

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

~~62~~

Our File 61

Permanent Rule_____

Temporary Rule X

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/1 DUE DATE 7/8

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved 7/2 Date Sent Back to Agency 7/2

- -

1. Rules as Adopted_____

2. Rules as Proposed_____

3. Certificate of Board's
   Authorizing Resolution, where applicable_____

4. Order for Hearing_____

5. Notice of Hearing_____
   Sufficiency_____

6. Secretary of State's List_____(one copy only)

7. Certificate of Acquisition of
   Secretary of State's List_____

8. Secretary of State's Certification of Delivery
   of Secretary of State's List to Agency_____

9. Affidavit of Mailing_____
   At least 30 days prior to hearing_____

10. Publication in State Register_____
    At least 30 days prior to hearing_____

11. Statement of Need and Evidence_____

12. Hearing Examiner's Report_____

13. Agency's Findings of Fact_____

14. Certificate of Board's Resolution
    Adopting Rules, where applicable_____

15. Order Adopting_____

16. Report of Chief Hearing Examiner_____

17. Order Approving Incorporation by Reference,
    where applicable_____

18. Certificate of Compliance with Rulemaking Procedures_____

19. Copy of Notice of Intent to Solicit Outside Opinion,
    where applicable_____

20. Petition by Public, where applicable_____

Our File # 612

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT, Commissioner
Department of Public Welfare

DATE: July 2, 1980

Attn: PAUL ZERBY

FROM : H. THEODORE GRINDAL
Special Assistant
Attorney General

PHONE: 296-7030

SUBJECT: In the Matter of the Proposed Adoption of Amendment to the Department of Public Welfare Rule 49 Governing Welfare Per-Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program (12 MCAR § 2.049)

The above-captioned temporary rules have been approved by this office.

While the statute does not require it, this office recommends that an Order of Adoption and a copy of the Rules as Adopted be filed with the Secretary of State. It is the department's responsibility to comply with the Notice provisions of Minn. Stat. § 15.0412, Subd. 5.

If you have any questions, do not hesitate to contact me.

HTG/bw
cc: Paul Zerby
Duane Harves
Susan Robertson

MINNESOTA ASSOCIATION OF HEALTH CARE FACILITIES

SUITE 429, 2850 METRO DRIVE
MINNEAPOLIS, MINNESOTA 55420

TELEPHONE: 612/854-2844





June 11, 1980

Robert Rau
Department of Public Welfare
1st Floor
Centennial Office Building
St. Paul, Minnesota 55155

Dear Bob:

Pursuant to a request for public comment published by DPW in the June 2, 1980 State Register, I am forwarding to you for your consideration the following comments regarding DPW Rule 49 (12 MCAR § 2.049 D.2.c.).

The temporary rule as published reads as follows:

c. Nursing care exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to maximum of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of B.4.b. This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981.

MAHCF comments and recommendations are:

1. The proposed temporary rule at lines one, two, and three states: "Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours . . ." (emphasis supplied).

We would like to point out that the enabling statute used the word or at line 3 instead of and. Due to the fact that the word and is not used in HF 2476 (Chapter 614) and also that the word and changes the meaning of the statute and/or the rule, we would

recommend that DPW change the word and at line 3 to or.

This particular concern has been discussed via telephone with you and Maria Gomez. It is my understanding that the Department will make this change and further that the use of the word and in the proposed temporary rule was inadvertent.

2. Both the language of the statute and the proposed temporary rule references the necessary "trigger" or qualifying amount of nursing hours in terms of calendar year providers. This is to say that a facility, in order to qualify for the exception, would be required to demonstrate that it exceeded 2.8 hours in skilled or (see above) 2.2 hours in ICF during calendar year 1979. This is probably workable for calendar year providers but may be confusing for a fiscal year (other than calendar year) provider.

As a suggestion we would recommend that the Department use the most recent cost report from facilities which have other than a calendar year in evaluating whether the facility qualifies for the exception. This suggestion is made because of possible administrative difficulties with any other method of evaluating the number of nursing hours incurred in 1979.

3. Our last comment relates to the last sentence of the proposed temporary rule which states:

> "This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981."

It is clear that this sentence is at variance with the language of the statute which states:

> ". . . for only those cost reports submitted on or after July 1, 1980 and before July 1, 1981."

It is our understanding from discussions with you that the reason for the proposed language was a concern that the language of the statute was somewhat unclear and could have established a situation whereby a facility which submitted a cost report now (after July 1, 1980) could potentially qualify twice for the exception. Your concern was that the intent of the statute was to allow for a one-time exception due to the fact that substantial changes are contemplated in Rule 49. These changes may be acted on during the 1981 session of the Legislature.

MAHCF would agree with the concern and the above intent of the statute; however, we feel that the language of the statute is not

only preferable but also in keeping with the intent and current administrative process at DPW.

We would suggest that DPW consider changing the language of the last sentence of the proposed rule as follows:

> "This provision is effective for facilities submitting cost reports after July 1, 1980 and before July 1, 1981; however no facility may claim this exception more than once during the above time frame unless this rule or the statute is amended."

The above suggested language will accomplish the purpose of insuring that a facility will only claim the exception once and also will be in compliance with the language of the statute.

If there are any questions regarding the above comments, please feel free to contact the undersigned.

Sincerely,

Rick E. Carter
Deputy Director

REC:ca

cc: LaVonne Hagemeyer
Steven Chies
Larry Johnson
J. I. Green
Jack Brose
John Broeker
Maria Gomez

Courage Center

3915 Golden Valley Road • Golden Valley, Minnesota 55422 • (612) 588-0811



June 18, 1980

Mr. Robert Rau
First Floor
Centennial Office Building
St. Paul, MN 55155

Dear Mr. Rau:

This letter is in response to the June 2, 1980 edition of the Minnesota State Register. On page 1893 there is an invitation for public comment to a proposed rule change of DPW Rule 49.

That proposed change failed to mention the execption for Rule 80 facilities that has previously been included in this language. Naturally such a change would have a dramatic impact on our ability to meet the requirements placed on us by DPW Rule 80. I understand from Mr. Sydejko, our representative with Main, Hurdman, and Cranstoun Accounting firm which audits our finances that this was simply an oversight and not an intentional deletion.

I still felt it would be appropriate to follow-up on your conversation with Mr. Sydejko to "double-check" that this oversight will not mistakenly be adapted into the formal language of the regulation. Thank you for your attention to this matter.

Sincerely,

Mark S. Moilanen
Administrator
COURAGE RESIDENCE

MSM:mfb

Courage Center is a nonprofit organization providing medical and vocational rehabilitation, recreation, sports, camping, educational programs and residential services to people in the Upper Midwest with physical disabilities and speech, hearing and vision disorders.

PROPOSED

Section D 2 of DPW Rule 49 is amended as follows:

Nursing Care and Attendant Limitations

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

Skilled - 2.9 hours

ICF I - 2.3 hours

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under D.8.d.(3) or facilities mandated by a correction order from the Department of Health to provide additional nursing care.

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

c. Nursing Care Exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to a maximum of 3.2 hours per day for skilled nursing care

and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of Section B.4.b. This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981.

Chapter 614

HF 2476 Supplemental Appropriations

Senate Journal

out the duties specified in subdivision 2. The officer or agency shall promptly furnish any data and staff assistance requested to the extent permitted by law.

Sec. 183. [CORRECTIONAL SERVICES FINANCING; STUDY COMMITTEE EXTENSION.] *Notwithstanding the provisions of Laws 1979, Chapter 336, Section 4, Subdivision 4, the committee created to study the financing of correctional services and the Community Corrections Act in Minnesota may continue to meet until it has completed its report to the legislature, but not after January 1, 1981.*

Sec. 184. [NURSING HOME REIMBURSEMENT RATES.] *The commissioner of public welfare shall promulgate temporary rules no later than July 1, 1980 to amend the current rules governing nursing home reimbursement to allow those nursing homes that incurred in calendar year 1979 nursing hours in excess of 2.8 hours per day for skilled nursing care or 2.2 hours per day for intermediate care to receive reimbursement for actual nursing hours up to a maximum number of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care for only those cost reports submitted on or after July 1, 1980 and before July 1, 1981.*

Sec. 185. [CONSERVATION OF BIOMASS FUEL, FIREWOOD.] *In any instance where trees or portions of trees usable as firewood are removed from property under the control of a public utility, pipeline company, railroad, state agency or department, or a political subdivision, that portion of the tree material that is six inches or larger in diameter shall not be destroyed by open burning or deposited in a landfill without first having been offered for use to the public, subject to the approval of the landowner or landowners involved. This section shall not apply to tree material removed in a program of sanitation or disease control, as defined in Minnesota Statutes, 1979 Supplement, Section 18.023.*

Sec. 186. [OPEN APPOINTMENTS.] *The open appointments program shall not apply to any appointments made jointly by the governor, attorney general, and chief justice.*

Sec. 187. [COUNCIL ON BLACK MINNESOTANS.] *Subdivision 1.* [CREATION.] *There is created a state council on Black Minnesotans to consist of seven members appointed by the governor. The members of the council shall be broadly representative of the Black community of the state and shall include at least three males and at least three females. Membership terms, compensation, removal of members and filling of vacancies for non-legislative members shall be as provided in Minnesota Statutes, Section 15.059. In addition, two members of the house of representatives appointed by the speaker and two members of the senate appointed by the subcommittee on committees of the committee on rules and administration shall serve as ex-officio, non-voting members of the council. The council shall annually elect from its membership a chairperson and other officers it deems necessary.*

Subd. 2. [DEFINITIONS.] *For the purpose of this section, the term "Black" means a person who considers himself or herself as having origin in any of the black racial groups of Africa.*

Subd. 3. [DUTIES.] *The council shall:*

ADOPTED

Section D 2 of DPW Rule 49 is amended as follows:

Nursing Care and Attendant Limitations

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

Skilled 2.9 hours

ICF I 2.3 hours

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under D. 8. d.(3) or facilities licensed under DPW Rule 80, or facilities mandated by a correction order from the Department of Health to provide additional nursing care.

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

Exhibit A

c. Nursing Care Exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care ~~and~~ or 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to a maximum of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of Section B. 4. b. This provision is effective for facilities ~~with with fiscal years ending after May 31, 1980 and before June 30, 1981.~~ submitting cost reports after July 1,1980 and before July 1, 1981; however, no facility may claim this exception more than once during the above time frame unless this rule or statute is amended.

APPROVED AS TO FORM AND LEGALITY
JUL 02 1980 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY H. Theodore Dunkel
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
Department of Public Welfare

In the Matter of the Proposed Adoption of Amendment to DPW Rule 49 Governing Welfare Per-Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program (12 MCAR § 2.049)

ORDER ADOPTING TEMPORARY RULE

The above-entitled matter was published in the State Register on June 2, 1980, as a proposed temporary rule as authorized by Minn. Stat. § 15. 0412, subd. 5 (1978) as amended (1980). After affording interested and affected persons an opportunity to present written tatements within 20 days of the publication date, having reviewed and considered the written statements, and having determined the need for the above-captioned rule amendment and the reasonableness thereof,

NOW, THEREFORE, IT IS ORDERED THAT the Commissioner adopts the proposed rule as modified by the attached Exhibit A, headed Adopted Rule. The modifications reflect the comments of the interested persons and do not result in substantial changes, modifications are as follows:

1. The first modification, in Section D.2.a., excepts from that limitation facilities licensed under DPW Rule 80. This modification to the amendment is an existing provision of the rule which was inadvertantly omitted in the proposed temporary rule.

2. The second modification, in the first sentence of Section D.2.c., a deletion of "and" and substitution of "or" in the description facilities eligible for the higher limits on hours per day of care is to correct a grammatical error and conform the rule to the statute.

3. The third modification, in the last sentence of Section D.2.c., is to make the rule effective as required by the statute for facilities submitting cost reports after July 1, 1980 and before July 1, 1981. The final clause is to prevent any facility twice claiming a benefit, which all parties agree should not be available more than once during the applicable period. This modification to the amendment as proposed by interested parties is necessary for clarification of the temporary rule and conformance to the wording of the statute.

IT IS FURTHER ORDERED THAT the Commissioner hereby adopts the above-captioned rule amendment as modified in the attached Exhibit A from this day of July 1, 1980, pursuant to the authority vested under Minnesota Laws 1980, Chapter 614, § 184.

Dated: 7/1/80

STATE OF MINNESOTA
Department of Public Welfare

/s/ Wesley Restad
WESLEY RESTAD
Deputy Commissioner