welfare Governing Per Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program, Rule 49

Fiscal Impact Statement

The proposed rule change will require an additional annual expenditure of approximately $1,000,000 and will be funded by the varied federal, state and local sources as follows:

Federal	$556,400
State	399,200
Local	44,400

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

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

Paul Zerby
Assistant Attorney General

DATED: September 21, 1979

DPW-79-025-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
DEPARTMENT OF PUBLIC WELFARE)
GOVERNING PER DIEM RATES FOR)
NURSING HOME PROVIDERS UNDER)
THE TITLE XIX MEDICAL ASSIS-)
TANCE PROGRAM, RULE 49.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on July 6, 1979, before Peter C. Erickson, 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 the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Public Welfare on August 3, 1979; 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 9 MCAR § 2.110; 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, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 5th day
of September, 1979.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

State of Minnesota
Department of Public Welfare

In the Matter of the Proposed
Amendment to Rule 49 of the
Minnesota Department of Public
Welfare

Statement of Need
and Reasonableness

DPW Rule 49 is an existing rule of the Minnesota Department of Public Welfare (MDPW), originally subjected to public hearing on June 28-30, 1972 and implemented effective November 1, 1972. There have been several amendments made to this rule through public hearings the most recent adopted amendment being proposed in public hearing on October 25, 1977.

The need to conduct a public hearing on this rule arises from Minn. Stat., Sec. 256B.45,Subd.1. According to this statute, MDPW was authorized to establish by rule an investment allowance for proprietary nursing homes and to conduct an annual public hearing thereafter to determine the percentage change in this investment allowance. The basic investment allowance was established at nine (9) percent through public hearing sessions conducted on November 12 and 13, 1976. The investment allowance was made effective for cost reports filed after December 31, 1976. The proposed amendment will increase the investment allowance percentage to 10.3% for welfare rates paid effective July 1, 1979.

MDPW reviewed varied statistics on interest rates and security bonds in determination of a reasonable change to the investment allowance percentage. The review was made for the comparative periods April, 1976 and January, 1979. The significance of the initial period is that the law establishing the authority for the investment allowance and the initial percentage factor was passed in April, 1976. The most current statistical data available during the review process was January, 1979.

The review of interest rates indicated that the yield on U.S. government securities (3-5 year issues) was 6.99 in April, 1976 and 9.36 in January, 1979, or a total point change for the period of 2.37. Home mortgage interest rates (nationally) for new and existing structures in April, 1976 were 8.67 and 8.85 respectively and 9.93 and 10.07 in January, 1979 respectively. The total point changes for the indicated periods were 1.26 and 1.22 for new and existing structures respectively. The average rates of public debt issued to the Federal Hospital Insurance Trust Fund was 7.125 and 8.413 respectively for the months of April, 1976 and January, 1979. The total point change was 1.288.

The review of security bonds indicated that the yield on domestic corporate bonds was 9.04 in April, 1976 and 9.65 in January, 1979, or a total point change for the period of .61. The yields on domestic municipal bonds were 6.55 (Bond Buyer) and 6.62 (Std. & Poor's) in April, 1976 and 6.61 and 6.25 in January, 1979. The total point changes on these varied bonds for the indicated periods were .06 and -.37 respectively. The yield on U.S. Treasury Bonds was 6.73 in April, 1976 and 8.43 in January, 1979, or a total point change for the period of 1.70.

The following data reflects the aforementioned review of varied interest rates and security bonds:

	April, 1976	January, 1979	Point Change	% Change
U.S. Govt. Statistics	6.99	9.36	2.37	33.9
Mortgages - New	8.67	9.93	1.26	14.5
Existing	8.85	10.07	1.22	13.8
Federal Hosp. Ins. Trust Fund	7.125	8.413	1.288	18.1
Corporate Bonds	9.04	9.65	.61	6.7
Muncipal Bonds				
Bond Buyer	6.55	6.61	.06	.9
Std. & Poor's	6.62	6.25	-.37	-5.6
U.S. Treasury Bonds	6.73	8.43	1.70	25.3
Average	7.57	8.59	1.02	13.5

The review of these varied statistics indicated that a wide range of point change (2.37 to -.37) was incurred in the rates of interest and security bonds. MDPW elected to utilize the norm of change reflected by the rates of public debt issued to the Federal Hospital Insurance Trust Fund. This instrument does reflect a reasonable change in interest rates for a selected period of time as compared to the average change reflected by the average of other interest rates and security bonds as contained in the aforementioned agency review. Therefore, MDPW would propose a change of 1.3 points to the current investment allowance effective July 1, 1979.

MDPW will have agency staff at the public hearing to present the proposed change to DPW Rule 49. Resource data utilized in the review process will also be available.

Date: May 22, 1979

Arthur E. Noot
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

AFFIDAVIT OF ADDITIONAL MAILING

DIANE LYNN HIRTE, being first duly sworn, deposes and says:

That on the 30 day of May, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also 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 the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals

Diane Lynn Hirte

Subscribed and sworn to before me

this 30 day of May

1979.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept. 22, 1984

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

AFFIDAVIT OF MAILING

DIANE LYNN HIRTE, being first duly sworn, deposes and says:

That on the 30 day of May, 1979, 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.

Diane Lynn Hirte

Subscribed and sworn to before me this

30 day of May, 1979

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept. 22, 1984

Margaret Holt

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 585 labels 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:05 o'clock P.M., this 25th day of May, 1979, have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY

Diana M. Scott

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

DIANE LYN HIRTE, being duly sworn on oath deposes and says:

1) That she is an employee of the Special Services Division of the Department of Public Welfare for the State of Minnesota.

2) That on the 25 day of May, 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 25 day of May, 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.

Diane Lynn Hirte

Subscribed and sworn to before me

this 30 day of May

1979.

Margaret Holt



STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Minnesota Veterans Home, Building 15, Auditorium Chapel, East 51st Street at Minnahaha, Minneapolis, Minnesota on July 6, 1979, 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 materials may be submitted by mail to George Beck, Hearing Examiner, Office of Hearing Examiners, 1745 University Ave., St. Paul, Minnesota 55104, (612) 296-8108 either before the hearing or within 5 working days after the public hearing ends. The Hearing Examiner may extend the written comment period up to 20 calendar days at the hearing.

Present Rule 49 has established the criteria by which welfare rates for nursing homes are to be determined. The proposed amendment is required in compliance with MN Stat., Section 256B.45 Subd. 1. This subdivision initially authorized the state agency to establish a 9% investment allowance for proprietary facilities effective July 1, 1977. The investment allowance is determined by factoring the original value of the building and its permanent fixtures by the 9 percent. The subdivision further authorized the state agency to conduct an annual public hearing to determine the percentage change in this investment allowance. After review of the current statistics and the average rates of public debt issued to the Federal Hospital Insurance Trust Fund for the period April, 1976 through January, 1979 the state agency proposes an increase of the proprietary investment allowance to 10.3% effective July 1, 1979. Amended cost reports will be accepted for changes in the welfare rates according to this proposal. Copies of the proposed rule are now available and one free copy may be obtained by writing to Susan Canine, Department of Public Welfare, 1st Floor, 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 Minn. Stat. § 256B.27, 256B.41 and 256B.45.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

> "NOTICE: The proposed rule amendment (in this case the investment allowance) is subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule amendment to particiapte in the rule hearing process"

The proposed rule change will require an additional annual expenditure of approximately $1,000,000 and will be funded by the varied federal, state and local sources as follows:

Federal	$556,400
State	399,200
Local	44,400

Please be advised that Minn Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. "Lobbyist" does not include any: (a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action; (c) Individual in the course of selling goods or services to be paid for by public funds; (d) News media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge offical action; (e) Paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding travel expenses, in any year in communicating with public officials. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone 612-296-5615.



ARTHUR E. NOOT
Commissioner

Dated: May 21, 1979

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING PER DIEM RATES FOR NURSING HOME PROVIDERS UNDER THE TITLE XIX MEDICAL ASSISTANCE PROGRAM, RULE 49

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the Minnesota Veterans Home, Building 15, Auditorium Chapel, East 51st Street at Minnahaha, Minneapolis, Minnesota on July 6, 1979, 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.

Arthur E. Noot
Commissioner

DATED: May 14, 1979