

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ADMIN 1000 (Rev. 1/78)
SF-00005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: 12/29/80

Attn: BEVERLY JONES HEYDINGER
Special Assistant
Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Temporary Amendments to Rule 12 MCAR 2.065 (Pre-admission Screening For Long Term Care) of the Department of Public Welfare.

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

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

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

JSA/bw
cc: Duane Harves
Susan Robertson

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: 12/29/80

Attn: BEVERLY JONES HEYDINGER
Special Assistant
Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Amendments to Rule 12 MCAR 2.065 (Pre-admission Screening For Long Term Care) of the Department of Public Welfare

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.

JSA/bw
cc: Duane Harves
Susan Robertson

Our File No. 659

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12/19/80
DATE FOR REVIEW _____
DATE DUE 12/29/80

Adopted w/a hearing _____
Adopted w/o a hearing _____
Temporary rule X

Approved 12/29/80 Disapproved _____ Returned to Agency 12/29/80

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

____ Rule as Adopted

____ Rule as Proposed

____ Order Adopting

____ Notice of Intent to Solicit Outside Opinion

____ Order for rulemaking
_____ Date of Hearing

____ Certificate of Board's Authorizing Resolution

____ Notice of rulemaking
_____ Sufficiency

____ Affidavit of Mailing Notice of rulemaking
_____ At least 30 days prior to hearing/adoption

____ Mailing list Certificate

____ Publication in State Register
_____ At least 30/20 days prior to hearing/adoption

____ Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

____ Agency's Findings of Fact

____ LCRAR Report or agency Affidavit

____ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

____ Statement of Need and Reasonableness

____ Petition for Adoption of a Rule

____ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

____ Certificate of Compliance w/Rulemaking Procedures

____ Affidavit of Mailing Notice of Submission to Attorney General

____ Notice of Submission to the Attorney General

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

RECEIVED
DEC 19 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

TO : JERRY S. ANDERSON
Special Assistant
Attorney General

DATE: 12/19/80

FROM : BEVERLY JONES HEYDINGER bjh
Special Assistant
Attorney General

PHONE: 296-8403

SUBJECT: Temporary DPW Rule 65 - Pre-Admission Screening for Long-Term Care

Enclosed please find the following for your review:

1. Two copies of proposed temporary rule, 5 S.R. 599, October 13, 1980.

2. Comments received beyond the twenty day period.

3. Findings of Fact

4. Order Adopting Temporary Rule

5. Two copies of temporary rule as adopted.

The authority for the rule is specifically set forth in Laws of 1980, Ch. 575, adding Minn. Stat. § 256B.091.

Please contact me if you have any questions.

BJH:jb
Enclosures

STATE OF MINNESOTA

DEPARTMENT OF Public Welfare

In the Matter of the Proposed Adoption of Rules of the State Minnesota Governing Pre-admission Screening for Long Term Care

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on October 13, 1980, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 12 MCAR § 2.065 are adopted this _____ day of December, 1980, pursuant to authority vested in me [the Board] by Minnesota Statutes section Minn. Laws of 1980, ch 575, sect. 1 (adding Minn. Stat § 256B.091).

STATE OF MINNESOTA

Arthur E. Hoover

COMMISSIONER OF _____

12 MCAR § 2.065 - Temporary Rule for Pre-admission Screening for Long Term Care (Revised).

A. Introduction.

1. Authority. This temporary rule governs administration of a program for pre-admission screening for nursing home care. It is enacted pursuant to the statutory authority vested in the Commissioner of Public Welfare pursuant to Minn. Stat., § 256B.091 (Minn. Laws 1980, Chapter 575).

2. Purpose of the pre-admission screening program is to prevent inappropriate nursing home placement of individuals from the community by establishing pre-admission screening teams to review all Medical Assistance recipients and individuals referred to the screening program who would become eligible for Medical Assistance within 90 days of admission to a nursing home in those counties participating in the program. The screening is intended to determine whether some combinations of health care and social services exist to maintain a portion of these persons in the community by utilizing alternative non-institutional support systems.

3. The screening program shall be implemented in counties designated by the Commissioner of Public Welfare and does not change any existing procedures currently in effect. The county agency responsible for administering the Medical Assistance program will be assigned responsibility for carrying out the terms of the screening program.

B. Selection of counties for participation.

1. The Commissioner of Public Welfare shall consider the following information in designating counties to participate in the pre-admission screening program:

a) potential number of individuals to be screened;

b) willingness of county agency and/or public health agency to participate;

c) amount of the appropriation; and

d) other information about the county which demonstrates its ability to successfully complete the screening project and provide data as required by statute.

2. Staff of the Department of Public Welfare (DPW) will provide agencies responsible for the screening with assessment forms and technical assistance in developing screening procedures.

C. Notification.

1. The county agency responsible for the screening shall refer persons who are eligible for medical assistance or who will be eligible for Medical Assistance within 90 days of admission to a nursing home.

2. The county agency responsible for the screening requirement shall notify the general public of the screening requirement including publication in available newsletters, information leaflets displayed in an accessible form and location, and promotion through other local media sources. The notification shall state that the screening requirement applies to persons within the participating counties who are intending to enter a nursing home, and are presently eligible or will become eligible for Medicaid within 90 days of nursing home admission. The screening is available to these persons without cost and to others on the sliding fee schedule contained in these rules.

3. DPW shall provide notification to County Commissioners, local health and welfare agencies, state hospitals and nursing homes, and to physicians within the county.

D. The pre-admission screening.

1. A resource directory of available non-institutional services shall be developed by the participating agency and used by the screening team in determining how

well an applicant's needs can be met by existing community services.

2. Nursing home admission shall be recommended by the screening team if it is determined that the individual requires care or services which are not available outside the nursing home.

3. A recommendation for the applicant to remain in the community shall be accompanied by a plan of care including referrals, followup services, and assignment of responsibility to implement each individual's plan of care.

2. 4. The screening team shall take action on requests for screening within five working days, and submit a final decision within ten working days. Written notification of the decision shall be provided to the applicant, referring agency, local welfare department if the applicant is a Medicaid recipient, and to the nursing home if placement is approved. Reconsideration of previously denied applications shall be given when there has been a change in circumstances.

3. 5. When an individual covered by the mandatory screening requirement is admitted to a nursing home on a non-emergency basis and has not obtained the required pre-admission screening, the screening team shall make a decision on the case within five working days of initial contact. If the screening team determines that the individual does not require institutionalization, the admitting facility shall be responsible for costs incurred.

4. 6. When an individual covered by the mandatory screening requirement is admitted to a nursing home on an emergency basis and has not obtained the required pre-admission screening, the screening team shall make a decision on the case within five working days of an initial contact. If the screening team determines that the institutionalization was necessary, or if the screening team fails to review the case within five working days of the contact, the costs of nursing home care shall be covered by Medical Assistance. If the screening team reviews the admission within the five working days and determines that

the individual does not require institutionalization, Medical Assistance shall cover the costs only for the period through the date the screening team notified the nursing home of its decision. It is the responsibility of the admitting facility to notify the agency responsible for the screening immediately and no later than two working days after the admission of such a patient. If the admitting facility fails to contact the screening agency within two working days, Medical Assistance shall not cover the costs of the institutionalization for any period up to the date the screening team decides that institutionalization is necessary.

5. 7. Medical Assistance shall not reimburse the nursing home in instances where an individual is admitted after the screening team has determined there is not a need for institutionalization. The recipient has the right to notification and a fair hearing on such denial of payment.

E. Right to appeal.

1. Persons who are recipients of or applying for Medical Assistance have the right to a fair hearing to challenge the action or inaction of the local and/or state welfare agencies. ~~The appeal is automatic if the individual's physician does not agree with the recommendation of the screening team.~~ Such hearings shall be conducted in accordance with applicable appeal procedures, as set forth by statute. Action taken as a result of the hearings shall be governed by applicable state law and federal regulations relating to Medical Assistance reimbursement. Appeals must be filed within ten working days of the screening team's decision.

2. Where the treating physician is in opposition to the screening team's decision, the physician shall notify the screening team and request an appeal on behalf of the individual. The appeal may be withdrawn with the consent of the individual and the treating physician.

2. 3. Persons who are not applying for or receiving Medical Assistance shall consider the screening decision advisory.

F. Reimbursement and reporting requirements.

1. DPW shall reimburse the participating agency for the pre-admission screening required for Medicaid eligible persons and those who will be Medicaid eligible within 90 days of admission to a nursing home, in a manner agreed upon by both parties.

2. The participating agency shall use the sliding fee schedule in this rule to assess persons for whom the screening is optional. DPW shall supplement this fee to the maximum charge in the fee schedule.

Annual Gross Income per individual	Screening Fee
under - 12,500	$ 0
$12,500 - 13,000	5
13,001 - 13,500	10
13,501 - 14,000	15
14,001 - 14,500	20
14,501 - 15,000	25
15,001 - 15,500	30
15,501 - 16,000	35
16,001 - 16,500	40
16,501 - 17,000	45
17,001 - 17,500	50
17,501 - and over	55

3. The participating agency shall submit a monthly report to DPW. The reports shall include number of individuals screened, results of each screening, and rationale for the screening team's recommendation. In addition, the participating agency shall provide information as requested for completion of the report to the legislature required by statute.

G. This rule shall be effective January 1, 1981.

APPROVED AS TO FORM AND LEGALITY

12/29 1980

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

PRESIDENT
Warren E. Maul

VICE PRESIDENTS
Laura Cooper
Bernard Becker

TREASURER
Felino de la Pena

EXECUTIVE DIRECTOR
Seymour J. Mansfield

LAW OFFICES

of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

DOWNTOWN OFFICE

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323 FOURTH AVENUE SOUTH
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Richard Pavel

LEGAL ASSISTANTS
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Carolyn J. Lawrence
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Doris Slaughter

November 6, 1980

Marie Scheer
Coordinator
Pre-admission Screening Program
Utilization Control Unit
444 LaFayette Road
P. O. Box 43208
St. Paul, Minnesota 55164

Dear Ms. Scheer:

I would like to offer the following comments to proposed Temporary Rule 12 MCAR Section 2.065 governing pre-admission screening for long term care. Please send me notice of any proposed changes to this Rule and/or notice of the hearing. I am an attorney with the Senior Citizen Project at the Legal Aid Society of Minneapolis, and I represent the Nursing Home Residents Advisory Council, an organization of nursing home residents throughout the state of Minnesota.

The Rule says nothing about the makeup of the screening teams. The statute is quite specific, and the requirements should be included in the Rule.

One important component of chapter 575 is omitted from the Rule. According to Subdivision 3, the screening team is to identify what services the individual needs in order to be maintained in the least restrictive environment, and to identify which of these services are available in the community. This screening team is to recommend the individual's maintenance in the community with specific service plans and referrals, and designation of an agency to implement the individual's plan of care. Nowhere in the rule is this essential component of pre-admission screening addressed.

It is implicit in chapter 575, that whether or not admission to a nursing home is appropriate is dependant upon whether services in the community are available to maintain the individual in a less restrictive setting. If these services are not available, then

United Way Agency

The Law Offices of the Legal Aid Society of Minneapolis
are part of
Central Minnesota Legal Services

LEGAL SERVICES CORPORATION
JUSTICE

the decision of the screening team must be in favor of institutionalization. This should be made explicit in the rule. Further, the lack of services should be stated as a rationale for the screening team's recommendation. See 12 MCAR Section 2.065 F.3.

Subdivision 6 of Chapter 575 specifies certain conditions under which the Commissioner may not deny Medical Assistance reimbursement. The first is related to the previous comment; namely that Medical Assistance cannot be denied if the supportive services the individual needs are not available in the community. Secondly, Medical Assistance may not be denied pending an appeal of the pre-admission screening team's decision.

Section D. 4. appears contrary to this provision. Section D. 4. provides that Medical Assistance is terminated on the date that the screening team notifies the nursing home that the individual does not require institutionalization. There are two problems with this provision. First of all, Medical Assistance should certainly not be terminated until the nursing home resident and his guardian or responsible relative are notified of the team's decision. Furthermore, Medical Assistance should continue for some reasonable period of time to enable the individual, with the help of the screening team, to set up a plan of support. And, as indicated above, Medical Assistance must continue pending an appeal.

The fact that the facility must notify the screening agency within two days of the admission of a patient who has not been screened is obscured by its placement in Section D. 4. This is an important responsibility of the facility, and deserves more prominence in the Rule.

By denying Medical Assistance if the facility fails to notify the screening agency within two days, the patient is being penalized as much as the facility for the facility's error. The Rule should require that the nursing home hold the resident harmless if the facility fails to correct the screening agency within two working days of admission.

Section D. 5. is also inconsistent with the statute to the extent that Medical Assistance is denied pending an appeal.

The Rule should clarify what is meant by "the appeal is automatic if the individual's physician does not agree with the recommendation of the screening team." Someone will have to do something in order for the appeals office of the Department of Public Welfare to know that an appeal is pending and that a hearing must be scheduled.

Finally, Sections C. 1 and 3 should be clarified. The County agency responsible for screening, or more practically, the local welfare department must notify applicants for Medical Assistance that the screening is a requirement prior to admission. Paragraph 1 simply states that the county agency shall refer persons for screening, but does not assure that Medical Assistance applicants or recipients will be aware that pre-screening is a condition of Medical Assistance eligibility.

Section C. 3 indicates who is to receive notification, but does not state what information is to be contained in the notice.

Rule 65 is a very important rule. It may be very beneficial to the elderly population in Minnesota as well as to the Department of Public Welfare. In its present form, however, it will seriously harm the persons whom chapter 575 is intended to benefit.

Thank you for your consideration of these comments.

Sincerely,

LEGAL AID SOCIETY, INC.

L N. D

Laurie N. Davison
Attorney at Law

LND/jh

cc: Iris Freeman

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Welfare
Bureau of Income Maintenance

Proposed Temporary Rule 12 MCAR § 2.065 Governing Pre-admission Screening for Long Term Care

Request for Public Comment

Notice is hereby given that the Department of Public Welfare has proposed the following temporary rule for the purpose of implementing the provisions of Minnesota Laws of 1980, ch 575.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Marie Scheer, Coordinator, Preadmission Screening Program, Utilization Control Unit, 444 Lafayette Road, P.O. Box 43208, St. Paul, Minnesota 55164. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in final adoption of the temporary rule.

Temporary Rule as Proposed

12 MCAR § 2.065 Pre-admission screening for long-term care.

A. Introduction.

1. Authority. This temporary rule governs administration of a program for pre-admission screening for nursing home care. It is enacted pursuant to the statutory authority vested in the Commissioner of Public Welfare pursuant to Minn. Stat. § 256B.091 (Laws of 1980, ch 575).

2. Purpose of the pre-admission screening program is to prevent inappropriate nursing home placement of individuals from the community by establishing pre-admission screening teams to review all Medical Assistance recipients and individuals referred to the screening program who would become eligible for Medical Assistance within 90 days of admission to a nursing home in those counties participating in the program. The screening is intended to determine whether some combinations of health care and social services exist to maintain a portion of these persons in the community by utilizing alternative non-institutional support systems.

3. The screening program shall be implemented in counties designated by the Commissioner of Public Welfare and does not change any existing procedures currently in effect. The county agency responsible for administering the Medical Assistance program will be assigned responsibility for carrying out the terms of the screening program.

B. Selection of counties for participation.

1. The Commissioner of Public Welfare shall consider the following information in designating counties to participate in the pre-admission screening program:

a. potential number of individuals to be screened;

b. willingness of county agency and/or public health agency to participate;

c. amount of the appropriation; and

d. other information about the county which demonstrates its ability to successfully complete the screening project and provide data as required by statute.

2. Staff of the Department of Public Welfare (DPW) will provide agencies responsible for the screening with assessment forms and technical assistance in developing screening procedures.

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."

C. Notification.

1. The county agency responsible for the screening shall refer persons who are eligible for Medical Assistance or who will be eligible for Medical Assistance within 90 days of admission to a nursing home.

2. The county agency responsible for the screening requirement shall notify the general public of the screening requirement including publication in available newsletters, information leaflets displayed in an accessible form and location, and promotion through other local media sources. The notification shall state that the screening requirement applies to persons within the participating counties who are intending to enter a nursing home, and are presently eligible or will become eligible for Medicaid within 90 days of nursing home admission. The screening is available to these persons without cost and to others on the sliding fee schedule contained in these rules.

3. DPW shall provide notification to county commissioners, local health and welfare agencies, state hospitals and nursing homes, and to physicians within the county.

D. The pre-admission screening.

1. A resource directory of available non-institutional services shall be developed by the participating agency and used by the screening team in determining how well an applicant's needs can be met by existing community services.

2. The screening team shall take action on requests for screening within five working days, and submit a final decision within ten working days. Written notification of the decision shall be provided to the applicant, referring agency, local welfare department if the applicant is a Medicaid recipient, and to the nursing home if placement is approved. Reconsideration of previously denied applications shall be given when there has been a change in circumstances.

3. When an individual covered by the mandatory screening requirement is admitted to a nursing home on a non-emergency basis and has not obtained the required pre-admission screening, the screening team shall make a decision on the case within five working days of initial contact. If the screening team determines that the individual does not require institutionalization, the admitting facility shall be responsible for costs incurred.

4. When an individual covered by the mandatory screening requirement is admitted to a nursing home on an emergency basis and has not obtained the required pre-admission screening, the screening team shall make a decision on the case within five working days of an initial contact. If the screening team determines that the institutionalization was necessary, or if the screening team fails to review the case within five working days of the contact, the costs of nursing home care shall be covered by Medical Assistance. If the screening team reviews the admission within the five working days and determines that the individual does not require institutionalization, Medical Assistance shall cover the costs only for the period through the date the screening team notified the nursing home of its decision. It is the responsibility of the admitting facility to notify the agency responsible for the screening immediately and no later than two working days after the admission of such a patient. If the admitting facility fails to contact the screening agency within two working days, Medical Assistance shall not cover the costs of the institutionalization for any period up to the date the screening team decides that institutionalization is necessary.

5. Medical Assistance shall not reimburse the nursing home in instances where an individual is admitted after the screening team has determined there is not a need for institutionalization. The recipient has the right to notification and a fair hearing on such denial of payment.

E. Right to appeal.

1. Persons who are recipients of or applying for Medical Assistance have the right to a fair hearing to challenge the action or inaction of the local and/or state welfare agencies. The appeal is automatic if the individual's physician does not agree with the recommendation of the screening team. Such hearings shall be conducted in accordance with applicable appeal procedures, as set forth by statute. Action taken as a result of the hearings shall be governed by applicable state law and federal regulations relating to Medical Assistance reimbursement.

2. Persons who are not applying for or receiving Medical Assistance shall consider the screening decision advisory.

F. Reimbursement and reporting requirements.

1. DPW shall reimburse the participating agency for the pre-admission screening required for Medicaid eligible persons and those who will be Medicaid eligible within 90 days of admission to a nursing home, in a manner agreed upon by both parties.

2. The participating agency shall use the sliding fee schedule in this rule to assess persons for whom the screening is optional. DPW shall supplement this fee to the maximum charge in the fee schedule.

Annual Gross Income per individual	Screening Fee
under - 12,500	$ 0
$12,500 - 13,000	5
13,001 - 13,500	10
13,501 - 14,000	15
14,001 - 14,500	20
14,501 - 15,000	25
15,001 - 15,500	30
15,501 - 16,000	35
16,001 - 16,500	40
16,501 - 17,000	45
17,001 - 17,500	50
17,501 - and over	55

3. The participating agency shall submit a monthly report to DPW. The reports shall include number of individuals screened, results of each screening, and rationale for the screening team's recommendation. In addition, the participating agency shall provide information as requested for completion of the report to the legislature required by statute.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Administration Building Code Division

Adopted Rules (Certification of Evaluators for Energy Disclosure Program)

The rules on certification of evaluators for the Energy Disclosure Program, published at *State Register*, Volume 4, Number 48, pp. 1890-1891 (4 SR 1890) June 2, 1980 are now adopted with the following amendments:

Amendments as Adopted

Energy Disclosure Program and Certification of Evaluators for Energy Disclosure Program

2 MCAR § 1.16222 Disclosure program. [Second paragraph, 5th sentence.] Evaluators shall submit an annual summary of evaluations to the ~~Building Code Division~~ Minnesota Energy Agency.

2 MCAR § 1.16224 Standards for certification, prerequisites. Persons possessing one of the following qualifications shall be eligible to be admitted for examination.

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."

In the Matter of the
Proposed Adoption of
Amendments to Rule 12 MCAR 2.065
(Pre-admission Screening for Long
Term Care) of the Department of
Public Welfare

FINDINGS OF FACT

The proposed temporary rule covering pre-admission screening for long term care was published in the State Register as required by statute. No comments were received within the twenty days allowed. A letter was received three days after the comment period closed from the Legal Aid Society of Minneapolis (representing the Nursing Home Residents Advisory Council).

The following changes have been made to the rule solely for the purpose of clarification. None of the changes substantially modify the focus of the rule or any provision of it, but are made to insure that its requirements are fully explained.

Approval of admission to a nursing home by the screening team is dependent upon whether services in the community are available to maintain the individual in a less restrictive setting. If these services are not available, the decision of the screening team must be in favor of institutionalization. This is the thrust of the statute upon which the rule is based. To make it explicit in the rule, the following section has been added:

> D.2. Nursing home admission shall be recommended by the screening team if it is determined that the individual requires care or services which are not available outside the nursing home.

The proposed rule did not discuss the plan of care required in the statute. A plan of care is called for when the screening team makes a recommendation for the applicant to remain in the community. The provision for recommendations by the screening team is stated in statute.

(e) Recommendations for individuals screened regarding:
(1) Nursing Home admission; and
(2) Maintenance in the community with specific service plans and referrals and designation of a lead agency to implement each individual's plan of care;

Minn. Laws of 1980, ch.575, sect.1 (adding Minn. Stat. §256B.091subd.3(e)).

To clarify possible confusion over this important component of the screening, the following section has been added:

D.3. A recommendation for the applicant to remain in the community shall be accompanied by a plan of care including referrals, followup services, and assignment of responsibility to implement each individual's plan of care.

Sections D.2. through D.5. have been renumbered D.4. through D.7. to accommodate these changes.

The rule as proposed was not sufficiently clear about the method for appeal by a physician. The statute states:

An appeal shall be automatic if the individual's physician does not agree with the recommendation of the screening team.

Minn. Laws of 1980, ch.575, sect.1 (adding Minn. Stat. §256B.091 subd.5)

A statement regarding physician appeal was deleted from the rule to avoid duplication of the statutory language. A requirement was added to require a minimum period for filing appeals. Section E.1. has been modified to incorporate these two changes. The section now reads:

E.1. Persons who are recipients of or applying for Medical Assistance have the right to a fair hearing to challenge the action or inaction of the local and/or state welfare agencies. ~~The appeal is automatic if the individual's physician does not agree with the recommendation of the screening team~~. Such hearings shall be conducted in accordance with applicable appeal procedures, as set forth by statute. Action taken as a result of the hearings shall be governed by applicable state law and federal regulations relating to Medical Assistance reimbursement. Appeals must be filed within ten working days of the screening team's decision.

A new provision was added to the rule to specify a notification procedure to effectuate an appeal by the physician. The following section was added:

> E.2. Where the treating physician is in opposition to the screening team's decision, the physician shall notify the screening team and request an appeal on behalf of the individual. The appeal may be withdrawn with the consent of the individual and the treating physician.

Section E.2. was renumbered E.3. to accommodate this addition.

The effective date of January 1, 1981, was added to coincide with the beginning of the program in the participating counties.

Dated: December 18, 1980

STATE OF MINNESOTA
Department of Public Welfare

ARTHUR E. NOOT
Commissioner