

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 634A and 619

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: October 29, 1980

Attn: PAUL ZERBY
SAAG

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Residents (12 MCAR sec. 2.052)

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.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE COMMISSIONER
612/296-2701

GENERAL INFORMATION
612/296-6117

October 27, 1980

PLEASE REPLY TO 296-2738

H. Theodore Grindal
Special Assistant Attorney General
Office of the Attorney General
Administration - Finance Division
Room G25 - Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of the Department of Public Welfare Rate Rule - 12 MCAR 2.052

Dear Mr. Anderson:

I am enclosing the following documents relating to the above-cited rate rule amendments:

1. Supplemental Order Adopting Rules

2. Adopted Rule

I trust that the readmission of these documents will satisfy the filing requirements of your agency. If I can be of further assistance in these matters, I can be contacted at 296-2738.

Very truly yours,

Robert J. Rau

Robert J. Rau, Director
Audit Division
Department of Public Welfare

RJR/sc

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: 8/19/80

Attn: PAUL ZERBY

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Residents (12 MCAR sec. 2.052)

The rules in the above-referenced matter have not been approved by this office and are being returned to you for the following reasons:

1. DPW Rule 52 sec. E. states the effective date of DPW Rule 52 revisions. It states that, "All revisions of this revised DPW Rule 52 shall be effective May 1, 1980 for cost reports submitted for fiscal years ended after November 30, 1979." Since the statutory authority for this rule does not permit retroactive effect for the rule, it appears that the May 1, 1980 effective date makes the rule illegal, Minn. Stat. sec. 15.0413, subd. 1. Therefore, this date should be changed to a future date to remedy the retroactivity problem. This does not appear to be a substantial change and should not require going back to hearing. However, this change does involve legality and should be referred to the Chief Hearing Examiner before being resubmitted to us.

2. Also, in DPW Rule 52 sec. F. the rule as proposed and adopted does not incorporate changes made to this section delineated by the Hearing Examiner in #20 of his report. Those changes would delete the words "unreasonable or not supported by the evidence" and replace them with the word "invalid." In the Order Adopting the Rules, #1 states that the Findings of Fact of the Hearing Examiner including #20 are adopted and incorporated in full. The changes appear to be omitted from the Rules as Adopted. This does not appear to be a substantial change.

Upon consideration of the issue set forth in this memorandum, these rules may be resubmitted. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form made subsequent to his review be resubmitted to that office. At the time of resubmission to this office, please insure that the original and two copies of the Order Adopting and the Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents. For administrative convenience, please designate the rules as resubmitted rules at the time of resubmission.

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

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE COMMISSIONER
612/296-2701

GENERAL INFORMATION
612/296-6117

October 22, 1980

PLEASE REPLY TO 296-2738

H. Theodore Grindal
Special Assistant Attorney General
Office of the Attorney General
Administration - Finance Division
Room G25 - Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of the Department of Public Welfare Rate Rules - 12 MCAR ~~2.048 and~~ 12 MCAR 2.052

Dear Mr. Anderson:

I am enclosing the following documents relating to the above-cited rates rules' amendments:

1. Supplemental Order Adopting Rules
2. Adopted Rule
3. Hearing Records

I trust that the readmission of these documents will satisfy the filing requirements of your agency. If I can be of further assistance in these matters, I can be contacted at 296-2738.

Very truly yours,

Robert J. Rau

Robert J. Rau, Director
Audit Division
Department of Public Welfare

RJR/sc

RECEIVED
OCT 22 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. NOOT

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Amendments to the Department of Public Welfare Rule Governing Welfare Per Diem Rates For Intermediate Care Facilities/Mentally Retarded Residents (12 MCAR 2.052)

ORDER ADOPTING RULES

The above-captioned matter came on for hearing before Mr. Harry Seymour Crump, Hearing Examiner appointed by the Chief Hearing Examiner, on February 15, 1980 at the Minnesota Historical Society Building 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.

After affording interested persons on opportunity to present written and oral statements, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the proceedings and testimony herein 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 that the Commissioner adopts these rules identified as 12 MCAR 2.052 (DPW Rule 52) as set forth in the attachment pursuant to the authority vested in me pursuant to Minnesota Statutes, Chapters 15, 246, 253A, 256 and 257.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Dated: October 22, 1980

ARTHUR E. NOOT, COMMISSIONER

Adopted Rule

Department of Public Welfare

Support Services Bureau

12 MCAR 2.052 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

Section B.1.a. Historical Rate. The method of calculating the per diem rate will be to determine reasonable costs for the most current fiscal year, except for the property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance, and divide by actual resident days according to the reasonable cost provisions of D. and cost reporting regulations contained in C. Such rate shall be based on occupancy factor of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than ten beds. The property and related costs, general and administrative costs, and the earnings allowance or minimum cost of captial allowance will be divided by 93 percent of total capacity resident days for licensed beds. For facilities of ten beds or less the facility may use actual resident days. This provision shall not be in conflict with Section B.3.a.(3).

Section B.1.c.(1) Allowance for known cost changes.

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

(i) Rental payments pursuant to a written lease.

~~(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.~~

(j) A food cost change computed initially by multiplying the average of food services costs per day for available 1979 cost reports less the lower and upper 10% times the percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics, for the period October through September. Subsequent annual cost changes will be made on a calendar year basis.

~~(j)~~ (k) 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. This provision is applicable only to the first two fiscal years of newly-constructed or newly established facilities. Welfare rates in subsequent fiscal periods will be based on the occupancy from the most recently completed fiscal year.

~~(1) 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.~~

(1) An unidentified cost change computed by multiplying the allowable historical costs from the most recently completed fiscal year less those costs relating to line-item costs for which there has been a cost projection times the percentage change in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through Steptember. In no case may the cost change be applied against the historical cost of salaries, changes in facilities or equipment, payroll-related costs, property taxes, interest, depreciation expense, rental payments or raw food costs.

(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 the sum of known cost changes calculated under (a) through (i) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If the sum of actual cost increases exceeds the known cost changes determined under (a) through (1) above, no adjustment in welfare rate will be made.

Section B.3.a. Special Rate-Setting Procedures.

(3) Interim-rate establishment. The Commissioner will establish an interim rate in accordance with Regulation B.1. retroactive to the first day on which a Medical Assistant 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 accorance 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 ten 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 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. Rate settlement requests which are in excess of the interim rates ~~may~~ shall be subject to cost category ceilings according to Section D.1.

Section B.4.b. Overall limitation.

(2) Salary cost changes which exceed ~~6%~~ 15% 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 seven-county metropolitan area and $16.00 per resident day for facilities located outside the stated metropolitan area.~~

(4) The rate limitation will not apply to providers whose welfare rate request does not exceed 80% of the statewide weighted average rate determined annually on a calendar year basis utilizing the most recently completed fiscal year cost reports submitted on or before December 31.

(5) The overall rate limitation will be computed by dividing total allowable cost ~~plus exceptions~~ by the actual resident days.

Section D.1.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 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. A top management individual who is compensated in more than two facilities with a total bed complement of more than 50 beds shall be subject to the compensation limitation on a cumulative basis of all facilities served by the individual. The maximum compensation limitation shall be $35,000 per facility.

Section D.3.b. Limitations

(1) The total basis of depreciable facility assets shall not exceed an average of ~~$14,820~~ $25,194 per bed for Class A beds and $29,452 per bed for Class B beds built or purchased after ~~January 1, 1974~~ December 31, 1979. ~~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~~ 1981 according to a construction index as determined by the Commissioner.

(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. After the facility's first three complete fiscal years and every three years thereafter, the facility's investment per bed limitation will be adjusted to reflect the average annual increase for equipment additions and/or facility modification. The investment per bed revision does not apply to original construction and/or investment costs. The investment per bed revision will not be an exception to the overall maximum of Section B.4.b. The change in the investment per bed limitation will be based on the consumer price index for housing in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September.

Section D.5.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.

The minimum cost of capital allowance will be adjusted annually on a calendar year basis according to the consumer price index for all items in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. The initial revised minimum cost of capital allowance will be $.58. ~~effective January 1, 1980.~~

Section E. Effective Date of DPW Rule 52 Revisions

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

1. All revisions of this revised DPW Rule 52 shall be effective January 1, 1981 for cost reports submitted for fiscal years ended after December 31, 1979.

Section F. Severable Provisions

1. If any provisions of the rule as adopted by the Commissioner of Public Welfare are found through judicial procedures to be invalid, the remaining provisions shall remain valid.

ATTORNEY GENERAL

TED GRINDAL
Special Assistant
Attorney General

Oct. 16/80

JERRY S. ANDERSON
Special Assistant
Attorney General

DPW Rule 12 MCAR § 2.052
Our File Nos. 619 and 634A

DPW really messed us up on this one. You reviewed this rule back in August and disapproved it at that time. Two weeks ago DPW submitted it to us without telling us that it was being resubmitted, which is the reason for the second file. This second submission was totally screwed up and I disapproved it without knowing about the earlier file. Upon the second re-submission, Judith and I discovered the first file.

As the situation exists, the rule appears to be in an acceptable form, with one exception. In your disapproval memo you had an objection to Section E. Effective Date . . . . Please review the past and present rule and let me know what you think.

JSA:bw

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

RECEIVED
FEB 2 1980
OFFICE OF HEARING EXAMINERS

February 29, 1980

Harry Seymour Crump
Office of Hearing Examiners
1745 University Avenue
Room 300
St. Paul, Minnesota 55104

RE: In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Providers (12 M.C.A.R. § 2.052)

Dear Mr. Crump:

This letter and its attachments are submitted to you in accordance with my understanding of your requests at the February 15, 1980 hearing concerning the above matter.

1. To be attached to Exhibit F I enclose two worksheets relating to construction costs of health facilities one stated in dollars per square foot and the other in dollars per bed.

2. I also enclose a copy of Mr. Rau's prepared testimony for the hearing.

3. I understand you have inquired about the authority for the Department's rulemaking in this matter.

The Department has cited and relies upon Minn. Stat. §§ 256B.27 and 256B.04, subd. 2. Section 256B.27 relates to the power of the agency to administer the Medical Assistance program, to set the rates and charges, and to require cost reports. Section 256B.04, subd. 2, states that the Department shall:

> Subd. 2. Make uniform rules and regulations, not inconsistent with law, for carrying out and enforcing the provisions hereof in an efficient, economical, and impartial manner, and to the end that the medical assistance system may be administered uniformly throughout the state, having regard for varying costs of medical care in different parts of the state and the conditions in each case, and in all things to carry out the spirit and purpose of this program, which rules and regulations shall be made with the approval of the attorney general on form and legality, shall be furnished immediately to all county agencies, and shall be binding on such county agencies.

The rulemaking power of the agency under Section 256B.04, subd. 2, was before the Minnesota Supreme Court in connection with Rule 49 (the rule for setting nursing home rates which is comparable to Rule 52 for facilities for the mentally retarded) in Koronis Manor Nursing Home v. Department of Public Welfare, 311 Minn. 375, 249 N.W.2d 448 (1976). The Court there, based on the Department's rulemaking authority gave the Department's interpretation of the rule great weight.

Rule 52 itself was before the Minnesota Supreme Court in the case of Portland Residence, Inc. v. Minnesota Department of Public Welfare, decided January 12, 1979. A copy of the decision is attached here for convenience. In that case, the Court simply noted:

> Residents of the Portland facility receive governmental assistance through the Medical Assistance Program or the Cost of Care Program to defray the cost of their care. DPW determines the per diem reimbursement rate for such payments pursuant to Minn. Rule DPW 52 (hereinafter Rule 52).

The rulemaking authority of the Department was clearly assumed by the Court.

The question of the Department's rulemaking authority was expressly raised in the context of a Rule 49 case in NHE/Minn. Inc., d/b/a NAG/ Rochester v. Minnesota Department of Public Welfare. In that case, the District Court for the Third Judicial District, stated (on page 6 of the Memorandum):

> Effective November 1, 1972, DPW promulgated Minn. Reg. DPW 49 pursuant to the statutory authority granted by Minn. Stat. § 256B.27 which requires reports and audits, and § 256B.04(2) which empowers the Department to promulgate rules and regulations to effectuate the provisions of Chapter 256B.

A copy of this decision also is attached hereto for ease of reference.

The Department's statutory authority regarding Rule 52 was also passed upon in a report of a prior Hearing Examiner. In his report, DPW-77-028-SM, Mr. Michalchick stated as follows:

Statutory Authority

6. Minn. Rule DPW 52 (Rule 52) is an existing rule adopted pursuant to authority in Minn. Stat. §§ 256B.04, subd. 2, and 256B.27. Those sections authorize the Commissioner of Public Welfare to adopt rules and require reports relating to Medical Assistance for Needy Persons. Further, Minn. Stat. § 252.27, subd. 1 (1976), provides that the cost of caring for any child who is mentally retarded, epileptic or emotionally handicapped shall be paid by the appropriate county. The county paying the costs of such care and treatment shall, subject to uniform regulations established by the Commissioner of Public Welfare, receive reimbursement not exceeding 70% of such costs from funds made available for this purpose by the Legislature. These statutes authorizing the original adoption of Rule 52 authorize its amendment in this procedure.

A copy of this report is included with this letter, along with other materials described below.

4. We understand that the hearing examiner has requested the Department to document its need and rationale for making the rule provisions effective as of January 1, 1980.

The proposed changes to DPW Rule 52 were discussed with the Accounting/Rule 52 committee of the Association of Residences for the Retarded in Minnesota (ARRM) during the summer and fall of 1979. Several meetings were conducted in negotiation of the changes which would be presented in public hearing. This process was utilized in order to arrive at as much common understanding as possible and narrow the issues in controversy at the public hearing. Many of the provisions benefit the providers' rate determination, as well as some benefitting the Department in its cost containment efforts. It was all parties' understanding that the rule changes would be effective January 1, 1980 for calendar year-end cost reports because many, if not most, of the service vendors utilize the calendar year for their fiscal or business year. Thus, the calendar year effective date is the most prudent and reasonable date for rule changes since this date coincides with the submission of the largest percentage of cost reports.

In the testimony by service vendors and interested parties no individual objected to this effective date. At the end of the hearing Mr. Wayne Larson, the Administrator of Homeward Home and the Chairman of the ARRM Accounting/Rule 52 Committee, stated that there was no objection to the January 1, 1980 effective date for the rule changes. It was, again, understood by this individual and the industry that that date would be the effective date of such changes.

The record of past changes to this rule indicate that the effective dates have been January 1, 1976 and January 1, 1977. The rule changes effective January 1, 1977 were proposed in public hearing on February 11, 1977 before a representative of the Office of Hearing Examiners. The Notice of Hearing (dated December 28, 1976) clearly stated that the rate methodology would be effective for cost reporting periods beginning in calendar year 1977. Both the proposed and adopted rules indicate that all revisions of the revised rule would take effect beginning with reports covering fiscal years ending after November 30, 1976. The Hearing Examiner's Office accepted this provision of the proposed rule in his March 10, 1977 report to the agency's Commissioner. The Chief Hearing Examiner approved the proposed rule with its retractive date of implementation. Copies of all of these documents are attached for ease of reference. In order to meet the legitimate expectations of all parties, and in the interest of a manageable administration of the rule, the Department earnestly requests that the current proposed rule similarly be effective January 1, 1980.

We hope this letter and its enclosures are responsive to the concerns which you expressed.

Very truly yours,

Paul G. Zerby

PAUL G. ZERBY
Assistant Attorney General

4th Floor Centennial Office Bldg.
St. Paul, Minnesota 55155
Telephone: 612/296-8403

PGZ/klm
Encs.

Note: this does not include change ...ered by CHE see p. 2

H/G copy.

Exhibit C

Adopted Changes to DPW Rule 52

The following changes are proposed to DPW Rule 52 effective January 1, 1980:

Section B.1.a. Historical Rate. The method of calculating the per diem rate will be to determine reasonable costs for the most current fiscal year, except for the property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance, and divide by actual resident days according to the reasonable cost provisions of D. and cost reporting regulations contained in C. Such rate shall be based on occupancy factor shall be based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than ten beds. The property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance will be divided by 93 percent of total capacity resident days for licensed beds. For facilities of ten beds or less the facility may use actual resident days. This provision shall not be in conflict with Section B.3.a.(3).

p.4 of Complete Rule

Section B.1.c.(1) Allowance for known cost changes.

p.5 of Completerule

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

(i) Rental payments pursuant to a written lease.

~~(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.~~

(j) A food cost change computed initially by multiplying the average of food services costs per day for available 1979 cost reports less the lower and upper 10% times the percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics, for the period October through September. Subsequent annual cost changes will be made on a calendar year basis.

~~(j)~~ (k) 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. This provision is applicable only to the first two fiscal years of newly-constructed or newly established facilities. Welfare rates in subsequent fiscal periods will be based on the occupancy from the most recently completed fiscal year.

~~(1) 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.~~

(1) An unidentified cost change computed by multiplying the allowable historical costs from the most recently completed fiscal year less those costs relating to line-item costs for which there has been a cost projection times the percentage change in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through Steptember. In no case may the cost change be applied against the historical cost of salaries, changes in facilities or equipment, payroll-related costs, property taxes, interest, depreciation expense, rental payments or raw food costs.

(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 the sum of known cost changes calculated under (a) through (i) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If the sum of actual cost increases exceeds the known cost changes determined under (a) through (l) above, no adjustment in welfare rate will be made.

Section B.3.a. Special Rate-Setting Procedures.

(3) Interim-rate establishment. The Commissioner will establish an interim rate in accordance with Regulation B.1. retroactive to the first day on which a Medical Assistant 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 accorance 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 ten 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 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. Rate settlement requests which are in excess of the interim rates may be subject to cost category ceilings according to Section D.1.

ordered changed by CHE

Section B.4.b. Overall limitation.

p.8

(2) Salary cost changes which exceed ~~6%~~ 15% 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 seven-county metropolitan area and $16.00 per resident day for facilities located outside the stated metropolitan area.~~

(4) The rate limitation will not apply to providers whose welfare rate request does not exceed 80% of the statewide weighted average rate determined annually on a calendar year basis utilizing the most recently completed fiscal year cost reports submitted on or before December 31.

(5) The overall rate limitation will be computed by dividing total allowable cost ~~plus exceptions~~ by the actual resident days.

deletion per H.E. P14

Section D.1.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:

p. 17 of Complete Rule.

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. A top management individual who is compensated in more than two facilities with a total bed complement of more than 50 beds shall be subject to the compensation limitation on a cumulative basis of all facilities served by the individual. The maximum compensation limitation shall be $35,000 per facility.

change per HE 15

Section D.3.b. Limitations

p.21

(1) The total basis of depreciable facility assets shall not exceed an average of ~~$14,820~~ $25,194 per bed for Class A beds and $29,452 per bed for Class B beds built or purchased after ~~January 1, 1974~~ December 31, 1979. ~~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~~ 1981 according to a construction index as determined by the Commissioner.

change per HE 16

(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. After the facility's first three complete fiscal years and every three years thereafter, the facility's investment per bed limitation will be adjusted to reflect the average annual increase for equipment additions and/or facility modification. The investment per bed revision does not apply to original construction and/or investment costs. The investment per bed revision will not be an exception to the overall maximum of Section B.4.b. The change in the investment per bed limitation will be based on the consumer price index for housing in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September.

Section D.5.c. Minimum cost of capital allowance for providers.

p.25

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.

The minimum cost of capital allowance will be adjusted annually on a calendar year basis according to the consumer price index for all items in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. The initial revised minimum cost of capital allowance will be $.58. ~~effective January 1, 1980.~~

Section E. Effective Date of DPW Rule 52 Revisions

p.26

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

should be deleted?

1. All revisions of this revised DPW Rule 52 shall be effective May 1, 1980 for cost reports submitted for fiscal years ended after November 30, 1979.

See HE ¶ 19 ?

Section F. Severable Provisions

p.26

1. If any provisions of the rule as adopted by the Commissioner of Public Welfare are found through judicial procedures to be unreasonable or not supported by the evidence, the remaining provisions shall remain valid.

Our File # 619

8/6 Robert Rau advised to submit necessary copies of documents

Permanent Rule_____

Temporary Rule_____

8/11 rec'd from R. Rau.

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/30 DUE DATE 8/19

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved_____ Date Sent Back to Agency 8/19

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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 ✓ 2.15.80
   Sufficiency ✓
6. Secretary of State's List not submitted but see 7,8,9 (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 ✓ 1.7.80
10. Publication in State Register ✓ copy not submitted but see HE Pg 2
    At least 30 days prior to hearing ✓ 1.7.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated into #15 - Order Adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

AG copy:
Complete Adopted Rule - Final Form
This includes change ordered by CHE - see p.7

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 May 1, 1980

CONTENTS OF REGULATIONS

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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 promulgate pursuant 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, except for the property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance, and divide by actual resident days according to the reasonable cost provisions of D. and cost reporting regulations contained in C. Such rate shall be based on occupancy factor shall be based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than ten beds. The property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance will be divided by 93 percent of total capacity resident days for licensed beds. For facilities of ten beds or less the facility may use actual resident days. This provision shall not be in conflict with Section B.3.a.(3).

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

(i) Rental payments pursuant to a written lease.

(j) A food cost change computed initially by multiplying the average of food services costs per day for available 1979 cost reports less the lower and upper 10% times the percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics, for the period October through September. Subsequent annual cost changes will be made on a calendar year basis.

(k) 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. This provision is applicable only to the first two fiscal years of newly-constructed or newly established facilities. Welfare rates in subsequent fiscal periods will be based on the occupancy from the most recently completed fiscal year.

(l) An unidentified cost change computed by multiplying the allowable historical costs from the most recently completed fiscal year less those costs relating to line-item costs for which there has been a cost projection times the percentage change in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. In no case may the cost change be applied against the historical cost of salaries, changes in facilities or equipment, payroll-related costs, property taxes, interest, depreciation expense, rental payments or raw food costs.

(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 the sum of known cost changes calculated under (a) through (i) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If the sum of actual cost increases exceeds 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

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 wirtten 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 circumstance. 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. retroactive to the first day on which a Medical Assistant 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 ten 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 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. Rate settlement requests which are in excess of the interim rates shall be subject to cost category ceilings according to Section D.1.

changed per CHE

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 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 regulations.

(2) Salary cost changes which exceed 15% 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.

(4) The rate limitation will not apply to providers whose welfare rate request does not exceed 80% of the state-wide weighted average rate determined annually on a calendar year basis utilizing the most recently completed fiscal year cost reports submitted on or before December 31.

(5) The overall rate limitation will be computed by dividing total allowable cost by the actual resident days.

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 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 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.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 non-compliance with Regulations 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 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 a 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 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 expense 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.

a. 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.) 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 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. A top management individual who is compensated in more than two facilities with a total bed complement of more than 50 beds shall be subject to the compensation limitation on a cumulative basis of all facilities served by the individual. The maximum compensation limitation shall be $35,000 per facility.

For each full percentage point increase in the Consumers price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the 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. 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 are wages paid for services rendered more than 20 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)(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 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 (i) 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).

(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 $25,194 per bed for Class A beds and $29,452 per bed for Class B beds built or purchased after December 31, 1979. This limitation will be adjusted annually beginning January 1, 1981 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. After the facility's first three complete fiscal years and every three years thereafter, the facility's investment per bed limitation will be adjusted to reflect the average annual increase for equipment additions and/or facility modification. The investment per bed revision does not apply to original construction and/or investment costs. The investment per bed revision will not be an exception to the overall maximum of Section B.4.b. The change in the investment per bed limitation will be based on the consumer price index for housing in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September.

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 years.

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. 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. Facility 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.

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.5.b.(1)(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.(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.

The minimum cost of capital allowance will be adjusted annually on a calendar year basis according to the consumer price index for all items in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. The initial revised minimum cost of capital allowance will be $.58.

E. Effective Date of DPW Rule 52 Revisions

1. All revisions of this revised DPW Rule 52 shall be effective May 1, 1980 for cost reports submitted for fiscal years ended after November 30, 1979.

F. Severable Provisions

1. If any provisions of the rule as adopted by the Commissioner of Public Welfare are found through judicial procedures to be unreasonable or not supported by the evidence, the remaining provisions shall remain valid.

DPW-80-028-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Residents. (12 MCAR § 2.052)

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on February 15, 1980, at 9:00 a.m., in the Minnesota Historical Society Building, Saint Paul, Minnesota.

Robert J. Rau, Audit Director, testified for the Department of Public Welfare (hereinafter "DPW"). John L. Kirwin, Special Assistant Attorney General, represented the DPW.

Approximately 55 persons attended the hearing. Three individuals from the audience spoke and gave comments in regard to the proposed amendments. The hearing continued until all interested persons and groups had an opportunity to be heard.

This proceedings is a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rule should be adopted and given the force of law.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), 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. § 15.052, subd. 4 (1978). 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. § 15.0412 (1978) 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

Procedural Requirements

1. On December 19, 1979, DPW filed the following documents with the 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 DPW presentation.

2. On January 7, 1980, Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1097.

3. On January 7, 1980, DPW 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 January 15, 1980, DPW filed the following documents:

(a) Order for Hearing.
(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 Affidavit of Additional Mailing.
(f) The Secretary of State's Certificates.
(g) The Statement of Need and Reasonableness.
(h) The names of personnel who will represent DPW at the hearing together with the names of any other witnesses solicited 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 February 29, 1980, for the receipt of written comments and statements. Six post-hearing comments, in the form of letters, were received and made a part of the record herein. Also included, are the comments of the Special Assistant Attorney General as to the basis for the proposed retroactive rulemaking provisions by the DPW.

Pursuant to the written requests of the DPW and the Hearing Examiner, the Chief Hearing Examiner ordered an extension of time for the issuance of the Hearing Examiner's Report until April 7, 1980.

Statutory Authority

6. 12 MCAR § 2.052 (DPW Rule 52) is an existing rule adopted pursuant to authority in Minn. Stat. §§ 256.04, subd. 2 and 256B.27. Those sections authorize the Commissioner of Public Welfare to adopt rules and require reports relating to Medical Assistance for Needy Persons. The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 256B.27 and 256B.04.

Need and Reasonableness

Rate Determination

7. DPW Rule 52 B.1.a. provides for a method of calculating welfare per diem rate. DPW proposed to add a provision to this clause to provide a cost incentive for service providers when the facility's occupancy exceeds 93%. On the other hand, providers who operate below the 93% occupancy threshold will be assessed a penalty from a computation method in the proposed amendment to this clause. An exception is allowed in this calculation of occupancy for facilities with less than 10 beds.

No oral or written comments were made on this proposed amendment by the public within the requisite time periods.

The Hearing Examiner finds the amendment as proposed is needed and reasonable in fulfilling the fiscal accountability objectives of the rule.

8. DPW proposed to delete existing Section B.1.c.(1)(h), which is the current raw food cost projection formula based upon an annualization of the last quarter purchases of the service vendor. DPW proposed this change and deletion due to the fact that the current methodology does not recognize seasonal variances in prices and does encourage stockpiling of food purchases in the last quarter of the vendor's fiscal year. In Section B.1.c.(1)(j) the agency proposes to establish a new methodology with a flat raw food cost allowance for all providers based on the factoring of raw food costs, reported in the immediate prior calendar year, by a percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul. Consequently, the service providers will be eligible for a food cost change according to their fiscal year-end statistics. Mr. Rau stated that the food cost change is not to be automatically granted to a vendor on January 1st of every year but that the compilation of the food cost change must be submitted to DPW for review.

There were no written or oral comments presented by the public concerning this amendment.

The Hearing Examiner finds the amendments as proposed are needed and reasonable.

9. DPW proposed to revise the current occupancy projection formula in Section B.1.c.(1)(k), which is based on the annualization of the last quarter resident days of the service vendor. DPW states that the methodology utilized in this section is not precise for those vendors whose fiscal year-ends are skewed in the last quarter by seasonable occupancy changes. The current occupancy formula was intended to annualize the fill-up in start-up facilities. Mr. Rau stated that it was reasonable to propose that the occupancy formula be revised to apply only to the first two fiscal years of the service providers. Subsequent to these two fiscal years the historical period resident days will be used in computing the prospective welfare rate.

There were no written or oral comments directly on this clause concerning the amendment proposed by DPW.

The Hearing Examiner finds that the amendment as proposed is needed and reasonable.

10. DPW proposed to revise the current unidentified cost increase change formula in Section B.1.c.(1)(l), which inserts a more exact method for computation of a cost change for inflationary items, which are normally unpredictable in a cost change projection. The current unidentified cost increase methodology was found to be too restrictive and did not take into account the inflationary factor in such cost changes. All cost items that are directly identified for cost change purposes in this rule will not be applicable in determining or computating this unidentified cost change factor. DPW proposed that the unidentified costs be determined by a factor of the cost projection times the percentage change in the consumer price index for the period of October through September of the current fiscal year. Mr. Rau stated that the service provider will be eligible for this unidentified cost change according to their fiscal year-end compilations. In addition, Mr. Rau stated that like

the raw food cost factor, this unidentified cost change is not automatically granted to a vendor on January 1st of every year, but must be submitted to DPW for review.

There was no written or oral comments directly on this clause concerning the amendment as proposed by DPW.

The Hearing Examiner finds that the amendment as proposed is needed and reasonable.

Proposed amendment to Section B.1.c.(2) drew no comments and it is needed and reasonable to clarify those cost changes affected.

Special Rate Setting Procedures

12. DPW proposed to amend Section B.3.a.(3) to establish a cost ceiling on the interim rate settlements. The current rule states that newly-established and newly-constructed facilities were allowed interim rates with fiscal year-end rates settlements for the vendor's first reporting period. Mr. Rau stated that the original rule was intended to determine the interim rates to be adjusted upward or downward for the reasonable cost deviations which occurred during this initial operating period. In addition, Mr. Rau stated that in 1979, 87.5% of the facilities received rate settlements in excess of the interim rate. The agency is proposing a cost category review for such reasonable cost expenditures in addition to the specific reasonable cost principles as set forth in Section D. of the rule.

There was extensive written and oral comments on the calculations as set forth in Section D. in the rule, but there was no specific comment on this clause concerning the amendment as set forth above by DPW.

The Hearing Examiner finds the amendment as proposed is needed and reasonable.

Rate Limitation

13. DPW proposed to revise Section B.4.b.(2) to change the current 6% figure to 15% in regard to the percentage salary pass-through ceiling. Mr. Rau stated that the change is required to reflect the normal and customary salary increase in the industry. The Examiner would note that this amendment is in the same fashion as the majority of the DPW amendments, in that it is being revised to take into consideration the current economic situation. Other than the percentage change or revision, the remaining provisions of this section will remain the same.

There were no written or oral comments directly on this clause concerning this revision.

The Hearing Examiner finds that the amendment as proposed is needed and reasonable.

14. DPW proposed to delete the current provision of Section B.4.b.(3) which sets forth exemptions of certain low-rate facilities from the 115% overall rate limitiations. In attempting to provide consistency within this rule, the agency has proposed an addition to this section by adding Section B.4.b.(4) to the rule. The former provision needed to be deleted according to

Mr. Rau due to the fact that the provision had become obsolete. The new language of subsection 4 is designed to redefine the facilities which will not be subject to the 115% overall rate limitation due to their low rate structures and their need for expanded rate priorities. Finally, the agency proposed to add new language in Section B.4.b.(5) to clearly set forth the method of calculating the 115% overall rate figure. DPW proposed that the 115% overall rate limitation be computed by dividing the total allowable costs plus exceptions by actual resident days. Mr. Rau stated that the overall rate limitation calculation does not utilize the proposed 93% capacity days provision of Section B.1.a. The Examiner notes that the term "plus exceptions" is not defined in the rule and was not addressed or explained by DPW or Mr. Rau at the hearing. Since the above term seems to be mere surplus language or it has not been satisfactorily explained, the Examiner finds that the term is vague and should be deleted if it does not change the meaning of the provision. However, if all exceptions are in a rule, DPW should reference those applicable provisions.

deleted p.8. complete Rule and p.3. Amendments

There were no written or oral comments on the amendment as proposed.

The Hearing Examiner finds that the amendment as proposed is needed and reasonable except as to the qualifications set forth above.

Reasonable Cost Principles

15. DPW proposed to revise Section D.1.i. relative to top management compensation limitation by adding language designed to check and administer top management compensation. The new language is set out to adminster the top management compensation formula for providers who administer more than two facilities with a cumulative bed complement of more than fifty beds. Mr. Rau has in essence stated that the agency has determined that multipleadministered facilities may generate excessive salaries under the current formula and that this provision will allow the agency to review the compensation. Mr. Lawrence Cohen, speaking on behalf of the Minnesota Association of Private Residential Facilities, stated that he questioned the DPW for setting a ceiling on compensation of top management because from an administrative view a process of "compaction" would be set in motion limiting the salaries of lower management personnel. Cohen recommended that the $35,000 maximum limitation, which is based on a 1973 capital figure, be adjusted out based on the rate of inflation since 1973 or on the Presidential guideline of 7%. Thomas Miller of R.E.M., Inc., submitted a letter articulating the fact that top management compensation has not been adjusted since 1973 and feels a figure of $55,000.00 would be a reasonable compensation limit for 1980. The actual language proposed stated in pertinent part:

> A top management individual . . . may be subject to the compensation limitation . . . if the sum of the annual bed compensation formula as applied to individual facilities is unreasonable. (Emphasis added.)

The Hearing Examiner notes that this new language appears improper in that the utilization of the qualifiers "may", "if" and "unreasonable" seem to have a serious potential of giving the Commissioner unfettered decision and merely promoting litigation to determine what is "unreasonable" compensation. This

language should be mandatory and include all criteria used as a basis for the Commissioner's decision. Furthermore, the maximum figure should be considered in another rule procedure in terms of adjusting it upware to conform more realistically with the DPW practice and private industry. Lastly, the Hearing Examiner notes that Mr. Rau commented that there may be a change of the actual limitation figure of the current $35,000.00 amount in 1981. However, reasons for staying with the current figure were due to the large increase in the cost of the State of Minnesota to the providers and the concern of the legislature for the rate methodology and maximum amount.

language changed p.17 and p.3

In addition, the changing of the figures of Cumulative Annual Bed Compensation will allow some additional compensation to the Top Management of the service providers at the current time. Mr. Miller and Mr. Cohen suggest that the number of bed (licensed) formula should utilize the figures as set forth in a letter from the Department dated March 1, 1979. (This formula, however, is not a subject matter of this proceeding.) Mr. Rau stated that Cumulative Annual Bed Compensation (the formula) has been adjusted annually by the DPW in a procedure outside of the rulemaking process.

The Hearing Examiner finds the amendment as proposed is needed and reasonable except as to the qualifications set forth above. The changes suggested by the Hearing Examiner would not constitute substantial changes.

Reasonable Cost Principles

16. DPW proposed to revise Section D.3.b.(1) relative to depreciation limitations in order to establish separate investment per bed limitations for Class A and B facilities. Additionally, the agency proposes to delete the ability of the Commissioner to waive exceptions to the current investment per bed limitations. Mr. Rau stated at the hearing that the main focus of this subsection is to set a limit that clearly identifies the construction cost per bed limit for the service provider during his planning process. The rate limitation was determined by DPW in utilizing average construction cost per bed and updating such costs to current 1980 cost estimates. Mr. Rau stated that in his calculations the high and low figures were excluded to arrive at a reasonable average. The final computation listed an average construction cost per bed limitation of $22,290.00 for a Class A facility and $26,548.00 for a Class B facility. (DPW Exhibits C, E and F) Mr. Rau stated that in essence DPW should not be responsible for picking up the highest cost facilities, but only the average construction costs that are reasonable by DPW's cost factors analysis.

DPW Rule 52D.3.b.(1) was amended at the hearing to reflect the $22,290 cost limitation for a Class A bed by striking the figure "$22,051" and inserting $22,290 in lieu thereof. See, DPW Exhibit C.

There was severe criticism by some persons of this subsection at the hearing and in written comments from the following providers: R.E.M., Inc., Hiawatha Childrens' Home, Association for Retarded Citizens, Minnesota Association for Retarded Citizens, Woodvale Group, Homeward Bound, Inc., Dakota's Children, Inc. and on behalf of the ARRM Rule 52 Committee. All of the above providers stated that the calculations by DPW omit the following cost estimates:

	% Range	$ Range/Bed	$ Avg./Bed A	$ Avg./Bed B
1. Architectural	6-12%	1,000-3,000	1,000	2,000
2. Major Moveable Equip.		1,000-2,000	1,500	1,500
3. Furnishings		1,000-2,000	1,500	1,500
4. Land/Site Costs		1,000-3,000	2,000	2,000
5. Financing Fees (reduced interest notes)	0-10%	0-2,500	0	1,000
			6,000	8,000

Mr. Rau responded to Mr. Baldus' questions at the hearing that major moveable equipment and furnishings were included in the per bed limitation cost computation. Land site cost is not a part of the depreciable investment cost. However, $1,853 determined by DPW as an average cost/bed for moveable equipment and furnishings was factored in the computation for the average total bed figures which results in a $26,600 figure. See, attached sheet to DPW Exhibit F. The service providers stated that the architectural and financing fees should be included to assist facilities in securing financing from a variety of Federal and State funding programs. Also, the service providers stated that such costs for the land site of landscaping, sidewalks and other finishing costs should be included. Mr. Rau again reiterated at the hearing that DPW is trying to set a limit of the amount it will pay for such services. Rau stated that the rule addresses the total depreciable assets but certain above depreciable items as financing and professional fees were excluded. The service providers stated that such limitations will encourage less construction and the facilities that are built will have to be smaller. The smaller facilities would slow down shifting of individuals to community based facilities which, according to the providers, is the integral element or purpose in the entire Rule 52 scheme of compensation. Rau stated that the cost per bed was held to cost limits by reducing the number of square feet per resident.

The Hearing Examiner recommends that the Rate Limitation should be increased in a Class A facility from $22,290.00 to allow for a reasonable portion of the additional costs for moveable equipment, furnishing and landscaping cost. The total figure per bed excluding certain additional costs appears unreasonably low. Additionally, the Hearing Examiner recommends that the Rate Limitation for a Class B facility should be increased accordingly. The Hearing Examiner finds the proposed rule unreasonable and recommends that the DPW consider including a reasonable portion of these additional costs based upon the comments of the public. After these changes, the proposed rule on bed cost limitations will not to be unreasonable and is needed.

see changed amts. p 21 and 4

DPW proposed to delete the rule provision in Section D.3.b.(1) which allows the Commissioner to waive the limit because the process is unworkable and tends to encourage high cost construction. There were many comments opposing such a deletion. Furthermore, Mr. Larson suggested a waiver committee composed of 50% providers and 50% DPW people to determine the necessity for a waiver request. Mr. Rau rejected the idea of a waiver committee included in Rule 52. The Hearing Examiner finds that the deletion of the waiver provision is reasonable and needed.

The "December 31, 1979" date and the "January 1, 1981" date in proposed rule Section D.3.b.(1) appear, at first glance, to be improper; however, the use of prior dates in the rule as a basis for computation are reasonable, proper and needed.

17. DPW proposed to add additional language to Section D.3.b.(4) to allow the investment per bed limitation on existing facilities to be periodically updated to reflect additional fixed asset acquisitions. The increase will be determined by the consumer price index for housing. Such costs will not be exempted from Section B.4.b.'s 115% overall rate limitation.

There were no written or oral comments on the amendment as proposed.

The Hearing Examiner finds that the amendment as proposed is needed and reasonable.

Cost of Capital

18. DPW proposed to increase the minimum cost of capital allowance of Section D.5.c.(2) to $.58 per day. See, DPW Exhibit B. The minimum cost of capital allowance will be adjusted annually based upon the consumer price index for all items. This proposed change is necessary to provide a capital allowance for facility replacement of fixed assets as they become obsolete. This proposed change drew no specific comments and it is found to be needed and reasonable.

At the hearing, DPW amended the last line of Section D.5.c.(2) by striking the term "35 cents" and inserting, in lieu, the term " the minimum cost of capital allowance". See, DPW Exhibit B. This proposed amendment drew no comments. The Hearing Examiner finds that the amendment is needed and reasonable and it would not constitute a substantial change.

this change does not appear to have been effected

Effective Date of 12 MCAR § 2.052 Revisions

19. DPW proposed that Section E. be revised to reflect the effective date of the rule changes to be January 1, 1980 for the providers on a calendar year-end fiscal policy.

The Hearing Examiner requested and received comments from the Special Assistant Attorney General as to the legal authority for DPW to have and or require a retroactive date for the implementation of the proposed rule. The Attorney General cited the published cases of Koronis Manor Nursing Home v. Department of Public Welfare, 311 Minn. 375, 249 N.W.2d 448 (1976) and Portland Residence, Inc. v. Minnesota Department of Public Welfare, decided January 12, 1979, the unpublished opinion and the report of a previous hearing examiner involving a similar issue. This Hearing Examiner finds that the above cases or report do not support the basis for DPW making the proposed rules effective retroactively.

The Minnesota Supreme Court has recently stated directly the issue of retroactive effect of an agency's rule in Mason v. Farmers Insurance Companies, 281 N.W.2d 344 (1979). The Court interpreted Minn. Stat. § 15.0413, subd. 1 before the 1975 amendment of this subdivision and specifically stated,

> In principle, rules may be made retroactive if it is reasonable to do so . . . But Minn. St. 15.0413 does not specifically provide for retroactivity of this rule in this case; nor does the

Minnesota Franchise Act or the rule itself. Minnesota laws are presumed to have no retroactive effect unless clearly and manifestly intended by the legislature. Minn. St. 645.21 No lesser standard should be applied to rules promulgated under statutory authority.

Since the current Minn. Stat. § 15.0413 subd. 1 and Minn. Stat. § 256.B.04, subd. 2 and § 256.B.27 do not specifically allow an agency to have retroactive effect of its promulgated rules or clearly and manifestly intended by the legislature, the Hearing Examiner recommends deleting the date in Section E.1. in regard to the Rule 52 taking effect as of January 1, 1980, and replace it with an appropriate time in the future.

see Complete Rule p. 26 + Amendments p.5.

The Hearing Examiner finds that the amendment as proposed is improper as to the effective date of the rule.

Serveable Provisions

20. At the hearing, DPW proposed to amend proposed Section F. to protect the valid portion of Rule 52 and have them implemented as follows:

F. Serveable Provisions

If any provisions of the rule as adopted by the Commissioner of Public Welfare are found through judicial procedures to be ~~unreasonable or not supported by the evidence~~ invalid, the remaining provisions shall remain valid.

see Complete Rule p.26 + Amendments p.5 Wording is not changed

These changes drew no comments. The Hearing Examiner finds that the proposed amendment is needed and reasonable and appears not to constitute a substantial change.

CONCLUSIONS

1. Due, timely and adequate legal notice of the Promulgation of proposed Rule 12 MCAR § 2.052 (DPW Rule 52) was properly served and published by the Department. All other substantive and procedural requirements of law and rule have been fulfilled.

2. The Department has demonstrated its statutory authority to adopt and repeal the proposed amendments, except for the proposed rule in Finding No. 19.

3. With the exceptions noted in the Findings above, the Department has demonstrated the need for and reasonableness of the proposed amendments.

4. The Examiner made several suggestions which are not intended to preclude the Department from making its own non-substantial changes and improvements, provided they are based upon the facts and arguments in the record.

RECOMMENDATION

The Hearing Examiner recommends that the proposed amendments be modified as suggested in the Findings and, so modified, that they be adopted.

Dated: April 7, 1980.

HARRY SEYMOUR CRUMP
Hearing Examiner

HOMEWARD BOUND INC.

4741 Zealand Ave. No.
New Hope, Minnesota 55428
Phone: 535-6171

A nonprofit home dedicated to the care of mentally retarded and handicapped children

M 3

BOARD OF DIRECTORS

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EDWARD STANKE

ADMINISTRATOR

WAYNE H. LARSON

June 19, 1980

RECEIVED
JUN 23 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Jerry Anderson
Attorney General's Office
G-25 Administration Building
St. Paul, Minnesota 55155

Dear Jerry:

In reference to DPW Rule 52 revision 12 MCAR 2.052 I have enclosed my letter to Mr. Harves concerning a substantial change in the Rule from what was proposed at the public hearing. Mr. Harves did not receive my letter prior to the completion of his review of the rule.

Thank you for reviewing this concern which was not originally available to the public for consideration.

Sincerely,

Wayne

Wayne H. Larson, Chairman
ARRM Rule 52 Committee

Enclosure: letter, June 6, 1980

cc: Committee Members, Harold Tapper, ARRM - Director

WHL:ks

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EDWARD STANKE

ADMINISTRATOR
WAYNE H. LARSON

June 6, 1980

Mr. Duane Harves
Chief Hearings Examiner
State Office of Hearings Examiner
1745 University Avenue
St. Paul, Minnesota 55104

RE: DPW Rule 52
12 MCAR 2,052
DPW-80-028-HC

Dear Sir:

The ARRM Rule 52 Committee has reviewed the Department of Public Welfare's response to the report of the Hearings Examiner. We feel that the response to two sections is not in accord with the report of the Hearings Examiner and/or notice of Public Hearing:

Issue 1 Section D.1.i. Top-Management Compensation limitation as proposed by the Department of Public Welfare is:

1. Substantially different than the language and content presented by DPW at the public hearing, and
2. Unsubstantiated by data presented at the public hearing and no data was presented by the Department on the impact of a cumulative compensation formula for Top Management, and
3. Without opportunity for the public to give testimony on the issue of a cumulative compensation formula.

Therefore we recommend that this section of the proposed rule change be withdrawn and that the language in the existing rule be maintained pending further action on the promulgation of section D.1.i.

Issue 2 Section D.3.b. Limitations as proposed by the Department of Public Welfare concerning capital investment did not reflect the intent or specific direction of the Report of the Hearings Examiner because the revision does not include the following as presented at the Public Hearing:

1. Architectural Fees, and
2. Financing Fees - note: The Department's calculation did not include interim/construction interest but did not make allowance for mortgage discount points or FHA/HUD, etc. fees.

Therefore we recommend that the investment limitation be increased to reflect these fees or that the waiver process be reinstated in its original form to consider reasonable costs and cost savings in other capital expenses.

Sincerely,

Wayne H. Larson
Chairman, ARRM Rule 52 Committee

cc: Mr. Robert Rau, DPW
ARRM

WHL:ks

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JOYCE ST. ANGELO
EDWARD STANKE

ADMINISTRATOR

WAYNE H. LARSON

June 19, 1980

Joanne Hinderacher
Attorney General's Office
G-25 Administration Building
St. Paul, Minnesota 55155

Dear Joanne:

In reference to DPW Rule 52 revision 12 MCAR 2.052 I have enclosed my letter to Mr. Harves concerning a substantial change in the Rule from what was proposed at the public hearing. Mr. Harves did not receive my letter prior to the completion of his review of the rule.

Thank you for reviewing this concern which was not originally available to the public for consideration.

Sincerely,

Wayne

Wayne H. Larson, Chairman
ARRM Rule 52 Committee

Enclosure: letter, June 6, 1980

cc: Committee Members, Harold Tapper, ARRM - Director

WHL:ks

RECEIVED
JUN 23 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : JOANNE HINDERAKER
Special Assistant Attorney General

DATE: June 4, 1980

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: In the Matter of Proposed Amendment of the Rules of DPW (12 MCAR Sec. 2.052)

Pursuant to the provisions of Rule 9 MCAR Sec. 2.111, enclosed is a copy of the Order of the Chief Hearing Examiner in the above-entitled matter.

DRH/eag

RECEIVED
JUN
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amemdment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Residents (12 MCAR 2.052)

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter was heard before State Hearing Examiner Harry Seymour Crump on February 15, 1980, following which the Hearing Examiner issued his Report on April 7, 1980; and

WHEREAS, by Order of Arthur E. Noot, Commissioner, dated May 20, 1980, the Department of Public Welfare (hereinafter "Department"), proposes to adopt the rules as recommended by the Hearing Examiner with modifications; and

WHEREAS, on May 30, 1980, pursuant to the provisions of Rule 9 MCAR § 2.110, the Department submitted the rules to the Chief Hearing Examiner for his review pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, which review includes the issues of substantial changes in the rules and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Chief Hearing Examiner, having completed the aforementioned rule review, finds that the changes in the rules as submitted, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed; and

WHEREAS, the Chief Hearing Examiner finds that the Department has complied with the provisions of Minn. Stat. § 15.0412, subd. 4, with the following exception: Rule 12 MCAR § 2.052 B.3.a.(3) includes the following newly proposed language: "Rate settlement requests which are in excess of the interim rates may be subject to cost category ceilings according to § D.1." (Emphasis added). The use of the word "may" appears to give the Department discretion to waive the cost category ceilings which renders the rule illegal and thus unreasonable. Therefore, the word "may" must be changed to either "will" or "shall" to render the rule reasonable.

NOW, THEREFORE, Based on the foregoing, and pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.111, the Department shall either withdraw the proposed new language in Rule 12 MCAR 2.052 B.3.a.(3), amend it to remove the illegality, or reconvene the rule hearing. In the event the rule is amended as discussed above, the Department will have the responsibility of submitting the complete hearing record and the rules as adopted to the Attorney General, notifying all persons who requested to be informed

that the record has been submitted to the Attorney General, and, if approved by the Attorney General, shall have the responsibility of publishing the rules in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 4th day of June, 1980

DUANE R. HARVES
Chief Hearing Examiner

original

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. NOOT

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates For Intermediate Care Facilities/Mentally Retarded Residents (12 MCAR 2.052)

ORDER ADOPTING RULES

The above-captioned matter came on for hearing before Mr. Harry Seymour Crump, Hearing Examiner appointed by the Chief Hearing Examiner, on February 15, 1980 at the Minnesota Historical Society Building 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 proposed amendments to 12 MCAR 2.052 (DPW Rule 52) were considered as originally proposed and shown in the attached Exhibit A hereto. Robert J. Rau, Audit Director, and John L. Kirwin, Special Assistant Attorney General, appeared in behalf of the Department of Public Welfare. Approximately fifty-five (55) persons attended the hearing. The hearing continued until all interested groups and persons had an opportunity to be heard. Based upon the proceedings as indicated in the Report of the Hearing Examiner dated April 7, 1980, a copy of which is attached as Exhibit B hereto, the Hearing Examiner made Findings of Fact, Conclusions and Recommendations.

Pursuant to Minnesota Statutes, Section 15.0412, Subdivision 4(1978) said Report was available to all affected persons for at least five (5) 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, having considered the Report of the Hearing Examiner, and upon all of the proceedings and testimony herein 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 that the Commissioner hereby adopts and incorporates herein the Report of the Hearing Examiner dated April 7, 1980 to the following extent:

1. Findings of Fact of the Hearing Examiner 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 (unnumbered on page 4), 12, 13, 14, 17, 18 and 20 are adopted and incorporated in full.

2. Findings of Fact 15 of the Hearing Examiner is adopted with the following revision in compliance with the qualifications rendered by the examiner: .

   A top management individual who is compensated in more than two facilities with a total bed complement of more than 50 beds will be subject to the compensation limitation on a cumulative basis of all facilities served by the individual.

3. Findings of Fact 16 of the Hearing Examiner is adopted with the average construction cost per bed limitations adjusted from $22,290 and $26,548 per bed to $25,194 and $29,452 per bed for Classes A and B facilities respectively. These revisions were made in compliance with the changes suggested by the examiner in regard to moveable equipment, furnishings and land improvement costs.

4. Findings of Fact 19 of the Hearing Examiner is adopted with the revision of the effective date of the rule to rates paid on May 1, 1980 for cost reports with a fiscal year ending after November 30, 1979.

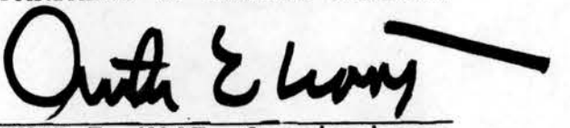
5. Conclusions 1, 2, 3 and 4 of the Hearing Examiner are adopted and incorporated in full.

6. The Recommendation of the Hearing Examiner is adopted and incorporated in full.

IT IS FURTHER ORDERED that the Commissioner hereby adopts the proposed amendment to 12 MCAR 2.052 (DPW Rule 52) of the Minnesota Department of Public Welfare so that from and after this day of April 25, 1980, said 12 MCAR 2.052 (DPW Rule 52) shall read in its entirety as set forth in the attached Exhibit C hereto, pursuant to the authority vested in me pursuant to Minnesota Statutes, Chapters 15, 246, 253A, 256 and 257.

Dated: May 20, 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE



ARTHUR E. NOOT, Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE COMMISSIONER
612/296-2701

GENERAL INFORMATION
612/296-6117

July 25, 1980

PLEASE REPLY TO 296-2738

J. Michael Miles
Assistant Attorney General
Office of the Attorney General
Administration - Finance Division
Room G25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates For Intermediate Care Facilities/ Mentally Retarded Residents (12 MCAR 2.052)

Dear Mr. Miles:

I am enclosing the public hearing record relating to the above-cited rate rule amendment. The Order Adopting Rules by the Commissioner of Public Welfare identified the changes made by the agency from the proposed rule to the adopted rule. Based on the Order of the Chief Hearing Examiner, a non-substantial change was made to Section B.3.a.(3) of the rule.

If I can be of further assistance in this matter, I can be contacted at 296-2738.

Very truly yours,

Robert J. Rau

Robert J. Rau, Director
Audit Division
Department of Public Welfare

RJR/sc

cc: Paul Zerby

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JAN 15 1980
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EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT
TO THE DEPARTMENT OF PUBLIC WELFARE RULE
GOVERNING WELFARE PER DIEM RATES FOR
INTERMEDIATE CARE FACILITIES/MENTALLY
RETARDED PROVIDERS (12 MCAR 2.052)

AFFIDAVIT OF MAILING

Linda M Peterson, being first duly sworn, deposes and says:

That on the 7th day of January, 1980, 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.

Linda M Peterson

Subscribed and sworn to before me
this 10 day of January,
1980.

Margaret Holt

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

RECEIVED
JAN 15 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT TO THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING WELFARE PER DIEM RATES FOR INTERMEDIATE CARE FACILITIES/MENTALLY RETARDED PROVIDERS (12 MCAR 2.052)

AFFIDAVIT OF ADDITIONAL MAILING

Linda M. Peterson, being first duly sworn, deposes and says:

That on the 7th day of January, 1980, 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
Intermediate Care Facilities Providers (124)

Linda M. Peterson

Subscribed and sworn to before me this 10 day of January, 1980.

Margaret Holt

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

RECEIVED
JAN 15 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT
TO THE DEPARTMENT OF PUBLIC WELFARE RULE
GOVERNING WELFARE PER DIEM RATES FOR
INTERMEDIATE CARE FACILITIES/MENTALLY
RETARDED PROVIDERS (12 MCAR 2.052)

CERTIFICATE OF DELIVERY OF
THE SECRETARY OF
STATE'S LIST

I hereby certify that the attached 331 labels & 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:10 o'clock A.M., this 4th day of Jan., 1980 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

Kathy Hyelin

RECEIVED
JAN 1 8 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT TO THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING WELFARE PER DIEM RATES FOR INTERMEDIATE CARE FACILITIES/MENTALLY RETARDED PROVIDERS (12 MCAR 2.052)

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

LINDA M. PETERSON, being duly sworn on oath deposes and says:

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

2) That on the 4th day of January, 1980, 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 4th day of January, 1980, 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.

Linda M. Peterson

Subscribed and sworn to before me

this 10 day of January,

1980.

Margaret Holt

MARGARET
NOTARY PUBLIC
RAMSEY COUNTY
My Commission Expires Sept. 22, 19

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

Re: In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing Welfare Per Diem Rates for Intermediate Care Facilities/ Mentally Retarded Residents (12 MCAR 2.052)

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

Paul G. Zerby

Assistant Attorney General

Dated: July 29, 1980

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT TO THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING WELFARE PER DIEM RATES FOR INTERMEDIATE CARE FACILITIES/MENTALLY RETARDED PROVIDERS (12 MCAR 2.052)

NOTICE OF HEARING

A public hearing concerning the proposed amendment to 12 MCAR 2.052 will be held at the Minnesota Historical Society Building, 690 Cedar Street (corner of Central), Weyerhaeuser Room, Second Floor, St. Paul, Minnesota, on February 15, 1980 commencing at 9:00 a.m. The proposed rule amendment may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule amendment, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Harry Seymour Crump, Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, MN 55104, (612) 296-8111, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five 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. The Statement of Need and Reasonableness gives evidence justifying both the need for and reasonableness for the proposed rule. The agency intends to present a summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

Presently 12 MCAR 2.052 establishes the criteria by which welfare rates for facilities serving mentally retarded residents are to be determined. The proposed amendments are necessary in order to provide cost incentives in the rate determination methodology, to enhance the accountability of public funds, and to provide a fair reimbursement system to the aforementioned service vendors. Two of the rule amendments relate to cost incentives to the service providers. The agency is proposing that the fixed expenses of property and related costs, general and administrative costs, and earnings allowance/cost of capital allowance will be divided by 93% licensed capacity days. Providers whose facility occupancy is greater than 93% will receive

a rate incentive while providers with facility occupancy less than 93% will receive a rate disincentive. The agency is further proposing an overall rate limitation exception to those providers whose welfare rate request does not exceed 80% of the statewide weighted average rate. The rationale for this exception is that these providers do not require such overall rate limitation since their rates do not approach the rate levels of other providers.

Several of the rule amendments relate to an accountability of public funds. The agency is proposing cost category ceilings on interim rates in order to avoid settlement on inordinate costs. The provision is intended to encourage prudent cost expenditures during the interim period according to the agency's interim cost report approval. The agency is also proposing to revise the salary cost change base for salary pass-through exception from a 6% to a 15% limit of historical salaries. The increased percentage recognizes current inflationary factors and limits the amount of cost pass-through. The agency is further proposing that the overall rate limitation be computed by actual resident days which does not include the incentive portion of the 93% provision. The agency is also proposing to limit the compensation of multiple-ownership personnel to a cumulative amount based on the current formula. This provision adds a further cost limitation to top management compensation. The agency is further proposing to revise the investment per bed limitation in recognition of the distinct construction costs between Class A and Class B facilities. This provision is consistent with the intent of the original investment per bed concept which limits funding of facility rates to the reasonable costs of construction. The agency is also proposing to add a rule provision which will make it explicit that if any portions of the rule are found unreasonable by a court the remainder of the rule remains valid.

Several of the rule amendments relate to the objective of providing a fair reimbursement system to service providers. The agency is proposing a revision to the food cost change to recognize inflationary patterns of such cost items. The agency is further proposing an amendment to the occupancy cost change to make the provision non-applicable after the first two facility reporting periods since the cost change is not material after two years. The agency is also proposing a revision to the unidentified cost change to recognize inflationary patterns of those historical cost items which cannot be directly cost-projected under the cost change rule provisions. The agency is further proposing a clarification to the rule which allows the agency to net cost changes in determination of the unimplemented cost changes for agency repayment calculation. This provision allows the agency to net underprojected costs from the overprojected costs. The agency is also proposing an amendment to the investment per bed limitation which allows the agency to adjust the capital cost limit every three years in recognition of inflationary patterns in the construction industry. This provision allows the service vendors to replace fixed assets as necessary according to current reasonable cost limits. The agency is lastly proposing to amend the minimum cost of capital allowance to recognize inflationary trends in the consumer price index. This provision allows service vendors to earn an allowance which may be utilized to cover the cost of replacing fixed assets.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 256B.27 and 256B.04.

The Department estimates that the cost of implementing the amendments to 12 MCAR 2.052 will not exceed $100,000 per year for local public bodies for the two years immediately following its adoption within the meaning of Minn. Stat. §§ 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Susan Canine, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2738. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendment, contact Bob Rau at (612) 296-2738.

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 the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: December 17, 1979

Arthur E. Noot
Commissioner of Public Welfare

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT
TO THE DEPARTMENT OF PUBLIC WELFARE RULE
GOVERNING WELFARE PER DIEM RATES FOR
INTERMEDIATE CARE FACILITIES/MENTALLY
RETARDED PROVIDERS (12 MCAR 2.052)

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held at the Minnesota Historical Society Building, 690 Cedar Street, Weyerhaeuser Room, Second Floor, St. Paul, Minnesota, on February 15, 1980 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, 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.

Dated: December 19, 1979

Arthur E. Noot
Commissioner

State of Minnesota

Department of Public Welfare

In the Matter of the Proposed
Amendment to the Department of
Public Welfare Rule Governing
Welfare Per Diem Rates For
Intermediate Care Facilities/
Mentally Retarded Providers
(12 MCAR 2.052)

Statement of Need
And Reasonableness

The regulations cited in 12 MCAR 2.052 comprise an existing rule of the Minnesota Department of Public Welfare (MDPW), originally subjected to public hearing on May 23, 1973 and implemented effective November 1, 1973. There have been two subsequent amendments made to this rule through public hearings, the most recent adopted amendment being proposed in public hearing February 11, 1977.

The need to conduct a public hearing on this rule arises from a review of the existing rule by MDPW. The review indicated that certain provisions of the rule must be revised in order to make the rule more current and to recognize a need for cost incentives in the rule. Secondly, the review indicated that certain provisions of the rule did not provide the anticipated result. Therefore, the provisions were revised to meet the intended results.

It is necessary to revise Section B.1.a. so as to provide a cost incentive for service providers in the determination of cost per day for property and related expenses, general and administrative costs, and the earnings allowance and minimum cost of capital allowance. The rate determination will require the providers to divide the cost for the aforementioned expenses by 93% of total capacity resident days for licensed beds. If the provider has occupancy in excess of 93%, this provision provides him with an incentive for cost containment. If the provider has less than 93% occupancy, the provision provides a disincentive. Facilities of ten beds or less will not be subject to the limitation portion of this provision since their licensed capacity is not conducive to this incentive provision.

It is necessary to delete Section B.1.c.(1)(h) and add Section B.1.c.(1)(j) so as to provide a more sophisticated methodology for recognizing a food cost change, especially in a period of high inflation. MDPW proposes to utilize a food index from the Bureau of Labor and Statistics for the period October through September in determination of the raw food cost change to be utilized on a calendar year basis.

It is necessary to amend Section B.1.c.(1)(k) so as to limit the cost effect of changes in occupancy to the facility's first two fiscal years. MDPW has determined that this provision is not necessary for subsequent periods since material changes in occupancy do not occur. Secondly, the occupancy changes which have been experienced by existing providers in these subsequent periods do not accurately represent the fluctuations in seasonal occupancy.

It is necessary to amend Section B.1.c.(1)(1) so as to provide a more sophisticated methodology for allowing an unidentified cost change for those historical expenses which the provider can not reasonably or accurately project for the prospective rate period. MDPW is proposing that the facility factor certain costs which have not been directly identified for cost change purposes by the percentage increase in the consumer price index for the period October through September. The unidentified cost change will be implemented on a calendar year basis.

It is necessary to amend Section B.1.c.(2) so as to clarify the calculation of the recovery of known cost changes which have not been implemented. The methodology includes the review of all cost changes to determine the net effect of the unimplemented cost changes.

It is necessary to amend Section B.3.a.(3) so as to inform newly constructed and/or newly established providers that the year-end rate settlements may be subject to a cost category review in determination of reasonable costs. This provision is intended to inform providers that there will be a reasonable cost ceiling on the rate settlement. This provision is necessary based on MDPW's experience with rate settlements in which the final rates are materially in excess of the interim rates. This occurrence indicates that providers have expended in excess of the interim rate to the extent that financing has been required in order to cover the operating needs of the facility. MDPW does not intend the interim rate provision to be an open-ended allowance for providers to expend monies during the interim period.

It is necessary to revise Section B.4.b.(2) so as to adjust the salary cost change limitation from 6 percent to 15 percent in recognition of the current salary situation in the industry. This provision requires providers to include the initial 15 percent salary increase in the overall rate limitation. Any salary increases in excess of 15 percent which is necessary to raise facility salaries to the salary levels of comparable facilities will be allowed as pass-through costs for maximum rate computation. The salary cost change for the administrator and/or top management compensation and/or additional personnel are excluded from this limitation computation and cost pass-through.

It is necessary to delete a portion of Section B.4.b.(3) and to add Section B.4.b.(4) so as to exclude from the maximum rate computation those providers whose welfare rate requests do not exceed 80 percent of the statewide weighted average rate as determined on a calendar year basis. MDPW is proposing that facilities whose rate requests are materially below the norm will not be subject to the overall rate limitation.

It is necessary to add Section B.4.b.(5) so as to clarify the fact that the overall rate limitation computation will be made by dividing the total allowable costs by the actual resident days. The clarification is necessary so as to inform providers that the 93 percent capacity days computation of Section B.1.a. is not applicable in this situation.

It is necessary to revise Section B.1.i. so as to modify the top management compensation formula for providers who administer more than two facilities with a cumulative bed complement of more than 50 beds. MDPW has experienced the situations in which multiple-administered facilities are not conducive to the current formula for cumulative annual bed compensation. The revised formula may subject the administrators of multiple-administered facilities to a cumulative basis of all facilities served by such individuals.

It is necessary to revise Section D.3.b.(1) so as to establish separate investment per bed limitations for Class A and Class B facilities. MDPW has recently been overwhelmed with exception requests to the current investment per bed limitation which was based on Class A facility costs. The exception requests were for Class B facilities which serve a more severely retarded and physically handicapped population than has been served in Class A facilities. The recognition of such distinct construction cost differences is necessary due to the physical plant requirements of such facilities. Secondly, the recognition of a Class B investment per bed limitation is necessary for reasonable cost containment in the program.

It is necessary to revise Section D.3.b.(4) so as to allow the investment per bed limitation on existing facilities to be periodically updated to reflect additional capital expenditures for fixed assets. MDPW is proposing that every three years the facilities investment per bed limitation will be increased to reflect the additional investment for fixed assets. It is not intended that the limitation which the facility has historically incurred will be deleted by this provision. The investment per bed limitation which the facility may have been subject to historically will be continued.

It is necessary to revise the Section D.5.c. so as to update the minimum capital allowance for all providers. MDPW is proposing that the minimum cost of capital allowance will be established at 58 cents per resident per day effective January 1, 1980 and will be updated annually according to the consumer price index on a calendar year basis. This provision is necessary in order to provide a capital allowance for facility replacement of fixed assets as they become obsolete.

It is necessary to revise Section E in order to establish the effective date of the aforementioned provisions of the rule. MDPW is proposing that the additions and amendments to this rule be effective for rates paid effective January 1, 1980.

It is necessary to add Section F so as to assure that those provisions of the rule which are uncontested will be implemented and established in the rate formula. Any provisions of the rule which are found to be unreasonable or unconstitutional by means of the judicial process may be litigated and will not jeopardize the remaining provisions of the rule.

COMMISSIONER OF PUBLIC WELFARE

Date: 12-28-79

Wesley Reed Jr.
ARTHUR E. NOOT

ADMIN. 1000A

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STATE OF MINNESOTA

DEPARTMENT AG - Admin Div

Office Memorandum

TO : DPW - Robert Rose

DATE:

FROM : Judith Wehrsein, 6-4347

SUBJECT: DPW Rule 52 Amendments.

This office needs the following in order to complete review and filing of the above referenced rule:

1) Original copy of Order Adopting, for filing with Secretary of State

2) One copy of Secretary of State's list, which will be returned to you.

3) One copy of each of the attached documents, to be retained by this office for our file.