

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

Our Files: 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: 10/24/80

Attn: PAUL ZERBY
SAAG

FROM : H. THEODORE GRINDAL
Special Assistant
Attorney General

PHONE: 7-3471

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.

DPW rule 52 § E deals with the effective date of the rule revisions. The chief difficulty with this section, the rule was rejected twice before, was the effective date being prior to our review and its eventual publication and becoming law. This difficulty has been resolved with the current language submitted to our office.

Unfortunately, there is an additional difficulty with section E. There are two number 1s. Also, the first number 1 which is obviously old language was deleted in the initial rules submitted to our office which was approved by the Hearing Examiner and Chief Hearing Examiner. That deletion was approved by us initially. In the copy that has now been submitted that language is there again without being lined out. Therefore, a typographical error from the initial set of rules reviewed. Also, at the end of that sentence there is a typographical error regarding the date. I believe the date should be November 30, 1979.

To correct this error, there should be lining through the first number 1 which is in effect contradictory and in conflict with the new number 1 and the language which has been added in the most recent submission.

The other difficulties with the rule as mentioned in previous memoranda from our office appear to be all resolved. It has also come to our attention that in B. 1. C., (1)(L) in line eight that the word September is spelled incorrectly. Also, in B. 4. b.(4) that a date of December 31 is mentioned, however, it does not indicate whether it is December 31 of 1980 or 1981. Because the effective date of the most recently submitted rule is January 1, 1981, perhaps more clarification is needed for this December 31 date.

Upon consideration of the issues 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 and subsequent to his review, be submitted 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. Subsequent to your changes that have been noted above, we will require a new Order Adopting the Rules that is dated subsequent to these changes. This office has retained copies of all other jurisdictional documents. For administrativ 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.

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 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 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 27, 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 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 (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.

APPROVED AS TO FORM AND LEGALITY
Oct 28 19 80
WARREN SPANNAUS, ATTORNEY GENERAL
BY Theodore Lundl
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 29 1980
Joan Anderson Growe
Secretary of State
3:45 PM

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

Our Files #[redacted] & 634A

STATE OF [redacted]INNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of
Public Welfare Department

DATE: 10/20/80

Attn: PAUL ZERBY

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: DPW Rules 12 MCAR §§ 2.049 and 2.052

You may think that our office is deliberately trying to prevent you from making these rules into law. In fact, there have been several instances where there have been small difficulties preventing us from approving these rules. Unfortunately, there is still a flaw to the rules as they were submitted to the Attorney General s Office and we cannot approve them at this time without one additional change.

When I initially reviewed these rules the major reason I rejected them was because of the date of DPW rule 52 revisions had already passed.

The effective date on the rules that were submitted initially to the Attorney General s Office as May 1, 1980. We told you that there was a difficulty with retroactivity. You then endeavored to put the date into the future avoiding the retroactive problem.

Now, because of the additional delays through typographical and other errors in rules submitted subsequent to my initial review, the October 1st date has passed. The retroactivity problem is still there. Therefore, at this point the rules are fine with only one exception. The date the rules become effective is inappropriate.

To remedy this flaw, it will be necessary for you to have an effective date in the future so that when the rules are published and five days after that they will then be effective. If it is prior to that, that you have an effective date, then there will be some retroactive effect which we cannot approve. At this point it would seem that you could handle the problem in two ways.

A. Either have a date far enough into the future to assure no difficulties complying with rulemaking procedures, or

B. Instead of the language of a specific date, use language to the effect that upon the rule becoming law five days after publication in the State Register, this rule shall become effective.

Those two alternatives are the ones you must consider for purposes of getting this rule approved by this office.

I am sorry that there have been so many difficulties in getting our approval of this rule but we are trying to maintain the same objective standards used to review it as we have from the first time it was submitted. Therefore, I must ask you to contact us regarding this one last difficulty before we can review it again.

HTG/bw

Our File # 634A

As originally submitted, this file was incomplete. Returned to agency 10/8

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED ~~9/24~~ 10/10 DUE DATE ~~10/14~~ 10/30/80

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 2.15.80
   Sufficiency ✓
6. Secretary of State's List copy not submitted (one copy only) but see #s 7, 8, 9.
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 A) ✓ B) Additional mailing
   At least 30 days prior to hearing ✓ 1.7.80.
10. Publication in State Register copy submitted 10/10 ~~copy not submitted~~ but see HE ¶ 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
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A.
15. Order Adopting A) ✓ B) Order Adopting 10/10/80
16. Report of Chief Hearing Examiner A) ✓ 6.4.80 B) ~~Supp. Order~~ 9.17.80
17. Order Approving Incorporation by Reference, where applicable _____
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
20. Petition by Public, where applicable N/A
21. Notice of submission to AG. ✓

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.

phrase deleted p.3

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.

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%	1,000-2,000	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.

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.

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.

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.

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

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TED GRINDAL
Special Assistant
Attorney General

DATE: Oct. 16/80

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE:

SUBJECT: 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

Proposed 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).

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 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. HE 1C

(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. HE 1C

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. HE1

None of this page appears in Rules as Adopted included in copy submitted 1/10 as page 3

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 may be subject to the compensation limitation on a cumulative basis of all facilities ~~if the sum of the annual bed compensation formulae as applied to individual facilities is unreasonable~~. 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~~ $22,051 per bed for Class A beds and $26,548 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.

none of this page appears in Rules as Adopted.

included in copy submitted 10/10 as page 5

Section E. Effective Date of DPW Rule 52 Revisions

1. All revisions of this revised DPW Rule 52 shall take effect beginning with reports covering fiscal years ending after November 30, ~~1976~~ 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 unreasonable or not supported by the evidence, the remaining provisions shall remain valid.

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

Attn: Paul Zerby

DATE: Oct. 7, 1980

FROM : JERRY S. ANDERSON
Special Assistant Attorney General

PHONE: 296-1288

SUBJECT: DPW Rules 12 MCAR §§ 2.049 and 2.052

As we discussed on the telephone, the above-entitled rules were submitted to this office in an incomplete form. Therefore, I cannot approve these rules and am returning them to you.

During our conversation you indicated that you would like to have some people from the agency meet with me to discuss the problems I have noted with the rules. Please have them contact me to arrange a time.

JSA:bw
encs.

Department of Public Welfare
Support Services Bureau

Proposed Amendment to 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 Ave., Rm. 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

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

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.
December 17, 1979

Arthur E. Noot
Commissioner of Public Welfare

Amendments as Proposed

12 MCAR § 2.052 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 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 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) ~~(i)~~ The cost effect of reductions and expansions to program services approved by the Department of Public Welfare.

(i) ~~(k)~~ 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.

(k) ~~(j)~~ The cost effect of changes in occupancy levels based on average occupancy for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate. 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) Unidentified cost increase equal to one percent of the average historical cost per day for the metropolitan area as indicated in B.4.b.~~

(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 ~~(k)~~ (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.

2. Effective date, notifications, and adjustments.

c. Adjustments for error or omissions. All rates determined according to 12 MCAR § 2.052 may be subject to adjustment as a result of errors or omissions determined through audit of the provider's accounting and statistical records or by amended reports as provided by C.1.i. Such adjustments are limited to the three complete fiscal years preceding the date on which an audit commences. If the adjustment results in a payment from the provider, payment shall be made by the provider within 120 days after the date on which the provider received written notification of the adjustment. If the adjustment results in a payment to the provider, payment shall be made within 45 days after the date of receiving written notice of the adjustment.

3. Special rate-setting procedures.

a. New facilities.

(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 12 MCAR § 2.052 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. 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 D.1.

4. Rate limitations.

b. Overall limitation.

(2) Salary cost changes which exceed ~~6%~~ 15% of the historical salaries if the salary cost changes are reasonable

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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 may 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.

C. Reports.

1. General reporting requirements and submittal procedures.

a. Required reports. Except as provided by B.3.b. (flat rate request) 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 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 organization 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

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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 on the number of meals served.

(b) Cost allocation based on actual resident days.

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

(a) Cost allocation based on actual resident days.

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

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

(b) Cost allocation based on actual resident days.

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

D. Reasonable cost principles.

1. General provisions.

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 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 may be subject to the compensation limitation on a cumulative basis of all facilities if the sum of the annual bed compensation formulae as applied to individual facilities is unreasonable. The maximum compensation limitation shall be $35,000 per facility.

D. Reasonable cost principles.

3. Depreciation.

b. Limitations.

(1) The total basis of depreciable facility assets shall not exceed an average of ~~$14,820~~ $22,051 per bed for Class A ~~licensed~~ beds and $26,548 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 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.

5. Cost of capital.

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 January 1, 1980.

E. Effective date of 12 MCAR § 2.052 revisions.

1. All revisions of this revised 12 MCAR § 2.052 shall take effect beginning with reports covering fiscal years ending after November 30, ~~1976~~ 1979.

F. Several 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, the remaining provisions shall remain valid.

[Proposed changes to 12 MCAR § 2.052: The preceding changes are proposed to 12 MCAR § 2.052 effective January 1, 1980.]



NORTHERN TRAIL—The Minnesota Zoological Garden offers an exhibit of large cold weather animals on its Northern Trail, a pleasant three-quarter mile walk that is cleared all winter for those who enjoy brisk conditions. (For the less hardy, the monorail tour is open all year.) The moose is the only Minnesota animal on the Trail, but visitors also will see Siberian tigers, musk oxen, bactrian camels and mongolian wild horses. In their natural habitats in the Northern Hemisphere these animals range on grassland, arctic tundra, craggy mountains and in northern forests. (Courtesy of the Minnesota Zoological Garden)

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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 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 K. 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 K. 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

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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 o 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 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 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 Holte

MARGARET [illegible]
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

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 Restad for
ARTHUR E. NOOT

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
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE COMMISSIONER
612/296-2701

GENERAL INFORMATION
612/296-6117

October 10, 1980

PLEASE REPLY TO 296-2738

Jerry Anderson
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 2.049 and 12 MCAR 2.052

Dear Mr. Anderson:

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

1. Copies of the Proposed Rules as reproduced in the State Register.

2. Orders Adopting Rules

3. Adopted Rules

4. 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 10, 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

DPW-80-028-HC

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 (A)

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.

Not submitted with Rules As Adopted

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

W-80-028-HC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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).)

SUPPLEMENTAL ORDER OF
THE CHIEF HEARING EXAMINER

B

WHEREAS, on May 30, 1980, the Department of Public Welfare (hereinafter "DPW") submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; and

WHEREAS, on June 4, 1980, the Chief Hearing Examiner issued his Order; and

WHEREAS, the DPW subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Attorney General recommended to the DPW that certain of the rules be amended; and

WHEREAS, the DPW has now resubmitted the rules to the Chief Hearing Examiner for his review; and

The Chief Hearing Examiner finds that the changes made in the rules in accordance with the recommendations of the Attorney General do not make the rules substantially different from those proposed at the public hearing.

Dated this 17th day
of September, 1980.

DUANE R. HARVES
Chief Hearing Examiner

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.

H

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)

AFFIDAVIT OF MAILING
NOTICE OF SUBMITTAL
TO THE ATTORNEY GENERAL

LINDA M. NELSON, being first duly sworn, deposes and says:

That on the 24th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons who had so requested to be notified.

Linda M. Nelson

Subscribed and sworn to before me
this 24 day of September,
1980.

Margaret Holt

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

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)

To all Interested Persons:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, subdivision 4 and Rule HE 102, PLEASE TAKE NOTICE that the above-captioned rule(s) have been re-submitted to the Attorney General's Office on September 24, 1980 for review as to form and legality. Pursuant to Rule ATTYGEN 305, any person may question the legality of the above-captioned rule(s) within ten (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rule(s), you should direct your comments to the Attorney General's Office, G-25 Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

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

Robert J. Hagen

AUTHORIZED SIGNATURE

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
WALTER A. BALDUS	THE WOODVALE GROUP	PO BOX 1047 AUSTIN MN	507-437-7621	✓	✓
WAYNE LARSON	ARRM	4741 Zealand Av. N. New Hope	612-535-6171	✓	✓
R E Miller	REM	6921 - York Ave So Edina	612 925 5067		✓
Tom Miller	REM	" "	" "		✓
Jim Horan	REM	" "	" "		✓
TERRY P COOK	LARSON ALLEN WEISHAIR & CO CPAS	1560 SHELARD TOWER 600 So Co Rd 18 MPLS MN 55426	546-2211		✓
Doug Teigen	Home For Creative Living	Windom MN. 56101	507-831-5033		✓
Lou Speggen	Lake Owasso Ramsey County	210 N. Owasso Blvd.	484-2234		✓
Tim Mowbray	Residential Services Inc.	2048 E. 8th St. Duluth Mn. 55812	218 728-2189		✓
Roger Larson	Lake Owasso Residence	210 N. Owasso Blvd	484-2234		✓
Toni Lippert	Metropolitan Health Board	300 Metro Square Bldg St. Paul 55101	291-6364		✓
Trudy Carlson	Caromin House	600 9 Tioga	525-5650		✓

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Lawrence D. Cohen	MAP	1291 Civic Applotree Sq. Mpls. Minn. 55420	854-0135	YES ✓	✓
Milton Bartsh	ARRM.	4053 DuPonts, Mpls 55409	824-7277	✓	✓
L. JANKOWSKI	MAP	1619 PORTLAND AVE MPLS 55404	339-8456		✓
Allen R Gundberg	Self-	Box 416 Fergus Falls, Mn 56537	218-736-5619		X
Richard Schachtman	SELF	242 W. 7th St. St Paul, Mn. 55102	222-6848		X

original

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 10, 1980

ARTHUR E. NOOT, COMMISSIONER

original

RECEIVED
SEP 17 1980
ADMINISTRATIVE HEARINGS

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)

REVISED ORDER ADOPTING RULES

RECEIVED
SEP 17 1980
ADMINISTRATIVE HEARINGS

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, and 18 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 October 1, 1980 for cost reports with a fiscal year ending after November 30, 1979.

5. Findings of Fact 20 of the Hearing Examiner is adopted in compliance with the Hearing Examiner's suggested wording changes. Those changes would delete the words "unreasonable or not supported by the evidence" and replace them with the word "invalid".

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

7. 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 September 10, 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: September 10, 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ARTHUR E. NOOT, Commissioner

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 personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Paul G. Zerby
Assistant Attorney General

Dated: 9/23/80