

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 775

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-12-82
DATE FOR REVIEW 1-23-82
DATE DUE 2-1-82

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved 1-29-82 Disapproved Returned to Agency 2-1-82

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 2-1-82 Revisor approved / disapproved 1/18/82

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 12.18.81 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 5/25/81 + Comments rec'd.

? Order for rulemaking — gives different date + place than in Notice of Hearing.
10.15.81 date of Hearing — all other documents are consistent with Notice

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
8.24.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate Affidavit of Additional Mailing.

✓ Publication in State Register
8.24.81 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

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)
NOT SUBMITTED

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

DATE: 1/29/82

ATTN : JOHN L. KERWIN, Spec. Ass't. Atty. Gen.

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital

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. Please 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 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 to the rules in the approved set.

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

JSA:drw

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Public Welfare

Rule Numbers: 12 MCAR S 2.027

Rule Title: Adopted Rule Governing Reimbursement for Cost of Care of Patients in a State Hospital (12 MCAR S 2.027)

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

12 MCAR S 2.027 E.4.n. Consumer price index figures

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
1/29/82
WARREN SPANNAUS, ATTORNEY GENERAL
BY Jerry Anderson
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Lorna M. Breiter
Lorna M. Breiter

Title: Assistant Revisor

Phone: 296-2778

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB - 1 1982
Joan Anderson Growe
Secretary of State
9:40 AM

AG copy.

Department of Public Welfare

Adopted Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR S 2.027)

Rule as Adopted

12 MCAR S 2.027 Reimbursement for cost of care of patients in a state hospital.

A. Application. Rule 12 MCAR S 2.027 governs the administration of the State Hospital Cost of Care Program in the Department of Public Welfare. The provisions of this rule are to be read in conjunction with Minn. Stat. SS 246.50-246.55 and other rules of the department. No person shall be denied state hospital services because of inability to pay the cost of care.

B. Definitions. For purposes of 12 MCAR S 2.027, the following terms have the meanings given them.

1. Business expense. "Business expense" means the cost of producing income from a business or farm. Capital expenditures and depreciation are not included as part of a business expense.

2. Capital expenditure. "Capital expenditure" means an investment made to purchase property or to make an improvement to property which has a useful life of more than one year.

3. Cost of care or per diem. "Cost of care" or "per diem" means the daily per capita cost of providing care to state hospital patients or the cost of outpatient services calculated in accordance with Minn. Stat. S 246.50, subd. 5.

4. Department. "Department" means the Minnesota Department of Public Welfare.

5. Dependent. "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota state income tax return. ~~One person shall not be claimed as a dependent by two individuals~~ An individual may not be claimed as a full unallocated dependent by more than one person. When two or more ~~individuals~~ persons are entitled to claim the dependent, the dependent shall be allocated equally among the ~~individuals~~

HE 13

persons unless the ~~individuals~~ persons choose another allocation.

6. Gross income or gross earnings. "Gross income" or "gross earnings" means all income received including in kind income.

7. Homestead. "Homestead" means the house owned and occupied by the patient as his dwelling place, together with the land upon which it is situated and an area no greater than two contiguous lots in a platted and laid out city or town or the smallest parcel allowed under applicable zoning regulations in unplatted land.

8. In kind income. "In kind income" means the annual sum of resources other than money received by a patient or dependent used to maintain the patient or the patient's family and having a value of more than $100.

9. Inpatient. "Inpatient" means a person who occupies a bed in the hospital for the purpose of observation, care, diagnosis, or treatment.

10. Lump sum payment. "Lump sum payment" means income received at one time. It includes windfalls, repayment of debts, payments from sale of property, tax refunds, gifts, and inheritances.

11. Net income. "Net income" means the amount of income remaining after deductions and exclusions from gross income as provided in this rule.

12. Outpatient. "Outpatient" means a person who makes use of the services of the state hospital but does not occupy a regular hospital bed, as set forth in Minn. Stat. S 246.50, subd. 5.

13. Patient. "Patient" means any individual receiving observation, diagnosis, care or treatment in a state hospital.

14. Patient's financial information file. "Patient's financial information file" means financial data collected for the purpose of determining ability of the patient or the responsible relative to pay the patient's cost of care.

15. Person. "Person" means a patient or responsible relative.

16. Personal property. "Personal property" means all property which is not real property.

17. Property. "Property" means everything owned by a person, including money.

18. Real property. "Real property" means land, including the buildings and improvements on it, and its natural assets, such as minerals and water.

19. Resource. "Resource" means any property or benefit that is ~~or may be~~ available to pay for the cost of care of the patient. HE 15

20. Responsible relative. "Responsible relative" means the spouse, the parents of minor children, and in the case of the mentally ill, the adult children of a patient, in that order of liability for cost of care.

21. State hospital. "State hospital" means a state hospital for mentally ill, chemically dependent, or mentally retarded persons.

C. Determination procedure.

1. Time of determination.

a. Ability to pay the cost of care shall be determined when the patient is admitted, when there is ~~or may be~~ a change in the patient's financial status, when a patient, responsible relative, guardian, conservator or representative payee reports a change in the financial status used in determining ability to pay, when the patient has been hospitalized for 120 days or more, when the patient is being discharged and when the financial status has not been reviewed for one year. HE 17

b. Within the six-year period after the date of a patient's discharge from the hospital, the department from time to time may, and upon request of the patient shall, reevaluate the patient's ability to pay any balance of the charge for cost of care.

2. Persons interviewed.

a. ~~The patient shall be interviewed to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person, such as a~~ HE 19

~~guardian, custodian, conservator or the parent of a minor child, or when the patient is incapable of participating in the interview process because of the patient's illness or disability. When the patient is not interviewed, the reason shall be noted in the patient's financial information file~~ In all instances the patient shall be present at the interview to determine ability to pay unless the patient is a minor or the attending physician of the state hospital attests the patient's presence is medically contraindicated. The physician's signed statement shall be placed in the patient's financial information file.

~~b. When the patient cannot be interviewed, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker~~ The patient shall be the source of financial information to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person. When the patient is not the source of financial information the reason shall be noted in the patient's financial information file.

HE 19

c. When the patient is not able to act on his own behalf, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker.

~~c.~~ d. If the patient is unable to pay the full cost of the per diem, the responsible relative shall be interviewed.

3. Financial interview. When a person is interviewed, the department shall:

a. Inform the person that he or she may choose an individual to assist in the determination process and any other contact with the department by authorizing such assistance in writing;

b. Provide the person with an informational pamphlet

on cost of care and review with the person how the department determines the charges for the patient's cost of care;

c. Inform the person that financial information obtained from the person will not be released without the person's written consent except pursuant to Minn. Stat. SS 15.1611-~~15.1698~~ 15.1699;

d. Inform the person of county, state, and federal financial programs which may assist in paying the cost of care and meeting personal and family needs; and

e. Request the person to complete and sign a financial information form provided by the department and to provide verification of financial information.

4. Verification required. This process shall be used to substantiate information entered on the signed financial information form. The ~~following information~~ reimbursement officer shall ~~be verified~~ verify:

~~a.~~ the patient's income, insurance benefits, property, deductions allowed to pay previously incurred debts, and the number of dependents claimed~~, and~~

~~b. Other information relevant to the person's ability to pay if the reimbursement officer has reason to question the accuracy of the information~~.

5. Consent forms. The person shall provide the reimbursement officer with a separate signed consent form for each verification which must be obtained from a third party. The name, date, and the information authorized shall be on the consent form prior to the person's signature. A blanket authorization may be used for a group of related agencies such as banks or insurance companies.

6. Refusal to complete financial information form. Failure or refusal to complete and sign the required financial information form, apply insurance benefits received to pay the cost of care, or provide signatures required to assign third party benefits and release medical and financial information or verification within 30 days of the interview shall result in the determination that the person is able to pay the full cost of

care permitted under Minn. Stat. S 246.51 until the person takes the required action.

7. Determination order. A determination order and notice of rate showing the per diem ~~and~~, the amount the person is ordered to pay and the right to a review and an appeal shall be sent by the department to the person, and the person's guardian ~~or~~, conservator or representative payee. HE 22

8. Review of determination. A person who disagrees with the department's determination of ability to pay may request that the department review its decision. The request shall be made in writing within 15 calendar days of the date the order was mailed. The request for review shall include the reasons for disagreeing with the determination order. ~~A request for review shall not extend the time for appeal given in Minn. Stat. S 246.55~~ When a person requests review as provided in this paragraph, the department's determination shall not become final until the department responds to the request for the review. The department shall send the person a notice of the decision after review and a final determination order. HE 23

9. Appeal of determination. A person may also appeal from the determination order pursuant to Minn. Stat. S 246.55.

D. Sources of income considered to be patient resources.

1. In general. The patient's ability to pay shall be determined from insurance benefits, net income, and value of property owned.

2. Insurance benefits.

a. When the investigation of the patient's ability to pay discloses eligibility for insurance benefits, the patient shall be determined to be able to pay the cost of care provided to the full extent of insurance benefits available. The dollar amount of this coverage need not be specified in the determination order.

b. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining part of the per diem shall be determined from the patient's net income and nonexcluded property.

3. Net income. The patient's entire net income remaining after the deductions from gross income have been made in accordance with E.4. shall be available to pay the cost of care and shall be converted to a daily amount.

4. Property. As long as the patient owns property not excluded under F., the patient shall be determined able to pay the full cost of care.

E. Net income; patient.

1. In kind income. The fair market value of in kind income included in the calculation of the patient's net income shall be established by any reliable means including, but not limited to, published reference documents, statements from merchants, or appraisals.

2. Lump sums. Lump sums, other than excluded property, shall be treated as income in the month received and thereafter shall be treated as property. The patient shall report the lump sum to the department within ten working days.

should also include persons named in C.I.a. since patient may be incompetent ?

3. Seasonal income from business or farm. Average monthly amounts for gross income and the deductions allowed in 4. shall be used to calculate the net monthly income of farmers and other individuals who experience seasonal variations in income and business expenses.

4. Deductions from gross income to arrive at net income. The following items shall be deducted from the patient's monthly gross income:

a. State and federal income tax payments, including back assessments;

b. Payments made under the Federal Insurance Contributions Act and Supplemental Medical Insurance;

c. Child care costs paid by the patient and not reimbursed from any source;

d. Support payments ordered by a court and actually paid. If this deduction is taken, the individual for whom support is paid shall not be included as a member of the patient's household in determining the monthly household living allowance in Exhibit 12 MCAR S 2.027 E.4.n.;

e. Guardianship fees;

f. Monthly payments on previously incurred bills for medical, dental and hospital care, car payments, house payments or rent, and utilities. The deduction allowed shall be the lesser of the sum of the actual monthly payments or $100 per month;

g. Personal expenses of employment, including mandatory retirement fund deductions, cost of transportation to and from work, work uniforms, union dues, dues of a professional association required for employment, and cost of tools and equipment used on the job. The amount deducted for costs of transportation to and from work shall be either the actual cost of public transportation or a per mile reimbursement as paid by the state to an employee using a personal car on state business for actual miles travelled;

h. Hospital and medical insurance premiums;

i. Business and farm expenses as reported on United States income tax returns. The cost of repairs and upkeep of income producing property which may be deducted shall be limited, on an annual basis, to two percent of the value of the property;

j. An allowance of $71 per month per boarder, ~~$39~~ $59 per month per roomer and $130 per month for each person who is both a roomer and boarder. This amount shall be updated periodically by the percentage the legislature authorizes for public assistance grants; HE 25

k. A personal needs and clothing allowance of the inpatient in the amount determined in accordance with Minn. Stat. S 256B.35 for persons receiving public assistance grants. In addition, a special personal allowance drawn solely from earnings from any productive employment under an individual plan of rehabilitation or work therapy shall be given to all patients in state hospitals. The special personal allowance shall not exceed $50 per month; HE 25

l. Sixty percent of the income earned from child care in one's own home or, if the patient chooses, the actual

itemized business expenses incurred in providing child care subject to the limitations provided in B.1., B.2., and E.4.i. HE 25

m. A housing allowance for inpatients. An inpatient without dependents living in his or her home shall be allowed the actual cost of his or her housing and utilities in the community for the month of admission and a period of three months of continuous hospitalization subsequent to that admission. An inpatient with dependents living in his or her home shall be allowed a pro rata share of his or her household's total actual housing costs during the month of admission and for a period of three months of continuous hospitalization subsequent to that admission. This housing allowance shall be available to the inpatient only twice in any one calendar year regardless of the number of times the patient is admitted to a state hospital in that calendar year;

n. A monthly household living allowance calculated according to the schedule in Exhibit 12 MCAR S 2.027 E.4.n.

Exhibit 12 MCAR S 2.027 E.4.n.

Number in Household	Monthly Household Living Allowance
1	$ 356
2	$ 534
3	$ 712
4	$ 890
5	$1,068
6	$1,246
over 6	$1,246 plus $178 for each additional person

The number in household of an inpatient shall be the number of dependents the patient claims. The number in household of an outpatient shall be the patient plus the number of dependents the patient claims. The housing allowance for the outpatient is included in the above budgets.

By July 1 of each year, the department shall adjust the monthly household living allowance to reflect the annual percentage change reported in the most recent consumer price index, for all urban consumers in the Minneapolis-St. Paul area. The consumer price index shall be as published by the Bureau of Labor Statistics, U.S. Department of Labor. The year 1967 is the "standard reference base period"."

F. Property; patient. Property shall be available to pay for the cost of the patient's care to the extent owned by the patient, subject to the exclusions in 1.-6.

1. Real property.

a. The value of the patient's homestead shall be excluded from consideration as a resource if the patient remains in the hospital for less than 18 months, if the spouse or a minor child lives in it, or if it is rented while the patient is hospitalized.

b. The value of real property owned by the patient which produces a net income shall be excluded from consideration as a resource. Real property which the patient is selling on a

contract for deed and for which the patient receives payments shall be considered income producing property.

2. Personal property. The value of the following personal property shall be excluded from consideration as a resource:

a. The value of personal property other than stocks, bonds, and ~~money market certificates~~ other investment instruments which is owned by the patient and which yields or contributes to the production of a net income, such as tools, farm implements, livestock, and business inventory and fixtures acquired prior to hospitalization;

b. Up to $2,000 in cash or liquid assets, for a single patient;

c. Up to ~~$10,000~~ $4,000 in cash or liquid assets, for a married couple;

d. Indian claim payments made by Congress to compensate for tribal land taken by the federal government;

e. Minnesota Housing Finance Agency loans for nine months after issuance;

f. One vehicle;

g. Household goods and furniture;

h. Clothing;

i. Mobile home used as a home by the patient or the patient's dependents;

j. Personal jewelry;

k. Bicycles;

l. Cameras;

m. Life insurance owned by the patient up to a cash surrender value of $1,500;

n. Trust funds~~, unless~~. However trust funds are not excluded from consideration if the trustee is required or has discretion to use the funds for paying the cost of care or the funds are designated for care, support, maintenance, or medical care even if the trust requires that public funds must first be exhausted; and

o. Burial expenses, including a burial lot and a

prepaid burial account up to $750 plus $200 accrued interest.

3. Waiver of property as a resource.

a. The department shall waive consideration of property in excess of the exemptions when ~~liquidation would result in undue hardship or the patient's equity cannot be converted, or when the spouse or dependent child needs a second vehicle as a means of transportation to obtain medical care, training for employment or employment~~ the patient's equity cannot be liquidated, the offered price is less than 80 percent of the market value given by two appraisers agreeable to both parties, or the cost of repairs necessary to meet the conditions of sale exceeds 35 percent of the offered price;

HE 30

b. Each case shall be referred to the department's ~~legal adviser~~ reimbursement division central office and decided on the merits of the facts recorded in the patient's financial information file to substantiate the circumstances;

HE 30

c. The decision to waive the consideration shall be examined at least annually for changes in market value, opportunity for sale or mortgage, and other pertinent factors.

too vague ?

4. Transfer of property. The market value of any property transferred, less any value received, shall be treated as an available resource if the property is valued at more than $1,000 and if the transfer is for less than the market value and if the transfer is made:

a. During or after hospitalization in a state hospital; or

b. Prior to hospitalization in a state hospital, but with intent to avoid the use of the property to pay for hospital care or in determining ability to pay for hospital care; or

c. Prior to hospitalization in a state hospital but ~~after planning for placement in the state hospital has begun~~ within 24 months of admission to the hospital.

HE 32

5. Documentation required. When property described in 4. is transferred during the period between two years prior to admission to a state hospital and six years following discharge, the patient or the patient's representative shall provide

documentation of the circumstances of the transfer.

6. Exemption. The provisions of 4. and 5. do not apply when the patient is not continuing to accrue charges and the full cost of care has been paid. The provisions of 4. and 5. do not apply to property excluded from consideration under other provisions of 12 MCAR S 2.027.

G. Ability to pay; responsible relative.

1. In general. When the patient is determined not to be able to pay the full cost of care, the department shall determine the ability of each responsible relative of the patient to pay the amount permitted by statute.

2. Interview. The responsible relative shall be interviewed to obtain and verify financial information.

3. Insurance benefits. The responsible relative shall inform the department about dependent benefits from hospital and medical insurance carried by the relative.

a. Dependent benefits to a patient shall be considered the same as the patient's insurance.

b. Any difference between benefits to a patient and others covered by the responsible relative's policy shall be verified.

c. The responsible relative shall complete and sign the forms necessary to verify patient eligibility for benefits and assign benefits to pay the cost of care of the patient.

d. ~~When insurance benefits are paid under a policy having premiums paid by the responsible relative,~~ The amount of the premium paid by the responsible relative may be deducted from the responsible relative's total obligation to pay.

4. Liability of responsible relatives. When the sum of the benefits described in 3. and the patient's other resources pay less than the full cost of care, the ability of each responsible relative to pay shall be determined in the statutory order of liability for cost of care. When two or more responsible relatives have the same order of liability for cost of care, a determination shall be made for each one. This provision applies to parents of a minor child and to the adult

children of a mentally ill patient.

5. Limitations on relative's ability to pay. The ability of a responsible relative to pay shall be determined from the annual gross earnings of the responsible relative subject to the limitations in a.-e.

a. A responsible relative who verifies annual gross earnings of less than $11,000 shall be determined not able to pay the cost of care.

b. No responsible relative who is a resident of Minnesota shall be ordered to pay more than ten percent of the cost of care for each patient.

c. The department shall require payment of the full cost of care for a child if the child's parents ~~and guardians all~~ both live outside Minnesota and are financially able to pay as determined by G.7. HF 36

d. Only the annual gross earnings of the spouse of a patient shall be used to determine the spouse's ability to pay.

e. When a responsible relative is married to a person who is not a responsible relative, only the annual gross earnings of the responsible relative shall be used to determine the responsible relative's ability to pay.

6. Determination of relative's ability to pay.

a. A responsible relative who provides the department a copy of the income tax return filed in the current year shall have his or her ability to pay determined from the table in Exhibit 12 MCAR S 2.027 G.7. For purposes of this table, household size consists of the responsible relative and the responsible relative's dependents living in the responsible relative's household, other than the patient.

b. A responsible relative who chooses not to provide the department a copy of the income tax return filed in the current year shall be assumed to have an income in excess of $11,000 and to be able to pay the statutory limit of ten percent of the cost of care. The relative shall be requested to sign an agreement to pay the balance of the patient's cost of care up to the ten percent limit.

7. Exhibit 12 MCAR S 2.027 G.7. shall be used to determine a relative's ability to pay, as described in 6.

Exhibit 12 MCAR S 2.027 G.7.

Daily Payment Based on Ability to Pay According to Household Size and Annual Gross Earnings of Responsible Relatives

Annual Gross Earnings of Responsible Relative	Household Size									
	1	2	3	4	5	6	7	8	9	10
~~11,000-~~										
~~12,999~~	~~1.00~~	-	-	-	-	-	-	-	-	-
~~13,000-~~										
~~14,999~~	~~1.50~~	~~.50~~	-	-	-	-	-	-	-	-
~~15,000-~~										
~~16,999~~	~~2.00~~	~~1.00~~	-	-	-	-	-	-	-	-
~~17,000-~~										
~~18,999~~	~~2.50~~	~~1.50~~	~~.50~~	-	-	-	-	-	-	-
~~19,000-~~										
~~20,999~~	~~3.00~~	~~2.00~~	~~1.00~~	-	-	-	-	-	-	-
~~21,000-~~										
~~22,999~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~	-	-	-	-	-	-
~~23,000-~~										
~~24,999~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~	-	-	-	-	-	-
~~25,000-~~										
~~26,999~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~	-	-	-	-	-
~~27,000-~~										
~~28,999~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~	-	-	-	-	-
~~29,000-~~										
~~30,999~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~	-	-	-	-
~~31,000-~~										
~~32,999~~	~~6.00~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~	-	-	-	-
~~33,000-~~										

HF 38, 39

34,999	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-	-
35,000-										
36,999	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-	-
37,000-										
38,999	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-
39,000-										
40,999	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-
41,000-										
42,999	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-
43,000-										
44,999	7.50	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-
45,000										
and over	7.50	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50

8. Adjustments to table. The department shall annually adjust the daily payment to reflect the annual percentage change reported in the most recent consumer price index for all urban consumers in the Minneapolis-St. Paul area.

11,000-						
11,999	.33	0				
12,000-						
12,999	.45	.33	0			
13,000-						
13,999	.57	.45	.33	0		
14,000-						
14,999	.72	.57	.45	.33	0	
15,000-						
15,999	.87	.72	.57	.45	.33	0
16,000-						
16,999	1.05	.87	.72	.57	.45	.33	0
17,000-						
17,999	1.23	1.05	.87	.72	.57	.45	.33	0
18,000-						
18,999	1.45	1.23	1.05	.87	.72	.57	.45	.33	0

1	19,000-										
2	19,999	1.81	1.45	1.23	1.05	.87	.72	.57	.45	.33	0
3	20,000-										
4	20,999	2.26	1.67	1.45	1.23	1.05	.87	.72	.57	.45	.33
5	21,000-										
6	21,999	2.82	1.92	1.67	1.45	1.23	1.05	.87	.72	.57	.45
7	22,000-										
8	22,999	3.52	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72	.57
9	23,000-										
10	23,999	4.41	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72
11	24,000-										
12	24,999	5.51	3.06	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87
13	25,000-										
14	25,999	6.89	3.82	2.75	2.45	2.17	1.92	1.67	1.45	1.23	1.05
15	26,000-										
16	26,999	8.61	4.77	3.05	2.75	2.45	2.17	1.92	1.67	1.45	1.23
17	27,000-										
18	27,999	8.80	5.96	3.37	3.05	2.75	2.45	2.17	1.92	1.67	1.45
19	28,000-										
20	28,999	8.80	7.46	4.21	3.37	3.05	2.75	2.45	2.17	1.92	1.67
21	29,000-										
22	29,999	8.80	8.80	5.26	3.72	3.37	3.05	2.75	2.45	2.17	1.92
23	30,000-										
24	30,999	8.80	8.80	6.57	4.07	3.72	3.37	3.05	2.75	2.45	2.17
25	31,000-										
26	31,999	8.80	8.80	8.21	4.45	4.07	3.72	3.37	3.05	2.75	2.45
27	32,000-										
28	32,999	8.80	8.80	8.80	4.83	4.45	4.07	3.72	3.37	3.05	2.75
29	33,000-										
30	33,999	8.80	8.80	8.80	6.03	4.83	4.45	4.07	3.72	3.37	3.05
31	34,000-										
32	34,999	8.80	8.80	8.80	7.53	5.25	4.83	4.45	4.07	3.72	3.37
33	35,000-										
34	35,999	8.80	8.80	8.80	8.80	5.67	5.25	4.83	4.45	4.07	3.72
35	36,000-										
36	36,999	8.80	8.80	8.80	8.80	6.12	5.67	5.25	4.83	4.45	4.07

HE 38.39

37,000-37,999	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83	4.45
38,000-38,999	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83
39,000-39,999	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25
40,000-40,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67
41,000-41,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12
42,000-42,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56
43,000-43,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80

HE 38.39

When the annual gross earnings exceed the amount shown in Exhibit 12 MCAR S 2.027 G.7., the daily payment shall be at the statutory limitation of ten percent of the per diem.

~~9.~~ 8. Verification of financial information.

a. The annual gross earnings of a relative and the number of dependents of a relative shall be verified from the relative's Minnesota state income tax return or, in the case of a relative who is not a resident of Minnesota and does not file a Minnesota state income tax return, from the United States income tax return.

b. The amount of the premium paid by the relative to provide dependent hospital and medical insurance coverage for the patient shall be verified.

~~10.~~ 9. Clothing and personal needs allowance of a minor. The parents of a patient who is an unmarried, dependent child shall be responsible for meeting the patient's clothing and personal needs allowance in addition to the amount they are determined able to pay to meet the cost of care.

Rule as Proposed (all new material)

12 MCAR §2.027 Reimbursement for cost of care of patients in a state hospital.

A. Application. Rule 12 MCAR §2.027 governs the administration of the State Hospital Cost of Care Program in the Department of Public Welfare. The provisions of this rule are to be read in conjunction with Minn. Stat. §§246.50-246.55 and other rules of the department. No person shall be denied state hospital services because of inability to pay the cost of care.

B. Definitions. For purposes of 12 MCAR §2.027, the following terms have the meanings given them.

1. Business expense. "Business expense" means the cost of producing income from a business or farm. Capital expenditures and depreciation are not included as part of a business expense.

2. Capital expenditure. "Capital expenditure" means an investment made to purchase property or to make an improvement to property which has a useful life of more than one year.

3. Cost of care or per diem. "Cost of care" or "per diem" means the daily per capita cost of providing care to state hospital patients or the cost of outpatient services calculated in accordance with Minn. Stat. §246.50, subd. 5.

4. Department. "Department" means the Minnesota

Department of Public Welfare.

5. Dependent. "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota state income tax return. ~~One person shall not be claimed as a dependent by two individuals.~~ An individual may not be claimed as a full unallocated dependent by more than one person. When two or more ~~individuals~~ persons are entitled to claim the dependent, the dependent shall be allocated equally among the ~~individuals~~ persons unless the ~~individuals~~ persons choose another allocation.

6. Gross income or gross earnings. "Gross income" or "gross earnings" means all income received including in kind income.

7. Homestead. "Homestead" means the house owned and occupied by the patient as his dwelling place, together with the land upon which it is situated and an area no greater than two contiguous lots in a platted and laid out city or town or the smallest parcel allowed under applicable zoning regulations in unplatted land.

8. In kind income. "In kind income" means the annual sum of resources other than money received by a patient or dependent used to maintain the patient or the patient's family and having a value of more than $100.

9. Inpatient. "Inpatient" means a person who occupies a bed in the hospital for the purpose of observation, care, diagnosis, or treatment.

10. Lump sum payment. "Lump sum payment" means income received at one time. It includes windfalls, repayment of debts, payments from sale of property, tax refunds, gifts, and inheritances.

11. Net income. "Net income" means the amount of income remaining after deductions and exclusions from gross income as provided in this rule.

12. Outpatient. "Outpatient" means a person who makes use of the services of the state hospital but does not occupy a regular hospital bed, as set forth in Minn. Stat. §246.50, subd. 5.

13. Patient. "Patient" means any individual receiving observation, diagnosis, care or treatment in a state hospital.

14. Patient's financial information file. "Patient's financial information file" means financial data collected for the purpose of determining ability of the patient or the responsible relative to pay the patient's cost of care.

15. Person. "Person" means a patient or responsible relative.

16. Personal property. "Personal property" means all property which is not real property.

17. Property. "Property" means everything owned by a person, including money.

18. Real property. "Real property" means land, including the buildings and improvements on it, and its natural assets, such as minerals and water.

19. Resource. "Resource" means any property or benefit that is ~~or may be~~ available to pay for the cost of care of the patient.

20. Responsible relative. "Responsible relative" means the spouse, the parents of minor children, and in the case of the mentally ill, the adult chidlren of a patient in that order of liability for cost of care.

21. State hospital. "State hospital" means a state hospital for mentally ill, chemically dependent, or mentally retarded persons.

C. Determination procedure.

1. Time of determination.

a. Ability to pay the cost of care shall be determined when the patient is admitted, when there is ~~or may be~~ a change in the patient's financial status, when a patient, responsible relative, guardian, conservator or representative payee reports a change in the financial status used in determining ability to pay, when the patient has been hospitalized for 120 days or more, when the patient is being discharged and when the financial status has not been reviewed for one year.

b. Within the six-year period after the date of a

patient's discharge from the hospital, the department from time to time may, and upon request of the patient shall, reevaluate the patient's ability to pay any balance of the charge for cost of care.

2. Persons interviewed.

~~a. The patient shall be interviewed to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person, such as a guardian, custodian, conservator or the parent of a minor child, or when the patient is incapable of participating in the interview process because of the patient's illness or disability. When the patient is not interviewed, the reason shall be noted in the patient's financial information file.~~

~~b. When the patient cannot be interviewed, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patients's legal representative, or a county social worker.~~

a. In all instances the patient shall be present at the interview to determine ability to pay unless the patient is a minor or the attending physician of the state hospital attests the patient's presence is medically contraindicated. The physician's signed statement shall be placed in the patient's financial information file.

b. The patient shall be the source of financial information to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person. When the patient is not the source of financial information the reason shall be noted in the patient's financial information file.

c. When the patient is not able to act on his own behalf, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker.

~~c.~~ d. If the patient is unable to pay the full cost of

the per diem, the responsible relative shall be interviewed.

3. Financial interview. When a person is interviewed, the department shall:

a. Inform the person that he or she may choose an individual to assist in the determination process and any other contact with the department by authorizing such assistance in writing;

b. Provide the person with an informational pamphlet on cost of care and review with the person how the department determines the charges for the patient's cost of care;

c. Inform the person that financial information obtained from the person will not be released without the person's written consent except pursuant to Minn. Stat. §§ 15.1611-15.1698;

d. Inform the person of county, state, and federal financial programs which may assist in paying the cost of care and meeting personal and family needs; and

e. Request the person to complete and sign a financial information form provided by the department and to provide verification of financial information.

4. Verification required. This process shall be used to substantiate information entered on the signed financial information form. The ~~following information~~ Reimbursement Officer shall ~~be~~ verif~~ied:~~y: ~~a. T~~the patient's income, insurance benefits, property, deductions allowed to pay previously incurred debts, and the number of dependents claimed~~, and~~.

~~b. Other information relevant to the person's ability to pay if the reimbursement officer has reason to question the accuracy of the information.~~

5. Consent forms. The person shall provide the reimbursement officer with a separate signed consent form for each verification which must be obtained from a third party. The name, date, and the information authorized shall be on the consent form prior to the person's signature. A blanket authorization may be used for a group of related agencies such as banks or insurance companies.

6. Refusal to complete financial information form. Failure or refusal to complete and sign the required financial information form, apply insurance benefits received to pay the cost of care, or provide signatures required to assign third party benefits and release medical and financial information or verification within 30 days of the interview shall result in the determination that the person is able to pay the full cost of care permitted under Minn. Stat. §246.51 until the person takes the required action.

7. Determination order. A determination order and notice of rate showing the per diem, ~~and~~ the amount the person is ordered to pay and the right to a review and an appeal shall be sent by the department to the person, and the person's guardian, ~~or~~ conservator~~.~~ or representative payee.

8. Review of determination. A person who disagrees with the department's determination of ability to pay may request that the department review its decision. The request shall be made in writing within 15 calendar days of the date the order was mailed. The request for review shall include the reasons for disagreeing with the determination order. ~~A request for reiew shall not extend the time for appeal given in Minn. Stat. §246.55.~~ When a person requests review as provided in this paragraph, the department's determination shall not become final until the department responds to the request for the review. The department shall send the person a notice of the decision after review and a final determination order.

9. Appeal of determination. A person may also appeal from the determination order pursuant to Minn. Stat. §246.55.

D. Sources of income considered to be patient resources.

1. In general. The patient's ability to pay shall be determined from insurance benefits, net income, and value of property owned.

2. Insurance benefits.

a. When the investigation of the patient's aiblity to pay discloses eligibility for insurance benefits, the patient shall be determined to be able to pay the cost of care provided

to the full extent of insurance benefits available. The dollar amount of this coverage need not be specified in the determination order.

b. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining part of the per diem shall be determined from the patient's net income and nonexcluded property.

3. Net income. The patient's entire net income remaining after the deductions from gross income have been made in accordance with E.4. shall be available to pay the cost of care and shall be converted to a daily amount.

4. Property. As long as the patient owns property not excluded under F., the patient shall be determined able to pay the full cost of care.

E. Net income; patient.

1. In kind income. The fair market value of in kind income included in the calculation of the patient's net income shall be established by any reliable means including, but not limited to, published reference documents, statements from merchants, or appraisals.

2. Lump sums. Lump sums, other than excluded property, shall be treated as income in the month received and thereafter shall be treated as property. The patient shall report the lump sum to the department within ten working days.

3. Seasonal income from business or farm. Average monthly amounts for gross income and the deductions allowed in 4. shall be used to calculate the net monthly income of farmers and other individuals who experience seasonal variations in income and business expenses.

4. Deductions from gross income to arrive at net income. The following items shall be deducted from the patient's monthly gross income:

a. State and federal income tax payments, including back assessments;

b. Payments made under the Federal Insurance Contributions Act and Supplemental Medical Insurance;

c. Child care costs paid by the patient and not reimbursed from any source;

d. Support payments ordered by a court and actually paid. If this deduction is taken, the individual for whom support is paid shall not be included as a member of the patient's household in determining the monthly household living allowance in Exhibit 12 MCAR §2.027 E.4.n.;

e. Guardianship fees;

f. Monthly payments on previously incurred bills for medical, dental and hospital care, car payments, house payments or rent, and utilities. The deduction allowed shall be the lesser of the sum of the actual monthly payments or $100 per month;

g. Personal expenses of employment, including mandatory retirement fund deductions, cost of transportation to and from work, work uniforms, union dues, dues of a professional association required for employment, and cost of tools and equipment used on the job. The amount deducted for costs of transportation to and from work shall be either the actual cost of public transportation or a per mile reimbursement as paid by the state to an employee using a personal car on state business for actual miles travelled;

h. Hospital and medical insurance premiums;

i. Business and farm expenses as reported on United States income tax returns. The cost of repairs and upkeep of income producing property which may be deducted shall be limited, on an annual basis, to two percent of the value of the property;

j. An allowance of $71 per month per boarder, ~~$39~~ 59 per month per roomer and $130 per month for each person who is both a roomer and boarder. This amount shall be updated periodically by the percentage the legislature authorizes for public assistance grants;

k. A personal needs and clothing allowance of the inpatient in the amount determined in accordance with Minn. Stat. §256B.35 for persons receiving public assistance grants~~;~~.

In addition, a special personal allowance drawn solely from earnings from any productive employment under an individual plan of rehabilitation or work therapy shall be given to all patients in state hospitals. The special personal allowance shall not exceed $50 per month.

l. Sixty percent of the income earned from child care in one's own home or, if the patient chooses, the actual itemized business expenses incurred in providing child care subject to the limitations provided in B.1., B.2., and ~~i.;~~ E.4.i.;

m. A housing allowance for inpatients. An inpatient without dependents living in his or her home shall be allowed the actual cost of his or her housing and utilities in the community for the month of admission and a period of three months of continuous hospitalization subsequent to that admission. An inpatient with dependents living in his or her home shall be allowed a pro rata share of his or her household's total actual housing costs during the month of admission and for a period of three months of continous hospitalization subsequent to that admission. This housing allowance shall be available to the inpatient only twice in any one calendar year regardless of the number of times the patient is admitted to a state hospital in that calendar year;

n. A monthly household living allowance calculated according to the schedule in Exhibit 12 MCAR §2.027 E.4.n.

Exhibit 12 MCAR §2.027 E.4.

Number in Household	Monthly Household Living Allowance
1	$ 356
2	$ 534
3	$ 712
4	$ 890
5	$ 1,068
6	$ 1,246
over 6	$ 1,246 plus $178 for each additional person

The number in household of an inpatient shall be the number of dependents the patient claims. The number in household of an outpatient shall be the patient plus the number of dependents the patient claims. The housing allowance for the outpatient is included in the above budgets.

By July 1 of each year, the department shall adjust the monthly household living allowance to reflect the annual percentage change reported in the most recent consumer price index, for all urban consumers in the Minneapolis-St. Paul area. The consumer price index shall be as published by the Bureau of Labor Statistics, U.S. Department of Labor. The year 1967 is the "standard reference base period".

F. Property; patient. Property shall be available to pay for the cost of the patient's care to the extent owned by the patient, subject to the exclusions in 1.-6.

1. Real property.

a. The value of the patient's homestead shall be excluded from consideration as a resource if the patient remains in the hospital for less than 18 months, if the spouse or a minor child lives in it, or if it is rented while the patient is hospitalized.

b. The value of real property owned by the patient which produces a net income shall be excluded from consideration as a resource. Real property which the patient is selling on a

contract for deed and for which the patient receives payments shall be considered income producing property.

2. Personal property The value of the following personal property shall be excluded from consideration as a resource:

a. The value of personal property other than stocks, bonds, and ~~money market certificates~~ other investment instruments which is owned by the patient and which yields or contributes to the production of a net income~~;~~ , such as tools, farm implements, livestock, and business inventory and fixtures acquired prior to hospitalization.

b. Up to $2,000 in cash or liquid assets, for a single patient;

c. Up to ~~$10,000~~ $4,000 in cash or liquid assets, for a married couple;

d. Indian claim payments made by Congress to compensate for tribal land taken by the federal government;

e. Minnesota Housing Finance Agency loans for nine months after issuance;

f. One vehicle;

g. Household goods and furniture;

h. Clothing;

i. Mobile home used as a home by the patient or the patient's dependents.

j. Personal jewelry;

k. Bicycles;

l. Cameras;

m. Life insurance owned by the patient up to a cash surrender value of $1,500;

n. Trust funds~~;~~. ~~unless~~ However trust funds are not excluded from consideration if the trustee is required or has discretion to use the funds for paying the cost of care or the funds are designated for care, support, maintenance, or medical care~~, and~~ (even if the trust requires that public funds must first be exhausted); and

o. Burial expenses, including a burial lot and a

prepaid burial account up to $750 plus $200 accrued interest.

3. Waiver of property as a resource.

a. The department shall waive consideration of property in excess of the exemptions when ~~liquidation would~~ the patient's equity cannot be liquidated, the offered price is less than 80% of the market value given by two appraisers agreeable to both parties, or the cost of repairs necessary to meet the conditions of sale exceeds 35% of the offered price. ~~result in undue hardship or the patient's equity cannot be converted, or when the spouse or dependent child needs a second vehicle as a means of transportation to obtain medical care, training for employment or employment;~~

b. Each case shall be referred to the department's ~~legal advisor~~ Reimbursement Division Central Office and decided on the merits of the facts recorded in the patient's financial information file to substantiate the circumstances;

c. The decision to waive the consideration shall be examined at least annually for changes in market value, opportunity for sale or mortgage, and other pertinent factors.

4. Transfer of property. The market value of any property transferred, less any value received, shall be treated as an available resource if the property is valued at more than $1,000 and if the transfer is for less than the market value and if the transfer is made:

a. During or after hospitalization in a state hospital; or

b. Prior to hospitalization in a state hospital, but with intent to avoid the use of the property to pay for hospital care or in determining ability to pay for hospital care; or

c. Prior to hospitalization in a state hospital but ~~after planning for placement in the state hospital has begun.~~ within twenty-four months of admission to the hospital.

5. Documentation required. When property described in 4. is transferred during the period between two years prior to admission to a state hospital and six years following discharge, the patient or the patient's representative shall provide

documentation of the circumstances of the transfer.

6. Exemption. The provisions of 4. and 5. do not apply when the patient is not continuing to accrue charges and the full cost of care has been paid. The provisions of 4. and 5. do not apply to property excluded from consideration under other provisions of 12 MCAR §2.027.

G. Ability to pay; responsible relative.

1. In general. When the patient is determined not to be able to pay the full cost of care, the department shall determine the ability of each responsible relative of the patient to pay the amount permitted by statute.

2. Interview. The responsible relative shall be interviewed to obtain and verify financial information.

3. Insurance benefits. The responsible relative shall inform the department about dependent benefits from hospital and medical insurance carried by the relative.

a. Dependent benefits to a patient shall be considered the same as the patient's insurance.

b. Any difference between benefits to a patient and others covered by the responsible relative's policy shall be verified.

c. The responsible relative shall complete and sign the forms necessary to verify patient eligibility for benefits and assign benefits to pay the cost of care of the patient.

d. ~~When insurance benefits are paid under a policy having premiums paid by the responsible relative,~~ tThe amount of the premium paid by the responsible relative may be deducted from the responsible relative's total obligation to pay.

4. Liability of responsible relatives. When the sum of the benefits described in 3. and the patient's other resources pay less than the full cost of care, the ability of each responsible relative to pay shall be determined in the statutory order of liability for cost of care. When two or more responsible relatives have the same order of liability for cost of care, a determination shall be made for each one. This provision applies to parents of a minor child and to the adult

children of a mentally ill patient.

5. Limitations on relative's ability to pay. The ability of a responsible relative to pay shall be determined from the annual gross earnings of the responsible relative subject to the limitations in a.-e.

a. A responsible relative who verifies annual gross earnings of less than $11,000 shall be determined not able to pay the cost of care.

b. No responsible relative who is a resident of Minnesota shall be ordered to pay more than ten percent of the cost of care for each patient.

c. The department shall require payment of the full cost of care for a child if the child's parents ~~and guardians all~~ both live outside Minnesota~~.~~ and are financially able to pay as determined by Section G.7.

d. Only the annual gross earnings of the spouse of a patient shall be used to determine the spouse's ability to pay.

e. When a responsible relative is married to a person who is not a responsible relative, only the annual gross earnings of the responsible relative shall be used to determine the responsible relative's ability to pay.

6. Determination of relative's ability to pay.

a. A responsible relative who provides the department a copy of the income tax return filed in the current year shall have his or her ability to pay determined from the table in Exhibit 12 MCAR §2.027 G.7. For purposes of this table, household size consists of the responsible relative and the responsible relative's dependents living in the responsible relative's household, other than the patient.

b. A responsible relative who chooses not to provide the department a copy of the income tax return filed in the current year shall be assumed to have an income in excess of $11,000 and to be able to pay the statutory limit of ten percent of the cost of care. The relative shall be requested to sign an agreement to pay the balance of the patient's cost of care up to the ten percent limit.

7. Exhibit 12 MCAR §2.027 G.7. shall be used to determine a relative's ability to pay, as described in 6.

Exhibit 12 MCAR §2.027 G.7.
Daily Payment Based on Ability to Pay According to Household Size and Annual Gross Earnings of Responsible Relatives

Annual Gross Earnings of Responsible Relative	Household Size									
	1	2	3	4	5	6	7	8	9	10
~~11,000~~										
~~12,999~~	~~1.00~~									
~~13,000~~										
~~14,999~~	~~1.50~~	~~.50~~								
~~15,000~~										
~~16,999~~	~~2.00~~	~~1.00~~								
~~17,000~~										
~~18,999~~	~~2.50~~	~~1.50~~	~~.50~~							
~~19,000~~										
~~20,999~~	~~3.00~~	~~2.00~~	~~1.00~~							
~~21,000~~										
~~22,999~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~						
~~23,000~~										
~~24,999~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~						
~~25,000~~										
~~26,999~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~					
~~27,000~~										
~~28,999~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~					
~~29,000~~										
~~30,999~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~				
~~31,000~~										
~~32,999~~	~~6.00~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~				
~~33,000~~										
~~34,999~~	~~6.50~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~			
~~35,000~~										
~~36,999~~	~~7.00~~	~~6.00~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~			
~~37,000~~										
~~38,999~~	~~7.50~~	~~6.50~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~		
~~39,000~~										
~~40,999~~	~~7.50~~	~~7.00~~	~~6.00~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~		
~~41,000~~										
~~42,999~~	~~7.50~~	~~7.50~~	~~6.50~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~	
~~43,000~~										
~~44,999~~	~~7.50~~	~~7.50~~	~~7.00~~	~~6.00~~	~~5.00~~	~~4.00~~	~~3.00~~	~~2.00~~	~~1.00~~	
~~45,000~~										
~~and over~~	~~7.50~~	~~7.50~~	~~7.50~~	~~6.50~~	~~5.50~~	~~4.50~~	~~3.50~~	~~2.50~~	~~1.50~~	~~.50~~

~~8. Adjustments to table. The department shall annually adjust the daily payment to reflect the annual percentage change reported in the most recent consumer price index for all urban consumers in the Minneapolis-St. Paul area.~~

11,000-11,999	.33	0								
12,000-12,999	.45	.33	0							
13,000-13,999	.57	.45	.33	0						
14,000-14,999	.72	.57	.45	.33	0					
15,000-15,999	.87	.72	.57	.45	.33	0				
16,000-16,999	1.05	.87	.72	.57	.45	.33	0			
17,000-17,999	1.23	1.05	.87	.72	.57	.45	.33	0		
18,000-18,999	1.45	1.23	1.05	.87	.72	.57	.45	.33	0	
19,000-19,999	1.81	1.45	1.23	1.05	.87	.72	.57	.45	.33	0
20,000-20,999	2.26	1.67	1.45	1.23	1.05	.87	.72	.57	.45	.33
21,000-21,999	2.82	1.92	1.67	1.45	1.23	1.05	.87	.72	.57	.45
22,000-22,999	3.52	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72	.57
23,000-23,999	4.41	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72
24,000-24,999	5.51	3.06	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87
25,000-25,999	6.89	3.82	2.75	2.45	2.17	1.92	1.67	1.45	1.23	1.05
26,000-26,999	8.61	4.77	3.05	2.75	2.45	2.17	1.92	1.67	1.45	1.23
27,000-27,999	8.80	5.96	3.37	3.05	2.75	2.45	2.17	1.92	1.67	1.45
28,000-28,999	8.80	7.46	4.21	3.37	3.05	2.75	2.45	2.17	1.92	1.67
29,000-29,999	8.80	8.80	5.26	3.72	3.37	3.05	2.75	2.45	2.17	1.92
30,000-30,999	8.80	8.80	6.57	4.07	3.72	3.37	3.05	2.75	2.45	2.17
31,000-31,999	8.80	8.80	8.21	4.45	4.07	3.72	3.37	3.05	2.75	2.45
32,000-32,999	8.80	8.80	8.80	4.83	4.45	4.07	3.72	3.37	3.05	2.75
33,000-33,999	8.80	8.80	8.80	6.03	4.83	4.45	4.07	3.72	3.37	3.05
34,000-34,999	8.80	8.80	8.80	7.53	5.25	4.83	4.45	4.07	3.72	3.37
35,000-35,999	8.80	8.80	8.80	8.80	5.67	5.25	4.83	4.45	4.07	3.72
36,000-36,999	8.80	8.80	8.80	8.80	6.12	5.67	5.25	4.83	4.45	4.07
37,000-37,999	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83	4.45
38,000-38,999	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83
39,000-39,999	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25
40,000-40,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67
41,000-41,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12
42,000-42,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56
43,000-43,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80

When the annual gross earnings exceed the amount shown in Exhibit 12 MCAR §2.027 G.7., the daily payment shall be at the statutory limitation of 10% of the per diem.

~~9.~~ 8. Verification of financial information.

a. The annual gross earnings of a relative and the number of dependents of a relative shall be verified from the relative's Minnesota state income tax return or, in the case of a relative who is not a resident of Minnesota and does not file a Minnesota state income tax return, from the United States income tax return.

b. The amount of the premium paid by the relative to provide dependent hospital and medical insurance coverage for the patient shall be verified.

~~10.~~ 9. Clothing and personal needs allowance of a minor. The parents of a patient who is an unmarried, dependent child shall be responsible for meeting the patient's clothing and personal needs allowance in addition to the amount they are determined able to pay to meet the cost of care.

Requested changes in Adopted Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR S 2.027):

Page 1, line 1, delete "Proposed (all new material)" and insert "Adopted"

Page 3, line 21, correct the misspelled "chidlren"

Page 3, line 21, after "patient" insert the comma which appeared in the rule as proposed

Page 5, line 14, strike "15.1698" and insert "15.1699"

Page 5, line 24, strike all of "verified" and after it insert "verify"; delete "y:"

Page 5, line 24, and page 13, line 26, it is not necessary to show the change in capitalization

Page 5, line 26, after "claimed" delete the stricken comma and insert a stricken semicolon (the semicolon appeared in the State Register)

Page 6, line 34, correct the misspelled "aiblity"

Page 9, line 5, after "month" delete the underlined period

Page 11, line 9, reinstate the stricken semicolon and insert the new material which follows before it

Page 11, line 11, delete the underlined period

Page 11, line 24, delete the period and insert the semicolon that appeared in the State Register

Page 11, line 34, delete the stricken ", and"

Page 11, line 35, remove the underlining under the semicolon

Page 11, lines 34 and 35, remove the parentheses

Page 12, lines 6 and 8 and page 16, line 53, delete "%" and insert "percent"

Page 12, line 8, delete the underlined period

Page 12, line 32, delete "twenty-four" and insert "24"

Page 14, line 15, delete "Section"

Page 16, line 53, delete "10" and insert "ten"

Insert new material after stricken material and save as much of the old material as possible

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

__X__ The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

See attached sheet.

Steven C. Cross
Revisor of Statutes

Name: Lorna M. Breiter
Lorna M. Breiter

Title: Assistant Revisor

Phone: 296-2778

- -

_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

Agency's Representative

- -

_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

LEGAL ADVOCACY FOR DEVELOPMENTALLY DISABLED PERSONS IN MINNESOTA

PROTECTION ADVOCACY

222 Grain Exchange Building, 323 Fourth Avenue South
PHONE: (612)-338-0968; outstate-tollfree 1-(800)-292-4150
TTY: (612)-332-4668 MINNEAPOLIS, MN. 55415

SEYMOUR J. MANSFIELD
executive director

ERIC S. JANUS
managing attorney

LUTHER A. GRANQUIST
attorney

ANNE L. HENRY
attorney

STEPHEN E. SCOTT
attorney

PATRICIA A. SIUTA
attorney

June 26, 1981

RECEIVED
SEP 14 1981
ADMINISTRATIVE HEARINGS

JUL 1981
RECEIVED
SUPPORT SERVICES BUREAU

Ms. Jane Turner
Senior Welfare Specialist
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

RE: Proposed Rule 12 M.C.A.R. §2.027, Reimbursement of Cost of Care of Patients of a State Hospital

Dear Ms. Turner:

The following are comments submitted on behalf of the class of mentally retarded residents residing in state hospitals that we represent as attorneys in the case of Welsch v. Noot.

1. The term patient ought to be changed to the more common "resident" throughout the proposed rule. Persons residing in state hospitals today are more commonly referred to as residents than patients.

2. The definition of in-kind income found in Section B.10 should be more carefully defined. "Any benefit" could mean services from a volunteer or services such as legal representation through our office to an individual. These kinds of benefits certainly would not increase a person's financial ability to pay for the cost of care. Unless that term can be defined specifically, the term in-kind income should be deleted from the rule.

3. The definition of inpatient should be changed to reflect "resident" and defined as a person receiving twenty-four hours of care within the hospital. This definition could be contrasted to an individual receiving service as a "nonresident who receives care on less than a twenty-four hour basis." Nonresident services could replace the definition of "outpatient" found in Section B.14.

4. Section B.21 defines resource and uses the term "may be available." May be available is too speculative a term for a rule. "May be" should be stricken from the definition of resource so that the definition would read "any property or benefit that is available to pay for the cost of care of the patient."

5. The term responsible relative defined in Section B.14 should be clarified to reflect that parents are responsible only when they are parents of minor children. The income of parents of adult children is not considered available to adult children for purposes of medical assistance and other financial aid programs. In order to be consistent with these other programs, I believe that the parents of minor children should be included in the term responsible relative rather than simply parents.

6. Section C.1 relating to the time of determination of ability to pay should be changed to take out "or may be." The term may be is too speculative for the rule. The ability to pay should be determined or redetermined when there is a change in circumstances not when there "may be." I believe it would also be advantageous to add a sentence allowing the resident to request a redetermination of ability to pay since the resident may be in the best situation to know of change in circumstances.

7. A definition of child should be added to your definition Section B. The definition should be consistent with state law on child, i.e., someone below the age of majority. If minority is not always the significant factor when a child is referred to in this rule, I would recommend that you use minor and adult to modify the term child so that your intent is clear.

8. Section C.1.b. should be changed from allowing a six year period for redetermination to a one year period. In addition the patient should not be held liable to pay state hospital bills on the basis of income and resources available after hospitalization. Any redetermination should be of the circumstances during the period of time when the person was in the state hospital. The section as currently written is extremely punitive for persons receiving care in state hospitals. If the Department is concerned about any kind of fraudulent activity, the criminal statutes currently on the books in Minnesota would allow action to be taken.

9. Section C.2 detailing persons to be interviewed should include a statement that the resident be included for participation to the extent of the resident's ability when someone other than the resident is interviewed such as the resident's guardian or custodian.

10. Section C.5 on refusal to complete the financial information form should contain a timeline during which the resident has the opportunity to provide financial information. As the section is now written the county could request financial verification and the next day request that the patient begin paying the full cost of care if all requested information has not been provided. Given the fact that we are concerned with residents

of state hospitals here, I believe that a period of at least 60 days should be allowed for an individual to provide any verification requested by the county.

11. Section C.6. The determination order should be sent both to the resident and the guardian or conservator rather than "or." This is necessary to insure that everyone who needs to be informed receives notice.

12. The review of determination found at C.7. should be changed to allow 30 calendar days during which a resident could request review of a Determination Order. The Determination Order should not become final until that 30 day period has run in order to allow an individual time for appeal as provided in Minn. Stat. §246.55.

13. The county should be required to give notice to residents and guardians or custodians of the appeal procedures to be used found in Minn. Stat. §246.55. This information should be required to be sent with any Determination Order.

14. Section D.1.b.(2) is extremely punitive for residents of state hospitals. There certainly could be circumstances where an individual could not realize any benefit from a piece of property, such as property jointly owned with other family members, and yet such property would not be excluded under the rule.

15. D.2.d.(6) allows up to $100.00 in payments including medical, dental, and hospital care to be deducted from income. Since we are talking about residents of state hospitals, I believe that 100 percent of medical, dental, and hospital payments should be deducted from income in order to determine the amount available to pay for hospital care. It is only reasonable to allow an individual to pay these ongoing bills while they are receiving treatment.

16. D.2.d.(11). This section states the personal needs allowance of $35.00 should be deducted from income. The legislature from time to time changes this amount and it would perhaps be more useful to cite the statute, §256B.35, rather than listing a particular amount which would then have to be changed as the legislature changes that amount.

17. The section describing property found at D.3.a.(2) describes a contract for deed as being considered income producing property. This is a vague term. Are the monthly payments

considered income for both the principal and interest aspects of the contract for deed payment or should they be treated differently? This section should be clarified in order to avoid interpretation problems.

18. In the personal property section found at Section D.3.b.(2)(m), trust funds in which the trustee has discretion to use the money for paying the cost of care should not be considered available income to an individual. The word discretion should be deleted leaving only trust funds in which the trustee is required to pay for the costs of an individual.

19. D.3.b.(2)(n). The exemption allowed for burial lots and a burial account should be increased to reflect the actual cost. The $750.00 plus $200.00 accrued interest has been used by the State of Minnesota for a number of years without reflecting the inflation in this area. Investigation should done to reflect the actual cost of a low cost funeral today.

20. D.3.d.(1)(a). The words "or after" should be deleted from this section so that a transfer of property made during hospitalization or prior to hospitalization is questionable. In order to be consistent with a change proposed earlier on allowing determination of ability to pay only of financial circumstances during hospitalization, this section should be changed as well.

21. D.3.d.(1)(c). This section is very vague. It is difficult to pinpoint when planning for placement in a state hospital began. Some parents are advised upon the birth of a severely disabled child that state hospitalization will be necessary but placement does not occur until the person is an adult. This section should be deleted in its entirety.

22. D.3.d.(3). This section should be changed to be consistent with other changes suggested above involving the six year investigation. An individual should not be liable for state hospital bills six years after they have been released and obtained employment and some measure of financial stability. It is conceivable that this kind of provision could in fact lead to more hospitalization of individuals as they are faced with large bills many years after hospitalization. Section (3) should be changed by deleting both "during the period between" and "in six years following discharge,".

23. Section E on responsible relatives should consistently refer to "responsible relatives" rather than the term "relatives" in order to avoid confusion.

24. Section E.3.d. regarding deductions of insurance

premiums from a responsible relative's obligation to pay should be changed to allow a deduction of a premium which is paid for by the responsible relative whether or not benefits are paid for any specific hospitalization. It is certainly in the interest of both the state and the county for responsible relatives to maintain insurance policies on individuals receiving state hospital care. This amount should be deducted regardless of whether benefits are actually paid to the state or county for state hospital services.

25. E.4. The liability of responsible relatives. This section should include the calculations of the county's share of state hospital costs. In other words, insurance benefits plus the resident's other resources should be added together with the county responsibility under state law and the amount remaining should be the amount considered for a responsible relative in determining the amount to be paid. The section should also be changed to reflect the fact that parents of a minor child, although both considered responsible relatives should not each bear separate liability for the cost of care. In other words, the family's financial situation should be considered as a whole. The sentence "when two or more relatives have the same order of liability for cost of care, a determination shall be made for each one" technically could allow individual determinations on each parent to be made for the services rendered a mentally retarded child. This is not currently the practice nor does it make any sense.

26. E.5.a.(2). This section should be changed to reflect recent statutory changes involving state hospital cost of care. In addition, the residence of the guardian should not be considered in determining whether the full cost of care is paid by the county and state of Minnesota. Personal guardians are under no legal obligation to financially support their wards beyond the extent of any of the ward's estate. Therefore, the residence of a guardian should be irrelevant and the question should be what is the ward's estate and how much of that is available to pay the cost of care.

27. E.5.b. and c. These two sections should be restructured in order to clearly reflect that a responsible relative with gross income of over $11,000 shall have their responsibility for the cost of care determined on the basis of the table contained in the rule. After the determination on the table has been made, the county could tell the relative that if they wish to pay more they certainly could do so. The way b. and c. are currently structured, the county could take advantage of an unknowing person by having them sign an agreement to pay the balance of the cost of care owed without informing them that they only have to pay the amount found on the table in the rule. This is exceedingly unfair to responsible relatives who may not have dealt with the cost of care system in the past.

28. A new section should be added here to allow the deduction of medical, dental, and hospital costs for the state hospital residents paid by the responsible relative. Again, it is certainly in the interest of the county and the state to have responsible relatives paying medical, dental, and hospital bills for residents of state hospitals and this payment should be deducted in total.

29. Another deduction which should be allowed is the medical insurance premium paid by the responsible relative for the individual resident of the state hospital. The existence of insurance is certainly a benefit for all concerned.

30. E.7. on the last page of the rule. This section should be changed to reflect the fact that if a child has income the child should be allowed to retain the personnel needs allowance set by the legislature in Section 256B.35. Currently many children in state hospitals receive SSI payments for personal needs allowance and this money should go for that purpose rather than requiring the parents to pay for that cost.

Thank you for the opportunity to comment on proposed DPW Rule 12 M.C.A.R. §2.027 on Cost of Care for Residents of State Hospitals. I urge you to consider the requested changes listed above in redrafting this rule in its final proposed form.

Please notify me when a proposed rule for hearing has been issued. I would also like a copy of the proposed rule when it is ready for hearing.

Sincerely,

Anne L. Henry

Anne L. Henry
Attorney at Law

ALH:bbo

SWEENEY, O'CONNOR & LeMAY
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
(612) 222-2541

THOMAS M. SWEENEY
JAMES J. O'CONNOR
JOHN H. LeMAY
GEORGE F. BORER

SUITE 350
NORTHERN FEDERAL BUILDING
SIXTH AND WABASHA
ST. PAUL, MINNESOTA 55102

RECEIVED
JUL 4 1981
ADMINISTRATIVE HEARINGS

JUL 1981
RECEIVED
SUPPORT SERVICES BUREAU

June 30, 1981

Ms. Jane Turner
Senior Welfare Specialist
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

Dear Ms. Turner:

Enclosed please find the comments of the ARC Minnesota Residential Services Committee concerning the proposed Rule 12 M.C.A.R. §2.027, reimbursement of cost of care of patients of a state hospital.

I transmit these comments to you as the Chairman of the aforementioned Residential Services Committee and trust that they will be helpful in your department's preparation of an appropriate rule for this area.

Sincerely yours,

John H. LeMay

JHL:peg

Enclosure

RECEIVED
SEP 14 1981
ADMINISTRATIVE HEARINGS

COMMENTS OF ARC MINNESOTA
RESIDENTIAL SERVICES COMMITTEE

RE: Proposed Rule 12 M.C.A.R. §2.027, Reimbursement of Cost of Care of Patients of a State Hospital

The following comments are submitted by the Association For Retarded Citizens-Minnesota through its Residential Services Committee and its Board of Directors.

1. In keeping with current terminology, we suggest the term,patient be changed to the term, resident throughout the rule.

2. Section B.10. In-kind income, when defined as "any benefit" could be construed to be services from volunteers in the neighborhood, legal assistance through the legal aid office, or perhaps many other things, which do not increase the individual's financial ability to pay for the cost of care. We suggest striking the term, in-kind income unless it can be defined with greater specificity.

3. Section B.14. A person receiving 24 hours of care in the hospital should be called a resident and a person now defined as an out-patient, could be classified as a non-resident receiving care on less than a 24 hour basis.

4. Section B-21. We submit that the phrase "may be available" will lead to much confusion as it is applied to the definition of a resource. Resource can adequately be defined as "any property or benefit that is available to pay for the cost of care of the patient."

5. Section B-14. In order to avoid confusion, we would suggest that within this section and as well as elsewhere in the Rule, that parents be further described as "parents of minor children". This is to reflect the fact that parents of adult children are not to be considered responsible for the obligations of those children, nor is their income subject to such claims.

6. Section C-1. We would ask that in addition to the department having the option of proceeding to a redetermination of ability to pay, that the resident also be allowed, in the Rule, a right to request a redetermination of ability to pay. We further submit that the phrase "or may be" may lead to unnecessary speculation and redetermination procedures and suggest that it therefore be stricken.

7. Section B. We think that a definition of child should be included in this section. It could be as simple as "someone

below the age of majority", but we think it would be a necessary addition for clarity's sake.

8. Section C.1.b. Any redetermination of circumstances by the State subsequent to the individual leaving the state hospital should be limited to consideration of that period of time during which the person was in the state hospital. This Rule, as written, appears to state that the person would be held liable to pay state hospital bills on the basis of income and resources available to him after the time he was hospitalized. We suggest this is a very punitive approach to such persons. We also suggest that the six year period for redetermination be modified to a one year period. In the event evidence is received concerning fraudulent activity, adequate resources are available under criminal statutes, notwithstanding any limitation established by such a rule as we are here discussing.

9. Section C.2. We feel it is most important that the resident be included in the interview process to the extent of his ability, even when a guardian or conservator or parent is being interviewed as well.

10. Section C.5. A specific deadline concerning time to complete the financial information submitted to the department would seem appropriate. We would suggest a period of 60 days, to allow the individual to provide the appropriate verification and gather the appropriate information.

11. Section C.6. The Determination Order should be sent to both the resident and the guardian or conservator rather than "or". This is necessary to insure that the resident as well as his legal representatives are involved in this important area.

12. Section C.7. Minnesota Statute §246.55 provides for a 30 day period to appeal,and we think it would be appropriate to change the period for requesting review of the Determination Order and the date upon which it becomes final to a like period.

13. The Rule should contain a direction to the counties to provide residents and their guardians, ect., with notice of the appeal procedures set forth in Minnesota Statute §246.55.

14. Section D.1.b.(2). There are many circumstances where an individual could jointly own property with another family member and yet not realize any benefit from that piece of property. This property would not be excluded under the Rule as presently written and we suggest that it, in fact, be excluded. Failure to do so is very punitive for the residents in question.

15. D.2.d.(6). As we are talking about residents of state hospitals, we submit that they receive full credit, that is a deduction from income for medical, dental and hospital bills as paid by them, instead of the proposed limitation of

$100.00 in such payments.

16. D.2.d. (11). Minnesota Statute §256B.35 establishes the personal needs allowance of such residents, and we would suggest that this section be changed to reflect that amount currently allowed under the Statute rather than a specific dollar amount, which may be changed from time to time by the legislature.

17. D.3.a.(2).We read this section as describing property sold on a Contract for Deed as being considered income property. We submit that only the interest paid on the balance of such Contract for Deed with each monthly payment should be so considered. This section should be redrafted to clarify such potential problems.

18. D.3.b.(2)(m). We agree that in those situations where a trustee is required to pay for the cost of care of an individual, that the value of the payments required to be made by the trustee should be considered as property of the individual. We do not think this to be a departure from present practice and/or the law. At the same time we strongly disagree with the attempt by the drafters of this Rule to include in personal property those situations where the trustee merely has discretion to use the money for such payments. This approach is clearly contrary to present practice and in effect, makes the department a controlling trustee in many of the existing trusts of this nature. We submit that such a major change in the right of an individual to select his own trustee, should be done only in response to specific direction by the legislature and not through the rule making process.

19. D.3.b.(2)(n). We submit that exemption allowed for burial lots and a burial account should be based on the actual cost of a modest funeral today, and not the historic $750.00 plus $200.00 accrued interest, which has been used for so many years.

20. D.3.d.(1)(a). This section should be changed to reflect the fact that a transfer of property made during hospitalization or immediately prior thereto is the transfer that is questionable. This could be accomplished by the deletion of the words "or after". We believe that the ability to pay as determined by financial circumstances should be relevant to the period of time during which the person is hospitalized.

21. D.3.d.(1)(c). We submit this section should be deleted in its entirety as the phrase "planning for placement in a state hospital" is subject to many interpretations and for all practical purposes impossible to define.

22. D.3.d.(3). Reference is made to Paragraph 8 above concerning limitation of liability to that period of time during which an individual is hospitalized. We think,to retain the punitive six year period of responsibility could,in fact, act as a deterrent to the voluntary discharge of individuals from the state hospital.

23. Section E. Use of the term, relatives, should be avoided, when in fact it is the intent of the Rule to refer to "responsible relatives".

24. E.3.d. In order to encourage responsible relatives to maintain insurance policies on individuals receiving state hospital care, we suggest that insurance premiums be an allowable deduction from the responsible relative's obligation to pay, notwithstanding the fact that benefits may or may not be paid. It should be sufficient to show that the insurance is maintained and in the event a claim would be submitted, coverage is available for the resident.

25. E.4. We think the language of this section could be redrafted to reflect the current practice of making a determination of financial situations by family, rather than, as the Rule apparently says, determining a husband's and a wife's separate income in the case of parents of a minor child. We also submit that the section should include calculation of the county's share of state hospital costs, along with the insurance benefits and the resident's other resources, with a net amount remaining, that being the amount considered as a responsible relative's obligation.

26. E.5.a.(2). The residency of a guardian is totally irrevelant in the question of whether or not Minnesota should pay the full cost of care. The resident wards estate and that portion available to pay cost of care are the only factors that should be considered. Additionally, this section should be changed to reflect current statutory changes involving state hospital cost of care.

27. E.5.b. and c. We think that the responsible relative should be fully informed as to the application of the table to their gross income, if over $11,000.00, as the basis for their legal responsibility to pay on cost of care. We do not object to the county requesting that the individual pay more than the amounts established by reference to the table, but we feel that it is the county's obligation to inform them that such payments would be made solely at their option.

28. We ask that a new section be added providing the responsible relative with the same deduction from income for medical, dental, and hospital costs, as we indicate should be allowed to the resident. Additionally, a deduction should be allowed for medical insurance premiums paid by the responsible relative. The presence of this insurance would certainly be a benefit to both the state and the individual.

29. E.7. Many children in state hospitals currently receive SSI payments for personal needs allowance. This section should be changed to reflect the fact that if the child has such income, the child should be allowed to retain the personal needs allowance as established by the legislature in §256B.35, rather than requiring the parents to pay for that cost.

We sincerely appreciate the opportunity afforded to our organization to review this Rule and offer a pre-hearing comment thereon. We respectfully request your due consideration of the items raised by us above. We further request that we be notified when the proposed Rule for Hearing has been issued and that you forward to us a copy of that Rule at your early convenience.

Sincerely yours,

John H. LeMay
Chairman of the ARC Minnesota
Residential Services Committee

RECEIVED
SEP 2 1981
ADMINISTRATIVE HEARINGS

Le Sueur County

welfare department

social and financial services

September 1,1981

George Beck
Hearing Examiner
Office of Administrative Hearings
1745 University Avenue - Rm. 300
St. Paul, MN 55104

Public Exh. No. A
File No. DPW-82-001-6 D
Date 9/2/81

Re: Hearing on Rule 27

I would like the following comments to be considered in the finalization of Department of Public Welfare Rule 27 -- Reimbursement for Cost of Care of Patients of a State Hospital.

On page 10, item F.2, C. Personal Property: The $10,000 cash or liquid assets exempt for married couples is too high. I believe that this amount should be consistent with that in the Medical Assistance program, that is $4,000. State law used to allow $10,000 per couple in the Medical Assistance program and $2,000 for single individuals. It seems that this rule is patterned after the Medical Assistance program. However, the Minnesota legislature changed the $10,000 allowed per couple to $4,000.

Page 14, Relative Responsibility Fee Schedule: This schedule is overly generous. That is, persons in the higher income brackets should pay more than is indicated in this chart. The maximum anyone would be required to pay is $7.50 per day. During fiscal year 1982, 10% of the hospital perdiem would be approximately $8.70. It is possible that this proposed rule was developed prior to the start of fiscal year 1982. The fee schedule should be revised to reflect current conditions.

Thank you for considering these two items.

Allen Zumach

Allen Zumach
Director

js

COURTHOUSE LE CENTER, MN 56057 PHONE (612) 357-2251

an equal opportunity employer

OFFICE OF COUNTY FAMILY SERVICE AGENCY

Wilkin County, Minnesota

TELEPHONE (218) 643-8561
P.O. BOX 369
BRECKENRIDGE, MINNESOTA 56520

Public Exhibit B
File No. DPW-82-0111-6 D
Date 9/4/81



RECEIVED
SEP 4 1981
ADMINISTRATIVE HEARINGS

September 2, 1981

Mr. George Beck, Hearing Examiner
Office of Administrative Hearings
1745 University Avenue, Room 300
St. Paul, MN 55104

RE: Proposed DPW Rule
12 MCAR 2.027

Dear Mr. Beck:

I have several questions or comments in relation to the proposed rule.

B.20. defines responsible relative as, "... and in the case of the mentally ill, the adult children of a patient, ..." I realize that this wording is in the law but is it defensible? If so, why aren't the adult children of a chemically dependent patient equally responsible?

E.4.f. It is not entirely clear if the $100 deduction is an aggregate for all bills for items listed or up to $100 for each type of bill listed. Car, mortgage or rent payments could each easily exceed $100. Upon close study, E.4.M. apparently answers that question through the use of a housing allowance which covers current housing and utility costs.

G.5.a. This is what leads to inequities when adult children are included as responsible relatives. For example, a daughter, married, whose husband is the sole source of income and a son, married, who is the sole wage earner, all other factors being equal would be treated differently. The son would pay and his family would be worse off. The daughter wouldn't pay and her family would be better off. There are probably no easy answers once you involve adult children.

Sincerely,

Thomas M. Fawcett
Director

TMF:kb

cc: Jane Turner,
Bureau of Support Services

SF 03506-02

STATE OF MINNESOTA

DEPARTMENT Faribault State Hospital

Office Memorandum

TO : Ardo Wrobel, Director
Mental Retardation Program Division

DATE: October 2, 1981

FROM : Arnold A. Madow
Assistant Administrator, Program Services

PHONE: 102-311

SUBJECT: Proposed Rule Governing Reimbursement for Cost of Care of patients of a State Hospital (12 MCAR 2.027)

The above rule is coming up for public hearing on October 15. In reviewing it, we note that it does not contain any provision for disregarding a portion of earned income for mentally retarded residents of the state hospitals in determining liability for payment of cost of care.

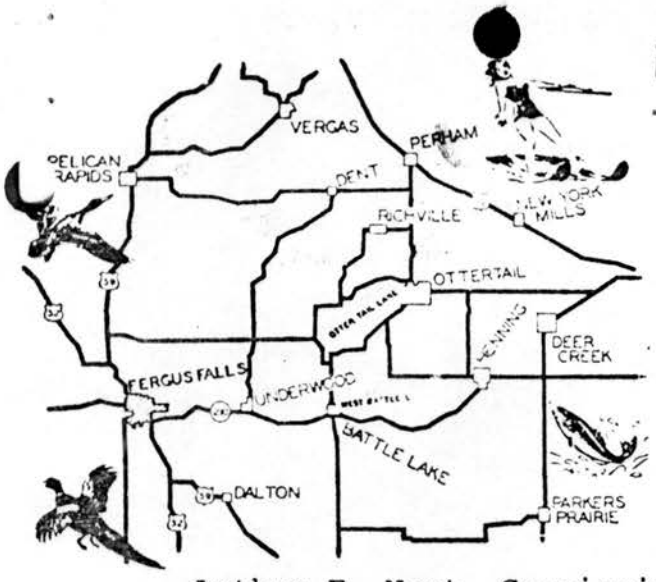
As you know, there is currently a provision in the Medical Assistance program for a deduction of $50 from earned income for mentally retarded persons employed under a plan of rehabilitiation. We feel very strongly that this provision continues to be needed as an incentive to the residents to engage in work training and work activity. We believe the proposed rule should contain a similar provision.

I request on behalf of Faribault State Hospital, as well as on behalf of the 2,500 mentally retarded residents of the entire state hospital system, that you make the necessary representations to have an income-disregard provision added to the proposed rule.

Thank you.

Public Exh. No. C
File No.
Date

/jn
cc: Jane Turner, Bureau of Support Services, DPW
Dean Nelson, Director of Social Services, FSH
William Hendrickson, Program Director, MVSAC



Public Exh. No. D
File No.
Date

OTTER TAIL COUNTY

Dept. of Social Services

ROLAND F. WINTERFELDT, Director

Fergus Falls, Minnesota 56537

RECEIVED
SEP 1981
SUPPORT SERVICES BUREAU

September 11, 1981

Arthur E. Noot, Commissioner
Minnesota Department of Public Welfare
Centennial Building
St. Paul, MN 55155

Dear Commissioner Noot:

I have just reviewed proposed Rule 12 MCAR 2.027. I suspect that this Rule is under the same statute that spells out the 10% county cost.

My concern is that apparently the applications are to be taken by state hospital reimbursement officers. Our experience with applications involving potential public assistance applications by reimbursement officers is not the most positive.

Applications, in the past, generally do not show ownership of real and/or personal property. Those parts of the applications are generally left blank. Either the system has to insist that the reimbursement officers receive extensive training in property ownership and the various ramifications or you may find that counties will deny payment because the applications are not complete or not true.

Also, the proposed Rule talks about one per diem in B 3. That is most unfair to have one cost for state hospitals. That defeats the whole concept of individual rates for nursing homes, ICF - MR's, general hospitals etc. It is most unethical, and I feel, illegal. Each state hospital has their own costs, and the per diem should be on each hospital, not the average cost of all hospitals.

I trust my comments will be considered in the final draft.

Very truly yours,

Roland F. Winterfeldt

:ms

c: Jane Turner
Bureau of Support Services, DPW

DPW-82-001-GB

DPW
File No. Exh. No. 2
Date

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR 2.027)

ORDER FOR HEARING

IT IS ORDERED this 31 day of July, 1981, that a public hearing on the proposed rules captioned above be held in Room 83 at the State Office Building, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota 55155, on October 1, 1981, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all persons who have registered their names with the Department of Public Welfare for that purpose and be published in the State Register.

STATE OF MINNESOTA

Ruth E Lunn

Commissioner of Public Welfare

KTH/dde

DPW-82-001-GB

Notice of Hearing

DPW
File No. ____ Exh. No. 3
Date ____

Department of Public Welfare

In the Matter of the Proposed Adoption of the
Department of Public Welfare Rule Governing
Reimbursement for Cost of Care of Patients
of a State Hospital (12 MCAR §2.027)

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota 55155 on October 15, 1981 commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, 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

either before the hearing or within five working days after the public hearing ends. 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.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR §2.027 is to establish the procedures and standards by which the Commissioner of Public Welfare shall carry out his responsibility under Minn. Stat. §246.50 through §246.55 governing reimbursement for cost of care of state hospital residents.

The rule has seven major sections: A. Applications; B. Definition; C. Determination Procedure; D. Sources of Income considered to be patient resources; E. Net income, patient; F. Property, patient; and G. Ability to pay, responsible relative.

Section A. Application cites the state statutes upon which the rule is based.

Section B. contains definitions which are unique to this rule.

Section C. specifies the determination procedure. The provisions include who shall be interviewed, the times of determination, verifications and consents required. The person is requested to complete, verify and sign a financial information form. Should the patient refuse to complete the financial information form, the rule states he shall pay the full cost of care as stated under Minn. Stat. §246.51. This section requires the Department to send to the person and his guardian or conservator a Determination Order showing the amount to be paid for care at a state hospital. There is a provision for requesting a review and appeal of the Determination Order.

Section D. Sources of Income considered to be patient resources specifies that the patient's ability to pay shall be based on his insurance benefits, net income and value of property owned. Insurance benefits received on behalf of the patient will be deducted from the amount owed by the patient for cost of care. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining amount shall be determined from his net income and non-excluded property.

The major part of Section E. Net income, patient describes the procedure to determine the net income of the patient.

Section F. Property, patient defines the property which is exempt from consideration as a resource in determining the patient's ability to pay his cost of care at a state hospital. For example, a patient may own many personal items and in addition have liquid assets of $2,000 if single or

$10,000 if married. This section permits the Department to waive consideration of excess property in the case of undue hardship. There are restrictions on the transfer of property by the patient.

Section G. Ability to pay, responsible relative describes how to determine the ability of responsible relatives of the patient to pay cost of care not met by the patient's resources. The relative's ability to pay is based on his gross annual income and number of dependents. For example, a responsible relative with an income of less than $11,000 is not required to pay for the patient's care. When a relative chooses not to provide the Department with a copy of his current income tax report he shall be assumed to have income in excess of $11,000 and shall be required to pay the statutory amount of 10% of the cost of care.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §253A.21, Subd. 6. 4

The Department estimates that there will be no cost to local public bodies to implement this rule for the two years immediately following its adoption within the meaning of Minn. Stat. §15.0412, Subd. 7. 10

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Jane Turner, Bureau of Support Services, Department of Public Welfare, Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-4415. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Jane Turner. 3b

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. 8

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, 1979 Supp., 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 6

(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: 7-31-81

Arthur E. Noot

Commissioner

KF/ded

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING REIMBURSEMENT FOR COST OF CARE OF PATIENTS OF A STATE HOSPITAL (12 MCAR §2.027)

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on the fifteenth day of October, 1981 at 9:00 a.m., in Room A, Fourth Floor, Centennial Office Building, Saint Paul, Minnesota.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for the reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that this rule identified as 12 MCAR §2.027 is adopted this 18 day of December, 1981, pursuant to authority vested in me by Minnesota Statutes sections 253A.21, Subd. 6, 246.01 and 246.51 (1980), and shall read in its entirety as set forth in the attached Exhibit 1.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ARTHUR E. NOOT
COMMISSIONER

DF-aob

"EXHIBIT 1"

DPW Exh. No. 8
File No.
Date

RECEIVED
SEP 14 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR 2.027)

AFFIDAVIT OF ADDITIONAL MAILING

Jane Turner, being first duly sworn, deposes and says:

That on the 25th day of August, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Hearing to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing (or) in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

Minnesota's County Welfare Departments
Minnesota's Human Service Boards
Minnesota's State Hospitals

Jane Turner

Subscribed and sworn to before me
this 25 day of August, 1981.

Margaret Holt

KTH/dda

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

DPW Exh. No. 4
File No.
Date

RECEIVED
SEP 14 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR 2.027)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. ¢15.0412, subd. 4, that their names be placed on file with and maintained by the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 9:00, A.M., this 21 day of August, 1981.

Robert J. Hagen

KTH/ddd

DRW Exh. No. 12
File No.
Date
RECEIVED
JUN 4 1981
ADMINISTRATIVE HEARINGS

introduce exhibits, note his appearance or question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the hearing.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner or the MPCA in determination of the above-entitled matter. Persons attending the hearing should bring all factual information or evidence bearing on the case which they wish to have included in the record.

The application for the variance and other documents related to this matter may be inspected and copied any time between 8:30 a.m. and 4 p.m., Monday through Friday, at the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113, telephone: (612) 296-7217; or at the Minnesota Pollution Control Agency, Regional Office, 1200 South Broadway, Suite 140, Rochester, Minnesota 55901, telephone: (507) 285-7343.

Questions concerning the issues raised in this Notice of and Order for Hearing or concerning informal disposition or discovery may be directed to Special Assistant Attorney General John C. Bjork at the address and phone number noted above.

All persons are advised that, if they intend to appear as parties at the hearing, a Notice of Appearance form must be completed and returned to the Hearing Examiner within twenty (20) days of the date of service of the Notice of and Order for Hearing. The Notice of Appearance form may be obtained from Special Assistant Attorney General John C. Bjork at the address and phone number noted above. Should a party fail to appear at the hearing, the issues set out in this order may be deemed proved, with the consequence that the requested variance may be granted and the proposed permit may be issued in its present form.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner as soon as possible but, in any event, at least five days prior to the hearing. A copy of the request must be served on the MPCA and all other parties.

May 14, 1981.

Louis J. Breimhurst
Executive Director

Department of Public Welfare
Support Services Bureau

Notice of Intent to Solicit Outside Opinion Concerning Reimbursement for Cost of Care of Patients of a State Hospital

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a proposed rule 12 MCAR § 2.027 (Reimbursement for Cost of Care of Patients of a State Hospital).

This rule will govern the investigation the commissioner shall make when determining the charges patient shall be ordered to pay for his/her observation, diagnosis, care and treatment in a state hospital.

Authority for this rule is contained in Minnesota Statutes, § 253A.21, subd. 6 (1980) and Minnesota Statutes, § 15.0412, subd. 3 (1980).

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Jane Turner
Bureau of Support Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-4415.

All statements of information and comment must be received by July 1, 1981. Any written material received by the department shall become part of the hearing record.

Department of Public Welfare

Proposed Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR § 2.027)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota 55155 on October 15, 1981 commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, 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 George Beck, Hearing Examiner, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-8108 either before the hearing or within five working days after the public hearing ends. 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.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR § 2.027 is to establish the procedures and standards by which the Commissioner of Public Welfare shall carry out his responsibility under Minn. Stat. § 246.50 through § 246.55 governing reimbursement for cost of care of state hospital residents.

The rule has seven major sections: A. Applications; B. Definition; C. Determination Procedure; D. Sources of Income considered to be patient resources; E. Net income, patient; F. Property, patient; and G. Ability to pay, responsible relative.

Section A. *Application* cites the state statutes upon which the rule is based.

Section B. contains *definitions* which are unique to this rule.

Section C. specifies the *determination procedure*. The provisions include who shall be interviewed, the times of determination, verifications and consents required. The person is requested to complete, verify and sign a financial information form. Should the patient refuse to complete the financial information form, the rule states he shall pay the full cost of care as stated under Minn. Stat. § 246.51. This section requires the Department to send to the person and his guardian or conservator a Determination Order showing the amount to be paid for care at a state hospital. There is a provision for requesting a review and appeal of the Determination Order.

Section D. *Sources of Income* considered to be patient resources specifies that the patient's ability to pay shall be based on his insurance benefits, net income and value of property owned. Insurance benefits received on behalf of the patient will be deducted from the amount owed by the patient for cost of care. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining amount shall be determined from his net income and non-excluded property.

The major part of Section E. *Net income, patient* describes the procedure to determine the net income of the patient.

Section F. *Property, patient* defines the property which is exempt from consideration as a resource in determining the patient's ability to pay his cost of care at a state hospital. For example, a patient may own many personal items and in addition have liquid assets of $2,000 if single or $10,000 if married. This section permits the Department to waive consideration of excess property in the case of undue hardship. There are restrictions on the transfer of property by the patient.

Section G. *Ability to pay, responsible relative* describes how to determine the ability of responsible relatives of the patient to pay cost of care not met by the patient's resources. The relative's ability to pay is based on his gross annual income and number

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

of dependents. For example, a responsible relative with an income of less than $11,000 is not required to pay for the patient's care. When a relative chooses not to provide the Department with a copy of his current income tax report he shall be assumed to have income in excess of $11,000 and shall be required to pay the statutory amount of 10% of the cost of care.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 253A.21, subd. 6.

The Department estimates that there will be no cost to local public bodies to implement this rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Jane Turner, Bureau of Support Services, Department of Public Welfare, Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-4415. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Jane Turner.

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, 1979 Supp., 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.

July 31, 1981

Arthur E. Noot, Commissioner
Department of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.027 Reimbursement for cost of care of patients in a state hospital.

A. Application. Rule 12 MCAR § 2.027 governs the administration of the State Hospital Cost of Care Program in the Department of Public Welfare. The provisions of this rule are to be read in conjunction with Minn. Stat. §§ 246.50-246.55 and other rules of the department. No person shall be denied state hospital services because of inability to pay the cost of care.

B. Definitions. For purposes of 12 MCAR § 2.027, the following terms have the meanings given them.

1. Business expense. "Business expense" means the cost of producing income from a business or farm. Capital expenditures and depreciation are not included as part of a business expense.

2. Capital expenditure. "Capital expenditure" means an investment made to purchase property or to make an improvement to property which has a useful life of more than one year.

3. Cost of care or per diem. "Cost of care" or "per diem" means the daily per capita cost of providing care to state hospital patients or the cost of outpatient services calculated in accordance with Minn. Stat. § 246.50, subd. 5.

4. Department. "Department" means the Minnesota Department of Public Welfare.

5. Dependent. "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota state income tax return. One person shall not be claimed as a dependent by two individuals. When two or more individuals are entitled to claim the dependent, the dependent shall be allocated equally among the individuals unless the individuals choose another allocation.

6. Gross income or gross earnings. "Gross income" or "gross earnings" means all income received including in kind income.

7. Homestead. "Homestead" means the house owned and occupied by the patient as his dwelling place, together with

the land upon which it is situated and an area no greater than two contiguous lots in a platted and laid out city or town or the smallest parcel allowed under applicable zoning regulations in unplatted land.

8. In kind income. "In kind income" means the annual sum of resources other than money received by a patient or dependent used to maintain the patient or the patient's family and having a value of more than $100.

9. Inpatient. "Inpatient" means a person who occupies a bed in the hospital for the purpose of observation, care, diagnosis, or treatment.

10. Lump sum payment. "Lump sum payment" means income received at one time. It includes windfalls, repayment of debts, payments from sale of property, tax refunds, gifts, and inheritances.

11. Net income. "Net income" means the amount of income remaining after deductions and exclusions from gross income as provided in this rule.

12. Outpatient. "Outpatient" means a person who makes use of the services of the state hospital but does not occupy a regular hospital bed, as set forth in Minn. Stat. § 246.50, subd. 5.

13. Patient. "Patient" means any individual receiving observation, diagnosis, care or treatment in a state hospital.

14. Patient's financial information file. "Patient's financial information file" means financial data collected for the purpose of determining ability of the patient or the responsible relative to pay the patient's cost of care.

15. Person. "Person" means a patient or responsible relative.

16. Personal property. "Personal property" means all property which is not real property.

17. Property. "Property" means everything owned by a person, including money.

18. Real property. "Real property" means land, including the buildings and improvements on it, and its natural assets, such as minerals and water.

19. Resource. "Resource" means any property or benefit that is or may be available to pay for the cost of care of the patient.

20. Responsible relative. "Responsible relative" means the spouse, the parents of minor children, and in the case of the mentally ill, the adult children of a patient, in that order of liability for cost of care.

21. State hospital. "State hospital" means a state hospital for mentally ill, chemically dependent, or mentally retarded persons.

C. Determination procedure.

1. Time of determination.

a. Ability to pay the cost of care shall be determined when the patient is admitted, when there is or may be a change in the patient's financial status, when the patient has been hospitalized for 120 days or more, when the patient is being discharged and when the financial status has not been reviewed for one year.

b. Within the six-year period after the date of a patient's discharge from the hospital, the department from time to time may, and upon request of the patient shall, reevaluate the patient's ability to pay any balance of the charge for cost of care.

2. Persons interviewed.

a. The patient shall be interviewed to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person, such as a guardian, custodian, conservator or the parent of a minor child, or when the patient is incapable of participating in the interview process because of the patient's illness or disability. When the patient is not interviewed, the reason shall be noted in the patient's financial information file.

b. When the patient cannot be interviewed, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker.

c. If the patient is unable to pay the full cost of the per diem, the responsible relative shall be interviewed.

3. Financial interview. When a person is interviewed, the department shall:

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

a. Inform the person that he or she may choose an individual to assist in the determination process and any other contact with the department by authorizing such assistance in writing;

b. Provide the person with an informational pamphlet on cost of care and review with the person how the department determines the charges for the patient's cost of care;

c. Inform the person that financial information obtained from the person will not be released without the person's written consent except pursuant to Minn. Stat. §§ 15.1611-15.1698;

d. Inform the person of county, state, and federal financial programs which may assist in paying the cost of care and meeting personal and family needs; and

e. Request the person to complete and sign a financial information form provided by the department and to provide verification of financial information.

4. Verification required. This process shall be used to substantiate information entered on the signed financial information form. The following information shall be verified:

a. The patient's income, insurance benefits, property, deductions allowed to pay previously incurred debts, and the number of dependents claimed; and

b. Other information relevant to the person's ability to pay if the reimbursement officer has reason to question the accuracy of the information.

5. Consent forms. The person shall provide the reimbursement officer with a separate signed consent form for each verification which must be obtained from a third party. The name, date, and the information authorized shall be on the consent form prior to the person's signature. A blanket authorization may be used for a group of related agencies such as banks or insurance companies.

6. Refusal to complete financial information form. Failure or refusal to complete and sign the required financial information form, apply insurance benefits received to pay the cost of care, or provide signatures required to assign third party benefits and release medical and financial information or verification shall result in the determination that the person is able to pay the full cost of care permitted under Minn. Stat. § 246.51 until the person takes the required action.

7. Determination order. A determination order and notice of rate showing the per diem and the amount the person is ordered to pay shall be sent by the department to the person and the person's guardian or conservator.

8. Review of determination. A person who disagrees with the department's determination of ability to pay may request that the department review its decision. The request shall be made in writing within 15 calendar days of the date the order was mailed. The request for review shall include the reasons for disagreeing with the determination order. A request for review shall not extend the time for appeal given in Minn. Stat. § 246.55.

9. Appeal of determination. A person may also appeal from the determination order pursuant to Minn. Stat. § 246.55.

D. Sources of income considered to be patient resources.

1. In general. The patient's ability to pay shall be determined from insurance benefits, net income, and value of property owned.

2. Insurance benefits.

a. When the investigation of the patient's ability to pay discloses eligibility for insurance benefits, the patient shall be determined to be able to pay the cost of care provided to the full extent of insurance benefits available. The dollar amount of this coverage need not be specified in the determination order.

b. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining part of the per diem shall be determined from the patient's net income and nonexcluded property.

3. Net income. The patient's entire net income remaining after the deductions from gross income have been made in accordance with E.4. shall be available to pay the cost of care and shall be converted to a daily amount.

4. Property. As long as the patient owns property not excluded under F., the patient shall be determined able to pay the full cost of care.

E. Net income; patient.

1. In kind income. The fair market value of in kind income included in the calculation of the patient's net income shall be established by any reliable means including, but not limited to, published reference documents, statements from merchants, or appraisals.

2. Lump sums. Lump sums, other than excluded property, shall be treated as income in the month received and thereafter shall be treated as property. The patient shall report the lump sum to the department within ten working days.

3. Seasonal income from business or farm. Average monthly amounts for gross income and the deductions allowed in 4. shall be used to calculate the net monthly income of farmers and other individuals who experience seasonal variations in income and business expenses.

4. Deductions from gross income to arrive at net income. The following items shall be deducted from the patient's monthly gross income:

a. State and federal income tax payments, including back assessments;

b. Payments made under the Federal Insurance Contributions Act and Supplemental Medical Insurance;

c. Child care costs paid by the patient and not reimbursed from any source;

d. Support payments ordered by a court and actually paid. If this deduction is taken, the individual for whom support is paid shall not be included as a member of the patient's household in determining the monthly household living allowance in Exhibit 12 MCAR § 2.027 E.4.n.;

e. Guardianship fees;

f. Monthly payments on previously incurred bills for medical, dental and hospital care, car payments, house payments or rent, and utilities. The deduction allowed shall be the lesser of the sum of the actual monthly payments or $100 per month;

g. Personal expenses of employment, including mandatory retirement fund deductions, cost of transportation to and from work, work uniforms, union dues, dues of a professional association required for employment, and cost of tools and equipment used on the job. The amount deducted for costs of transportation to and from work shall be either the actual cost of public transportation or a per mile reimbursement as paid by the state to an employee using a personal car on state business for actual miles travelled;

h. Hospital and medical insurance premiums;

i. Business and farm expenses as reported on United States income tax returns. The cost of repairs and upkeep of income producing property which may be deducted shall be limited, on an annual basis, to two percent of the value of the property;

j. An allowance of $71 per month per boarder, $39 per month per roomer and $130 per month for each person who is both a roomer and boarder. This amount shall be updated periodically by the percentage the legislature authorizes for public assistance grants;

k. A personal needs and clothing allowance of the inpatient in the amount determined in accordance with Minn. Stat. § 256B.35 for persons receiving public assistance grants;

l. Sixty percent of the income earned from child care in one's own home or, if the patient chooses, the actual itemized business expenses incurred in providing child care subject to the limitations provided in B.1., B.2., and i.;

m. A housing allowance for inpatients. An inpatient without dependents living in his or her home shall be allowed the actual cost of his or her housing and utilities in the community for the month of admission and a period of three months of continuous hospitalization subsequent to that admission. An inpatient with dependents living in his or her home shall be allowed a pro rata share of his or her household's total actual housing costs during the month of admission and for a period of three months of continuous hospitalization subsequent to that admission. This housing allowance shall be available to the inpatient only twice in any one calendar year regardless of the number of times the patient is admitted to a state hospital in that calendar year;

n. A monthly household living allowance calculated according to the schedule in Exhibit 12 MCAR § 2.027 E.4.n.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Exhibit 12 MCAR § 2.027 E.4.n.

Number in Household	Monthly Household Living Allowance
1	$ 356
2	$ 534
3	$ 712
4	$ 890
5	$1,068
6	$1,246
over 6	$1,246 plus $178 for each additional person

The number in household of an inpatient shall be the number of dependents the patient claims. The number in household of an outpatient shall be the patient plus the number of dependents the patient claims. The housing allowance for the outpatient is included in the above budgets.

By July 1 of each year, the department shall adjust the monthly household living allowance to reflect the annual percentage change reported in the most recent consumer price index, for all urban consumers in the Minneapolis-St. Paul area. The consumer price index shall be as published by the Bureau of Labor Statistics, U.S. Department of Labor. The year 1967 is the "standard reference base period".

F. Property; patient. Property shall be available to pay for the cost of the patient's care to the extent owned by the patient, subject to the exclusions in 1.-6.

1. Real property.

a. The value of the patient's homestead shall be excluded from consideration as a resource if the patient remains in the hospital for less than 18 months, if the spouse or a minor child lives in it, or if it is rented while the patient is hospitalized.

b. The value of real property owned by the patient which produces a net income shall be excluded from consideration as a resource. Real property which the patient is selling on a contract for deed and for which the patient receives payments shall be considered income producing property.

2. Personal property. The value of the following personal property shall be excluded from consideration as a resource:

a. The value of personal property other than stocks, bonds, and money market certificates which is owned by the patient and which yields or contributes to the production of a net income;

b. Up to $2,000 in cash or liquid assets, for a single patient;

c. Up to $10,000 in cash or liquid assets, for a married couple;

d. Indian claim payments made by Congress to compensate for tribal land taken by the federal government;

e. Minnesota Housing Finance Agency loans for nine months after issuance;

f. One vehicle;

g. Household goods and furniture;

h. Clothing;

i. Mobile home used as home by the patient or the patient's dependents;

j. Personal jewelry;

k. Bicycles;

l. Cameras;

m. Life insurance owned by the patient up to a cash surrender value of $1,500;

n. Trust funds, unless the trustee is required or has discretion to use the funds for paying the cost of care or the funds are designated for care, support, maintenance, or medical care; and

o. Burial expenses, including a burial lot and a prepaid burial account up to $750 plus $200 accrued interest.

3. Waiver of property as a resource.

a. The department shall waive consideration of property in excess of the exemptions when liquidation would result in undue hardship or the patient's equity cannot be converted, or when the spouse or dependent child needs a second vehicle as a means of transportation to obtain medical care, training for employment or employment;

b. Each case shall be referred to the department's legal advisor and decided on the merits of the facts recorded in the patient's financial information file to substantiate the circumstances;

c. The decision to waive the consideration shall be examined at least annually for changes in market value, opportunity for sale or mortgage, and other pertinent factors.

4. Transfer of property. The market value of any property transferred, less any value received, shall be treated as an available resource if the property is valued at more than $1,000 and if the transfer is for less than the market value and if the transfer is made:

a. During or after hospitalization in a state hospital; or

b. Prior to hospitalization in a state hospital, but with intent to avoid the use of the property to pay for hospital care or in determining ability to pay for hospital care; or

c. Prior to hospitalization in a state hospital but after planning for placement in the state hospital has begun.

5. Documentation required. When property described in 4. is transferred during the period between two years prior to admission to a state hospital and six years following discharge, the patient or the patient's representative shall provide documentation of the circumstances of the transfer.

6. Exemption. The provisions of 4. and 5. do not apply when the patient is not continuing to accrue charges and the full cost of care has been paid. The provisions of 4. and 5. do not apply to property excluded from consideration under other provisions of 12 MCAR § 2.027.

G. Ability to pay; responsible relative.

1. In general. When the patient is determined not to be able to pay the full cost of care, the department shall determine the ability of each responsible relative of the patient to pay the amount permitted by statute.

2. Interview. The responsible relative shall be interviewed to obtain and verify financial information.

3. Insurance benefits. The responsible relative shall inform the department about dependent benefits from hospital and medical insurance carried by the relative.

a. Dependent benefits to a patient shall be considered the same as the patient's insurance.

b. Any difference between benefits to a patient and others covered by the responsible relative's policy shall be verified.

c. The responsible relative shall complete and sign the forms necessary to verify patient eligibility for benefits and assign benefits to pay the cost of care of the patient.

d. When insurance benefits are paid under a policy having premiums paid by the responsible relative, the amount of the premium paid by the responsible relative may be deducted from the responsible relative's total obligation to pay.

4. Liability of responsible relatives. When the sum of the benefits described in 3. and the patient's other resources pay less than the full cost of care, the ability of each responsible relative to pay shall be determined in the statutory order of liability for cost of care. When two or more responsible relatives have the same order of liability for cost of care, a determination shall be made for each one. This provision applies to parents of a minor child and to the adult children of a mentally ill patient.

5. Limitations on relative's ability to pay. The ability of a responsible relative to pay shall be determined from the annual gross earnings of the responsible relative subject to the limitations in a.-e.

a. A responsible relative who verifies annual gross earnings of less than $11,000 shall be determined not able to pay the cost of care.

b. No responsible relative who is a resident of Minnesota shall be ordered to pay more than ten percent of the cost of care for each patient.

c. The department shall require payment of the full cost of care for a child if the child's parents and guardians all live outside Minnesota.

d. Only the annual gross earnings of the spouse of a patient shall be used to determine the spouse's ability to pay.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

e. When a responsible relative is married to a person who is not a responsible relative, only the annual gross earnings of the responsible relative shall be used to determine the responsible relative's ability to pay.

6. Determination of relative's ability to pay.

a. A responsible relative who provides the department a copy of the income tax return filed in the current year shall have his or her ability to pay determined from the table in Exhibit 12 MCAR § 2.027 G.7. For purposes of this table, household size consists of the responsible relative and the responsible relative's dependents living in the responsible relative's household, other than the patient.

b. A responsible relative who chooses not to provide the department a copy of the income tax return filed in the current year shall be assumed to have an income in excess of $11,000 and to be able to pay the statutory limit of ten percent of the cost of care. The relative shall be requested to sign an agreement to pay the balance of the patient's cost of care up to the ten percent limit.

7. Exhibit 12 MCAR § 2.027 G.7. shall be used to determine a relative's ability to pay, as described in 6.

Exhibit 12 MCAR § 2.027 G.7.

Daily Payment Based on Ability to Pay According to Household Size and Annual Gross Earnings of Responsible Relatives

Annual Gross Earnings of Responsible Relative	Household Size									
	1	2	3	4	5	6	7	8	9	10
11,000-12,999	1.00	-	-	-	-	-	-	-	-	-
13,000-14,999	1.50	.50	-	-	-	-	-	-	-	-
15,000-16,999	2.00	1.00	-	-	-	-	-	-	-	-
17,000-18,999	2.50	1.50	.50	-	-	-	-	-	-	-
19,000-20,999	3.00	2.00	1.00	-	-	-	-	-	-	-
21,000-22,999	3.50	2.50	1.50	.50	-	-	-	-	-	-
23,000-24,999	4.00	3.00	2.00	1.00	-	-	-	-	-	-
25,000-26,999	4.50	3.50	2.50	1.50	.50	-	-	-	-	-
27,000-28,999	5.00	4.00	3.00	2.00	1.00	-	-	-	-	-
29,000-30,999	5.50	4.50	3.50	2.50	1.50	.50	-	-	-	-
31,000-32,999	6.00	5.00	4.00	3.00	2.00	1.00	-	-	-	-
33,000-34,999	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-	-
35,000-36,999	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-	-
37,000-38,999	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-
39,000-40,999	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-

41,000-42,999	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-
43,000-44,999	7.50	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-
45,000 and over	7.50	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50

8. Adjustments to table. The department shall annually adjust the daily payment to reflect the annual percentage change reported in the most recent consumer price index for all urban consumers in the Minneapolis-St. Paul area.

9. Verification of financial information.

a. The annual gross earnings of a relative and the number of dependents of a relative shall be verified from the relative's Minnesota state income tax return or, in the case of a relative who is not a resident of Minnesota and does not file a Minnesota state income tax return, from the United States income tax return.

b. The amount of the premium paid by the relative to provide dependent hospital and medical insurance coverage for the patient shall be verified.

10. Clothing and personal needs allowance of a minor. The parents of a patient who is an unmarried, dependent child shall be responsible for meeting the patient's clothing and personal needs allowance in addition to the amount they are determined able to pay to meet the cost of care.

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
Board of Electricity

Adopted Rule Amending License and Renewal Fees

Rule 4 MCAR § 11.032, proposed and published at *State Register*, Volume 5, Number 50, pp. 2092-2093, June 29, 1981 (5 S.R. 2092) is now adopted as proposed.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

DPW-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR § 2.027).

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on Thursday, October 15, 1981, at 9:00 a.m. in Room A, Fourth Floor, Centennial Office Building, Saint Paul, Minnesota.

This Report is a part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411 through 15.0417 and 15.052 to determine whether the proposed rule should be adopted by the Department of Public Welfare.

Members of the agency panel appearing at the hearing included: Barbara Stromer, Assistant Commissioner, Support Services Bureau; Duane Cooney, Director, Reimbursement Division; Eleanor Weber, Supervisor, Reimbursement Division; and Kenneth Kohnstamm, Special Assistant Attorney General representing the Department of Public Welfare.

Eleven people signed the hearing register. Three public witnesses appeared and spoke at the hearing. The Department submitted 19 written exhibits. Eight written comments were received from the public.

The Commissioner must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the he does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the he shall submit the rule to the

Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On August 3, 1981, the Department filed the following documents with the Chief Hearing Examiner:

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

2. On August 24, 1981, a Notice of Hearing and a copy of the proposed rule were published at 6 State Register 225.

3. On August 24, 1981, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice. The Department also mailed notice to Minnesota's County Welfare Departments, Human Service Boards and State Hospitals as contemplated by Minn. Stat. § 15.0412, subd. 4.

4. On September 14, 1981, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(i) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 1898 (May 25, 1981).

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

5. The record remained open through November 4, 1981, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

Statutory Authority

6. Minnesota's nine state hospitals admit people for the care and treatment of mental illness, mental retardation or chemical dependency. Persons

are admitted regardless of ability to pay. Minn. Stat. § 246.51 (1980) directs the Commissioner of Public Welfare to determine an individual's ability to pay for his or her care and treatment. If the patient is unable to pay the cost of care, then the statute directs the Commissioner to determine the ability of certain responsible relatives to pay for the patient's care. The statute provides no standards or procedures for the Commissioner in making such determinations nor does it provide specific statutory authority for the adoption of rules. The purpose of this proposed rule is to establish those standards and procedures so that determinations are made fairly and uniformly.

7. Minn. Stat. §§ 253A.01 to 253A.21 is the Minnesota Hospitalization and Commitment Act. This act governs the care and treatment of persons in state hospitals. The Department cites as authority for the adoption of this rule, Minn. Stat. § 253A.21, subd. 6 (1980), which provides as follows:

> The commissioner shall establish such rules and regulations not inconsistent with the provisions of sections 253A.01 to 253A.21 as he may find to be necessary for the proper and efficient administration thereof and shall prescribe the form of applications, records, reports, and medical certificates required by sections 253A.01 to 253A.21 and the information to be contained therein.

While the Department recognizes that most of the specific statutory sections concerning payment for state hospital care by patients and their relatives are contained in Chapter 246, the Department suggests that Chapter 253 also recognizes the responsibility of the patient and his or her relatives to pay for care (Minn. Stat. § 253A.07, subd. 22 (1980)) and that therefore the proposed rules are authorized under Chapter 253. Minn. Stat. § 253A.07, subd. 22 (1980) relates specifically to the judicial commitment process, however.

8. The Department also suggests that authority for the rules exists in Minn. Stat. § 246.01, which provides that all powers and duties vested in the State Board of Control are transferred to the Commissioner of Public Welfare. The Board of Control, which was abolished in 1939, had authority to adopt rules for the conduct of its business. DPW suggests that this rulemaking authority was transferred to the Commissioner of Public Welfare by § 246.01. It seems likely, however, that if the Legislature had intended this general rulemaking authority possessed by the Board of Control to survive that it would have specifically restated it in Chapter 246. Finally, the Department suggests that statutory authority for the proposed rules arises from the nature of the duty imposed upon the Commissioner by Section 246.51, which requires him to determine "what part of the cost of care, if any, the patient is able to pay". It is argued that any standards or procedures proposed by the Commissioner to determine ability to pay would fall within the definition of rule contained in the APA. Accordingly, since the Commissioner must establish standards in order to carry out the legislative mandate, the legislature must have intended that it adopt rules consistent with the APA and the Minnesota Supreme Court holdings in McKee v. Likens, 261 N.W.2d 566 (Minn. 1977) and Johnson Brothers Wholesale Liquor Co. v. Novak, 295 N.W.2d 238 (Minn. 1980).

9. The Department has demonstrated its statutory authority to adopt the

proposed rule. That authority was not questioned in the course of this rulemaking proceeding. The Office of Administrative Hearings has, in the past, recognized that statutory authority for interpretative rules may, in the proper circumstances, be implied. Davis defines an interpretative rule as "any rule an agency issues without exercising delegated legislative power to make law through rules". 2 Davis, Administrative Law Treatise, (2d ed.), § 7.8, p. 36. The proposed rule is interpretative since it announces the Commissioner's interpretation of what factors will be considered in applying the statute to individual cases. Professor Cooper has stated that, "It is equally clear that an agency may, without specific statutory authority, make known its interpretation of the provisions of the statute it administers." 1 Cooper, State Administrative Law, p. 176 (1965). In determining that the rules it was examining were interpretative, our Supreme Court in the case of Minnesota-Dakotas Retail Hardware Association v. State, 279 N.W.2d 360 (Minn. 1979) noted that the power to enforce a statute necessarily encompasses the authority to announce in advance the circumstances when such power will be used. (279 N.W.2d at 365).

10. Minn. Laws 1981, Ch. 109 was enacted this past session in response to the Retail Hardware decision. The new law makes it clear that any rule, whether it is legislative, interpretative, or procedural has the force and effect of law once it has complied with the requirements of the APA and has been approved by the Attorney General, filed in the Office of the Secretary of State and published in the State Register. (The session law will be codified as Minn. Stat. § 15.0413, subd. 1, 1a and 1b.) The passage of this law does not, however, compel the conclusion that the legislature intended to require specific statutory authority for interpretative rules similar to that required by the Retail Hardware Court for a legislative rule. Rather, the legislative intent appears to be that once rules have passed through the stringent requirements of the APA, they are to have the force of law no matter how they are characterized. Although statutory authority for the adoption of interpretative rules may not be implied in every case, the language of Section 246.51 contemplates and in fact requires the adoption of standards to guide the Commissioner's determinations. The Commissioner is required to determine what part of the cost of care the patient is able to pay and the ability of relatives to pay. As the Department points out, such standards could not be properly adopted without utilizing the rulemaking procedures of the APA. The situation is therefore an appropriate one to find implied statutory authority for the proposed rules.

Section 2.027 A. - Application

11. This subsection sets out the scope of the proposed rule and provides that it is to be read in conjunction with other rules of the Department. The Director of the Developmental Disabilities Program in the Department of Energy, Planning and Development, Colleen Wieck, commented that the other rules should be identified. (Ex. F) DPW replied that it is unnecessary to cite the rules but that the Department intends to use applicable provisions of other rules wherever appropriate. (Ex. 18, p. 1) Although the rule is needed and reasonable as proposed, the Department should consider whether or not

listing at least the more obvious rules in this section would provide readers with a better orientation to how this rule will operate.

Section 2.027 B. - Definitions

12. Section 2.027 B.3. defines "cost of care or per diem". The Director of the Ottertail County Department of Social Services commented that a different per diem should be calculated for each state hospital as opposed to determining an average cost. (Ex. D) DPW commented that the question of whether or not there is more than one per diem is not within the purview of the proposed rule. (Ex. 18, p. 1) It appears that the statute at section 246.50, subd. 5, contemplates an average cost where it speaks of "average per capita cost of all maintenance, treatment and expense, . . . at all of the state hospitals . . .". The definition is needed and reasonable as proposed.

13. Colleen Wieck accurately notes that the last two sentences of § 2.027 B.5. appear to contradict each other. (Ex. F) Although DPW believes that the wording in the proposed rule is clear (Ex. 18, p. 2), the second sentence could be interpreted to mean that a dependent cannot be allocated equally among the taxpayers as is specifically allowed by the last sentence. DPW's intent is to ensure that a person is not counted as a dependent more than once. (Ex. 10, p. 3) As it stands, the rule is too vague to provide fair warning to a reader of what conduct is prohibited and is therefore a violation of a substantive provision of law. See, Thompson v. City of Minneapolis, 300 N.W.2d 767 (Minn. 1980). In order to correct the defect, it is suggested that the second sentence be rephrased as follows: "An individual may not be claimed as a full unallocated dependent by more than one person." It is further recommended that the word "individuals" be changed to the word "persons" where it appears in the third sentence so that the usage is consistent with the first sentence of this definition.

14. In regard to the definitions of "inpatient", "outpatient" and "patient" located at § 2.027 B.9., 12. and 13., Stephen E. Scott, on behalf of Legal Advocacy for Developmentally Disabled Persons in Minnesota (LADDP), stated that the term "patient" ought to be changed to the word "resident" since this term is more commonly used in state hospitals today. (Ex. E, p. 1) DPW noted that the word "patient" is used in the statute at section 246.50 and that the use of another term would introduce unnecessary confusion. DPW also points out that the term "resident" cannot be applied to both inpatients and outpatients. The definitions are needed and reasonable as proposed.

15. Section 2.027 B.19. defines the word "resource". Stephen Scott suggested the words "or may be" be stricken from the rule since the language was too speculative. (Ex. E, p. 1) DPW agreed to this suggestion at the hearing. (Ex. 17, p. 1) So amended, the proposed rule subsection is needed and reasonable. The deletion does not constitute a rule which is substantially different from that which was published.

16. In regard to the definition of "responsible relative" at § 2.027 B.20., the Director of the Wilken County Family Service Agency objected to the inclusion of adult children in the case of a mentally ill patient. (Ex. B)

The definition is, however, mandated by the statute (Minn. Stat. § 246.50, subd. 6) and is necessary and reasonable.

Section 2.027 C. - Determination Procedure

17. Section 2.027 C.1.a. sets out the times at which a determination must be made as to the ability to pay the cost of care. LADDP suggested that a patient be allowed to request a redetermination. (Ex. E, p. 2) At the hearing, the agency suggested that the following language be inserted after the word "status": "when a patient, responsible relative, guardian, conservator or representative payee reports a change in the financial status used in determining ability to pay,". (Ex. 17, p. 1) Mr. Scott also objected to the language of the rule which requires the ability to pay to be determined when there is "or may be" a change in financial status. Mr. Scott suggested that the language in quotations is too speculative. (Ex. E, p. 2) The Department responded that the words are appropriate because prior to any determination procedure the financial circumstances of the person are not known. (Ex. 18, p. 5) The phrase "or may be" creates unfettered discretion in the Department without any certain standards to guide that discretion. (See, Papachristou v. City of Jacksonville, 405 U.S. 156 (1972), Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968) and Minn. Stat. § 15.0411, subd. 3.) As such, it constitutes a violation of a substantive provision of law. In order to correct this defect, the three words "or may be" must be deleted. The rule subsection is otherwise needed and reasonable and the language added by the Department does not result in a rule which is substantially different from that which was published in the State Register.

18. Section 2.027 C.1.b. provides that the Department may continue to evaluate the patient's ability to pay for a period of six years after the patient's discharge from the hospital. LADDP commented that the period should be one year instead of six years. Mr. Scott also stated that any redetermination should be based upon the financial circumstances which existed during the time period when the person was in the state hospital rather than after. (Ex. E, p. 2) The Department does in fact propose to consider the patient's financial situation after hospitalization. It has chosen the six-year period by analogy to Minn. Stat. § 541.05, which sets a six-year statute of limitations on lawsuits to collect debts upon a contract or other obligation. These decisions by the Department are within its policy-making discretion and the rule subsection has been shown to be needed and reasonable as proposed.

19. Section 2.027 C.2. describes that persons to be interviewed relative to the ability to pay. LADDP commented that a statement should be added that the patient should be included for participation to the extent of his or her ability when someone such as the guardian or custodian is interviewed. (Ex. E, p. 2) During its post-hearing review, the Department determined that this section needed to be revised in order to fully protect the rights of the patient. The Department proposes to amend the subsection as follows:

Section C.2.a.

> In all instances the patient shall be present at the interview to determine ability to pay unless the patient is a minor or the attending physician of the state hospital attests the patient's

presence is medically contraindicated. The physician's signed statement shall be placed in the patient's financial information file.

Section C.2.b.

The patient shall be the source of financial information to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person. When the patient is not the source of financial information, the reason shall be noted in the patient's financial information file.

So amended p.4

Section C.2.c.

When the patient is not able to act on his own behalf, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker.

Section C.2.d.

If the patient is unable to play the full cost of the per diem, the responsible relative shall be interviewed.

The amendment appears to answer LADDP's objection and is not substantial. So amended, the subsection is needed and reasonable.

20. Section 2.027 C.4.b. provides that other information relevant to the person's ability to pay must be verified if the reimbursement officer has reason to question the accuracy of the information. The Director of the State Developmental Disabilities Program commented that this requirement was very broad and asked that the circumstances when this would apply be specified as well as what kinds of additional information may be requested. (Ex. F) DPW replied that verification is essential to ensure accuracy. (Ex. 18, p. 7) As it is proposed, this rule subsection does not provide any standards for the reimbursement officer in determining when there is reason to question the accuracy of information supplied. Accordingly, the rule as proposed permits arbitrary enforcement. The proposed subsection is therefore a violation of a substantive provision of law. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). In order to correct this defect, it must either be deleted or it must be amended to include standards to guide the reimbursement officer in determining when to request verification of financial information other than that listed in C.4.a.

deleted p.5

21. Section 2.027 C.6. sets out the consequences of a refusal to complete the financial information form. LADDP suggested a time period of at least 60 days be specified for an individual to provide the information. (Ex. E, p. 2) At the hearing, DPW proposed an amendment which would insert the following language after the word "verification" in line 22: "within 30 days of the interview". So amended, the rule subsection is needed and reasonable. The amendment is not substantial.

amended p.5

22. Section 2.027 C.7. concerns the determination order. At the hearing, DPW recommended several minor changes which includes setting out the right to a review and an appeal and mentioning the representative payee as a recipient of the order. (See, Ex. 17, attached hereto, p. 5, lines 26-28.) So amended, the subsection is needed and reasonable. The changes are not substantial.

amended p.6

23. Section 2.027 C.8. sets out the procedure for a review of the determination order. The proposed rule subsection requires that the request be submitted within 15 calendar days of the date the determination order was mailed. The rule also provides that a request for a review shall not extend the time for appeal given in Minn. Stat. § 246.55. That statute permits for a de novo appeal of the Commissioner's order to District Court, provided that the notice of appeal is filed within 30 days from the date the order was mailed. LADDP objected to the time period and asked that 30 calendar days be set to request a review and that the order not be final until that 30-day period had run in order to preserve the appeal under Minn. Stat. § 246.55. (Ex. E, p. 2) Although DPW has established the necessity and reasonableness of a non-judicial review process (Ex. 10, p. 6), the Department's decision not to extend the time for the judicial appeal has not been shown to be reasonable. Although the 15 calendar day request for review period is reasonable, the requestor is virtually put in the position of having to file a simultaneous judicial appeal in order to protect his or her right to that appeal. Even assuming optimistically that DPW would act on the request for review within a week, only one further week would remain to exercise the section 246.55 appeal. Since the rule does not require a decision by the Department in regard to the review of the determination within any set number of days, the rule as proposed permits DPW to effectively extinguish the requestor's judicial appeal rights simply by delaying a decision on the review period. It is neither reasonable to expect a person to initiate a judicial appeal, which may require obtaining a lawyer, within only a few days, nor is it reasonable to require a judicial appeal simultaneous with the request for review since this would defeat the purpose of providing the administrative review in the first place. Although the rule has a laudable goal, the rule as proposed is constructed in an arbitrary manner. Hurley v. Chaffee, 43 N.W.2d 281, 284 (1950); In re Application of Byron M. Hansen, 275 N.W.2d 790 (Minn. 1978). In order to correct this defect, the Department should delete the final sentence of this subsection and provide instead that the Department's response to the request for review shall constitute the final order of the Commissioner for the purposes of appeal pursuant to Minn. Stat. § 246.55. A reading of section 246.55 indicates that the legislative intent is to provide 30 days for an appeal from a final action of the Commissioner. As long as the determination order is being considered for revision, the Commissioner's order cannot be properly said to be final. The Department may be able to suggest alternative revisions of the proposed subsection which would also correct the defect, such as a limitation of the period for requesting review to 7-10 calendar days with a Department response to be made within a further 7 to 10 day period.

see new language p.6

12 MCAR § 2.027 E. - Net Income; Patient

24. Section 2.027 E.4. sets out the deductions permitted from gross income in order to arrive at a net income for the purpose of computing ability to pay. Section 2.027 E.4.f. permits a deduction for monthly payments on previously incurred bills up to a maximum of $100 per month. LADDP stated that 100% of payments on incurred bills should be deductible since it is only

reasonable to allow an individual to pay these ongoing bills while they are receiving treatment. (Ex. E, p. 3) The Director of the State Developmental Disabilities Program commented that the $100 maximum deduction seems very low. (Ex. F) In its statement of need, DPW stated that the maximum limit was established to prevent the patient who has large sums of outstanding obligations from using all resources to pay previously incurred bills. The amount of $100 would allow the patient to budget systematic monthly payments to maintain his or her credit rating and to ensure continued provision for the family. The limitation of $100 prevents the absorption of all the net assets of the patient by past debts. (Ex. 10, p. 8) In its post-hearing comments, the Department noted that the maximum amount will provide a way for the patient to plan for systematic payments from income received while a patient at a state hospital while at the same time recognizing that the patient has an obligation to pay the state for his care. DPW also noted that other sections of the rule permit a patient to deduct a monthly housing allowance for up to four months following admission and to deduct a monthly household living allowance for his or her dependents. (Ex. 18, p. 10) The balancing done by the Department is not arbitrary and subsection has been demonstrated to be needed and reasonable.

25. At the hearing, DPW suggested amendments to E.4.j., k., and l., which would increase the allowance per month per roomer, would add a special personal allowance and correct a rule citation. (See, Ex. 17, attached hereto, p. 8, lines 3, 10 and 14). So amended, the rule subsections are needed and reasonable. None of the amendments create a rule substantially different from that as published.

12 MCAR § 2.027 F. - Property; Patient

26. Section 2.027 F.2. sets out the personal property which may be excluded from consideration as a resource. At the hearing, DPW suggested two amendments to F.2.a. to clarify the intent of this exclusion. (See, Ex. 17, attached at p. 10, lines 7 and 9.) The amendments are not substantial and result in a proposed rule subsection which is needed and reasonable.

27. The proposed rule at F.2.c. sets the exclusion for cash or liquid assets at $10,000 for a married couple. The Director of the LeSueur County Welfare Department and the Director of Todd County Social Services (Exs. A and G) both stated that the $10,000 figure was too high and that it should conform to the medical assistance program which allows a $2,000 exclusion for single individuals and $4,000 for a couple. The Department acknowledged that the amounts of cash excluded from consideration were patterned after the medical assistance program. The amount excludable for couples in that program was lowered by the legislature in 1981 from $10,000 to $4,000. Since the Department has tried to incorporate whenever possible the medical assistance program standards, it proposes in its post-hearing comments that the $10,000 figure be amended to $4,000. (Ex. 18, pp. 12-13) Although the dollar figure as amended is substantially lower, it does not result in a rule which is substantially different from that as published since it does not affect classes of persons not represented at the hearing or go to a new subject matter or constitute a

major substantive change or result in a fundamentally different rule. (See, 9 MCAR § 2.111.) So amended, this subsection is needed and reasonable.

28. Section 2.027 F.2.n. excludes trust funds unless the trustee is required or has discretion to use the funds for paying cost of care. DPW believes that it is reasonable to make trust funds available to pay for care to the maximum extent possible. (Ex. 10, p. 13) LADDP commented that funds which the trustee has discretion to use for paying cost of care should not be considered an available resource. (Ex. E, p. 3) Our Supreme Court has held, however, that assets may not be placed in a discretionary trust so as to remove them from consideration when the resources of a beneficiary are being determined for purposes of receiving medical assistance. McNiff v. Olmstead County Welfare Department, 176 N.W.2d 888, 892 (Minn. 1970). At the hearing, DPW sought to further clarify the intent of this subsection by adding the following phrase: "(notwithstanding any requirement that public funds first be exhausted)". The proposed amendment seeks to defeat an attempt by the trustee to use government funds as a source of first resort instead of paying trust funds for cost of care. (Ex. 18, p. 13) The Department has demonstrated the need for and reasonableness of making discretionary funds available to pay cost of care. The amendment is likewise reasonable and is not a substantial change. It is suggested, however, that because the subsection itself is an exclusion and an important part of the subsection is contained in an "unless" clause, the use of a parenthetical clause to express the idea becomes somewhat confusing. DPW should consider simply restating this idea in an affirmative fashion in a separate sentence.

29. Section 2.027 F.2.o. permits the exclusion of a burial lot and a prepaid burial account up to $750 plus $200 accrued interest. The dollar amounts are the same as that contained in the medical assistance program. (Ex. 10, p. 13) LADDP commented that these dollar amounts have been used by the state for a number of years without adjustment for inflation and that they should be increased to reflect the actual cost. (Ex. E, p. 3) The Director of Todd County Social Services located in Long Prairie, Minnesota, commented that the amounts were appropriate. He states that approximately 95% of all public assistance beneficiaries in his area have sufficient assets to completely pay their own burial expenses. Additionally, he has found that most have social security benefits, other personal funds or life insurance to cover such expenses. Todd County has adopted a burial allowance schedule which totals approximately $1,350 for all burial expenses. (Ex. G, p. 1) The record demonstrates the need for and the reasonableness of the rule as proposed.

30. At the hearing, DPW suggested two amendments to section 2.027 F.3. Section F.3.a. was amended to provide more specific criteria for waiving consideration of property in excess of the exemptions. (See, Ex. 17 at p. 10, line 36.) At F.3.b., the words "legal advisor" were replaced with "Reimbursement Division Central Office" to more accurately pinpoint the responsible persons. Neither amendment is substantial and the resulting rule subsections are needed and reasonable.

31. Section 2.027 F.4. deals with transfers of property. Section F.4.a. includes transfers during or after hospitalization. LADDP suggested that the words "or after" be deleted to be consistent with its earlier suggestion that

ability to pay not be determined after hospitalization. (Ex. 3, p. 3) Since Section 2.027 C.1.b. was found to be reasonable, this subsection is likewise reasonable. DPW may wish to consider Mr. Scott's suggestion that a time limit be placed on the period after hospitalization that a transfer will be treated as an available resource.

time limit added p.12

32. Section 2.027 F.4.c. defeats transfers made prior to hospitalization, but after planning for a placement in a hospital has begun. Mr. Scott suggested that the section was vague since it is difficult to pinpoint when planning for placement begins. He suggested deletion of the section. At the hearing, the Department suggested amending the subsection so that it would read as follows: "Prior to hospitalization in a state hospital but within 24 months of admission to the hospital." The amendment cures the vagueness problem. DPW suggests that it is reasonable to so limit the time period. (Ex. 18, p. 15) The subsection as amended is needed and reasonable. The change is not substantial.

so amended p.12

33. Section 2.027 F.5. requires the patient or his representative to document transfers during the period two years prior to admission and six years following discharge. Mr. Scott again suggested that the six year provision be deleted so that patients would not be faced with large bills many years after hospitalization. (Ex. E, pp. 3-4) The Director of Todd County Social Services supported the rule as proposed. (Ex. G, p. 2) The rule subsection is consistent with prior proposed rules, the statute of limitations, and is needed and reasonable.

12 MCAR § 2.027 G. - Ability to Pay; Responsible Relative

34. Section G.3.d. as proposed permitted the responsible relative to deduct the insurance premium paid from his total obligation to pay. The rule as proposed, however, limited a deduction to situations where the insurance benefits are paid. In response to a prehearing comment, DPW agreed that limiting deductibility to circumstances where benefits are paid will serve as a disincentive to maintaining insurance policies and therefore proposed that the first clause of the proposed subsection be deleted. The amendment is not substantial and so amended, the subsection is needed and reasonable.

deleted p.13

35. Section 2.027 G.4. describes a method of determining liability of responsible relatives. LADDP had two comments in regard to this section. It stated that the county's share of hospital costs should be subtracted from the full cost of care before determining the amount to be paid by the responsible relative. LADDP also suggested that the second sentence could be interpreted to permit calculations for each parent. (Ex. E, p. 4) DPW responded that it is department policy that the last resource to pay an obligation for cost of care is a public assistance program. Accordingly, under the rule the county is liable for only the portion of the cost of care up to 10% which is not paid by patient resources including insurance benefits and payments by responsible relatives. See, Minn. Stat. § 246.54 (1980) as amended by Minn. Laws 1981, Ch. 360, Art. 2, § 17. In regard to individual determinations for each parent, DPW pointed out that at lower income levels, such a determination worked to the advantage of parents. (Ex. 18, p. 17) The proposed method results in a lesser total charge to the parents who have combined incomes

below $50,000. (Ex. 13) The proposed rule subsection is needed and reasonable.

36. Section 2.027 G.5.c. requires full payment of cost of care for a child if the parents and guardians all live outside Minnesota. In response to a prehearing comment stating that the residence of a guardian should be irrelevant, DPW agreed to strike the words "and guardians" and to add further language clarifying the parents' obligation. (See, Ex. 17 at p. 13, lines 4 and 5, attached hereto.) The changes are not substantial and so amended, the subsection is needed and reasonable.

37. Section 2.027 G.5.e. makes it clear that when a responsible relative is married to a person who is not a responsible relative, only the earnings of the responsible relative will be used to determine the responsible relative's ability to pay. The Director of the Wilkin County Family Service Agency commented that this leads to an inequity since a married daughter whose husband is the sole source of income would not be calculated as able to pay, while a son who is married and the sole wage earner would have his earnings included in the calculation. (Ex. B) DPW replied that the rule adheres to the statutory definition of responsible relative. Minn. Stat. § 246.50, subd. 6 does not include a son-in-law as a responsible relative. The subsection is needed and reasonable.

38. Section 2.027 G.7. consists of a table setting out a daily payment by the responsible relative based upon gross earnings and household size. At the hearing, DPW suggested amendments to lines 44, 46 and 48 through 50, which generally had the effect of increasing payments for persons at the higher income levels. (See, Ex. 17 at p. 14). The Director of the LeSueur County Welfare Department stated that persons in the higher income brackets should pay more than indicated on the chart. He states that during fiscal year 1982, 10% of the hospital per diem would be approximately $8.70 and yet the highest payment on the chart before the amendment was $7.50. (Ex. A) The Director of the Todd County Social Services urged that the table be compressed so that full responsibility occurs at a lower income bracket and suggested that the chart be expressed in percentages rather than dollar amounts. He submitted a proposed table with his comments. (Ex. G, p. 2) The Minnesota State Employees Union also commented that the proposed scale does not adequately reflect responsible relative's ability to pay. They urged that the scale be modified to increase cost liability especially in the higher income brackets. (Ex. H, pp. 1-2)

39. In its post-hearing comments, DPW proposes to modify the table by striking all material in lines 15 through 54, and substituting new figures. The table as now proposed by DPW is attached to this Report and is marked Exhibit 18, p. 21. DPW judged that the payment adjustments suggested by the Todd County Director would constitute a substantial change in the table. The Department came to the conclusion that an appropriate adjustment of the table could be based upon the Title XX Social Service Fee Schedule since it has been through the rulemaking process, it is used statewide, applies only to persons who are not on public assistance, meets the Department's goal of encouraging people to be self-sufficient, and establishes a sliding fee schedule based on income. (Ex. 18, p. 22) The amended table generally requires higher payments

at income levels over $22,000 when compared with the table that was originally published. The changes are not so large as to constitute a substantial change, however, and are based upon comments made by participants in the rule hearing process. So amended, the proposed rule subsection is needed and reasonable.

so amended p. 15, 16, 17, 18

40. At the hearing, DPW proposed to withdraw section 2.027 G.8. since it believes the provision is confusing and may be impossible to implement. The remaining subsections will be renumbered accordingly.

deleted p. 6

41. A comment by the Minnesota State Employees Union expressed concern that the rule was silent on determination of eligibility for federal reimbursement such as medicare and medicaid. (Ex. H, p. 2) DPW responded that medicare is considered an insurance benefit which would be considered under the rule as proposed. The financial statement used by DPW inquires about receipt of medicare and MA benefits. The procedure includes an investigation of county welfare records to learn if the patient was receiving MA benefits at the time of admission into the hospital. Accordingly, DPW believes that the proposed rule does provide for investigation of eligibility for federal benefits and the completion of applications for benefits for eligible patients. (Ex. 18, p. 26)

42. All subsections of the proposed rule which are not discussed in this Report are found to be needed and reasonable based upon the Department's Statement of Need and Reasonableness, its presentation at the hearing, and its post-hearing comments.

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

CONCLUSIONS

1. That the Department of Public Welfare gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Findings of Fact No. 13, 17, and 20.

4. That the has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Finding of Fact No. 23.

5. That the amendments and additions to the proposed rules which were suggested by the after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions No. 3 and 4 as noted at Findings of Fact No. 13, 17, 20 and 23.

7. That due to Conclusions No. 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: November 25, 1981.

GEORGE A. BECK
State Hearing Examiner

DPW Exh. No. 11
File No.
Date

ADDENDUM TO PROPOSED 12 MCAR 2.027
AND TO STATEMENT OF NEED AND REASONABLENESS

A. CHANGES IN PROPOSED 12 MCAR 2.027 AS RECOMMENDED BY THE DEPARTMENT

Page 3 Section B 19 line 16

Strike the words "or may be".

Page 3 Section C.1.a. line 29

Insert after the word "status",: when a patient, responsible relative, guardian, conservator or representative payee reports a change in the financial status used in determining ability to pay,

Page 5 Section C.6. line 22

Insert after the word "verification": within 30 days of the interview

Page 5 Section C.7. line 26

Strike the word "and" and insert ","

Page 5 Section C.7. line 27

Insert after the words "ordered to pay": ,and the right to a review and an appeal.

Page 5 Section C.7. line 28

Amend line 28 to read: the person's guardian, conservator or representative payee.

Page 8 Section E.4.j. line 3

The figure "$39" should be corrected to $59.

Page 8 Section E.4.k. line 10

Place a period after the word "grants" and add a new sentence: In addition, a special personal allowance drawn solely from earnings from any productive employment under an individual plan of rehabilitation or work therapy shall be given to all patients in state hospitals. The special personal allowance shall not exceed $50 per month.

Page 8 Section E.4.1. line 14

Correct "i" at end of line to read E.4.i.

Page 10 Section F.2.a. line 7

Strike the words "money market certificates" and substitute the words "other investment instruments".

Section F.2.a. line 9

Replace the semicolon with a comma and add: such as tools, farm implements, livestock, and business inventory and fixtures acquired prior to hospitalization;

Page 10 Section F.2.n. line 31

After "care" insert (not withstanding any requirement that public funds first be exhausted)

Page 10 Section F.3.a. line 36

Strike the material following the word "when" through page 11 line 4 and substitute: the patient's equity can not be liquidated, the offered price is less than 80% of the market value given by two appraisers agreeable to both parties, or the cost of repairs necessary to meet the conditions of sale exceeds 35% of the offered price.

Page 11 Section F.3.b. line 6

Strike the words "legal advisor" and substitute: Reimbursement Division Central Office.

Page 11 Section F.4.c. Line 23

Strike all of line 23 and substitute: within twenty-four months of admission to the hospital.

Page 12 Section G.3.d. lines 16 and 17

Strike all of line 16 and line 17 up through the word "relative". Capitalize "The".

Page 13 Section G.5.c. lines 4 and 5.

In line 4, strike the words "and guardians".

In line 5, substitute the word "both" for all and after Minnesota add: and are financially able to pay as determined by Section G.7.

Page 14 Section G.7. [Household Size

	1	2	3	4	5	6	7	8	9	10]

Amend line 44 to read:

40,999	8.00	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-

Amend line 46 to read:

42,999	8.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	0.50	-

Amend line 48 to read:

44,999	8.80	8.00	7.00	6.00	5.00	4.00	3.00	2.00	1.00	0.50

Strike lines 49 and 50 and substitute: When annual gross earnings exceed the amount shown in Exhibit 12 MCAR 2.027 G.7, the daily payment subject to the statutory limitation shall be calculated by increasing each successively higher income level by $.50.

7. Exhibit 12 MCAR §2.027 G.7. shall be used to determine a relative's ability to pay, as described in G.6.

Exhibit 12 MCAR §2.027 G.7.

Daily Payment Based on Ability to Pay According to Household Size and Annual Gross Earnings of Responsible Relatives

Annual Earnings of Responsible Relative	Household Size									
	1	2	3	4	5	6	7	8	9	10
11,000-11,999-	.33	0								
12,000-12,999	.45	.33	0							
13,000-13,999	.57	.45	.33	0						
14,000-14,999	.72	.57	.45	.33	0					
15,000-15,999	.87	.72	.57	.45	.33	0				
16,000-16,999	1.05	.87	.72	.57	.45	.33	0			
17,000-17,999	1.23	1.05	.87	.72	.57	.45	.33	0		
18,000-18,999	1.45	1.23	1.05	.87	.72	.57	.45	.33	0	
19,000-19,999	1.81	1.45	1.23	1.05	.87	.72	.57	.45	.33	0
20,000-20,999	2.26	1.67	1.45	1.23	1.05	.87	.72	.57	.45	.33
21,000-21,999	2.82	1.92	1.67	1.45	1.23	1.05	.87	.72	.57	.45
22,000-22,999	3.52	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72	.57
23,000-23,999	4.41	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87	.72
24,000-24,999	5.51	3.06	2.45	2.17	1.92	1.67	1.45	1.23	1.05	.87
25,000-25,999	6.89	3.82	2.75	2.45	2.17	1.92	1.67	1.45	1.23	1.05
26,000-26,999	8.61	4.77	3.05	2.75	2.45	2.17	1.92	1.67	1.45	1.23
27,000-27,999	8.80	5.96	3.37	3.05	2.75	2.45	2.17	1.92	1.67	1.45
28,000-28,999	8.80	7.46	4.21	3.37	3.05	2.75	2.45	2.17	1.92	1.67
29,000-29,999	8.80	8.80	5.26	3.72	3.37	3.05	2.75	2.45	2.17	1.92
30,000-30,999	8.80	8.80	6.57	4.07	3.72	3.37	3.05	2.75	2.45	2.17
31,000-31,000	8.80	8.80	8.21	4.45	4.07	3.72	3.37	3.05	2.75	2.45
32,000-32,999	8.80	8.80	8.80	4.83	4.45	4.07	3.72	3.37	3.05	2.75
33,000-33,999	8.80	8.80	8.80	6.03	4.83	4.45	4.07	3.72	3.37	3.05
34,000-34,999	8.80	8.80	8.80	7.53	5.25	4.83	4.45	4.07	3.72	3.37
35,000-35,999	8.80	8.80	8.80	8.80	5.67	5.25	4.83	4.45	4.07	3.72
36,000-36,999	8.80	8.80	8.80	8.80	6.12	5.67	5.25	4.83	4.45	4.07
37,000-37,999	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83	4.45
38,000-38,999	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25	4.83
39,000-39,999	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67	5.25
40,000-40,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12	5.67
41,000-41,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56	6.12
42,000-42,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	7.56
43,000-43,999	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80	8.80

When the annual gross earnings exceed the amount shown in Exhibit 12 MCAR 2.027 G.7., the daily payment shall be at the statutory limitation of 10% of the per diem.

DPW-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING REIMBURSEMENT FOR COST OF CARE OF PATIENTS OF A STATE HOSPTIAL (12 MCAR § 2.027).

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 15, 1981, before George A. Beck, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Public Welfare and;

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has cured the defects in the rules as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department of Public Welfare to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: January 4, 1982.



DUANE R. HARVES
Chief Hearing Examiner

original

DPW-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR § 2.027).

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and

a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: November 30, 1981.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING REIMBURSEMENT FOR COST OF CARE OF PATIENTS OF A STATE HOSPITAL (12 MCAR §2.027)

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on the fifteenth day of October, 1981, at 9:00 a.m., in Room A, Fourth Floor, Centennial Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes §15.0412 was served upon all persons, associations, and other interested groups registered with the Minnesota Department of Public Welfare for that purpose.

At the hearing, the proposed rule as published in 6 State Register 225 on August 24, 1981 was considered. Members of the agency panel appearing at the hearing included: Barbara Stromer, Assistant Commissioner, Support Services Bureau; Duane Cooney, Director, Reimbursement Division; Eleanor Weber, Supervisor, Reimbursement Division; and Kenneth Kohnstamm, Special Assistant Attorney General representing the Department of Public Welfare.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact and a Recommendation which are contained in the Report of Hearing Examiner dated November 25, 1981. The Report is attached hereto as Exhibit A.

Pursuant to the requirements of Minn. Stat. §15.0412, Subd. 4 (1978) this Report was available to all affected persons for at least five (5) days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, the applicable statutory standards and criteria, and having confirmed the need for the adoption and repeal of above captioned rules and the reasonableness thereof, the Commissioner now makes the following

FINDINGS OF FACT

1. The Findings of Fact of the Hearing Examiner are enumerated 1 through 42 in his Report. The Commissioner accepts the Hearing Examiner's Findings of Fact 1-7 and 9-42 and has incorporated the recommendations of the Hearing Examiner contained in those findings. The Commissioner accepts the Hearing Examiner's Findings of Fact 8 with the exception noted below. In addition, the Commissioner makes additional findings below in response to or to implement the Hearing Examiner's Findings of Fact 11, 20, 23, and 28.

2. Finding 8 of the Hearing Examiner's Report is one of several findings addressing the Commissioner's statutory authority for the promulgation of this rule. One of the statutes relied upon by the Commissioner is Minn. Stat. §246.01 (1980), which transfers to the Commissioner all powers and duties formerly vested in the State Board of Control. The State Board of Control, abolished in 1939, had the authority to adopt

rules for the conduct of its business. The Hearing Examiner found, "It seems likely, that if the Legislature had intended this general rule-making authority possessed by the Board of Control to survive that it would have specifically restated it in Chapter 246." The Commissioner rejects this finding. If only powers expressly specified in the statute were passed from the Board of Control to the Commissioner, then the general language providing that all powers and duties are transferred is rendered a nullity. The Commissioner accepts and adopts the remainder of Finding 8 of the Hearing Examiner's Report.

3. In Finding 11, the Hearing Examiner suggested, but did not require, that the Department consider providing better orientation to readers of this rule by listing in Section 2.027A the more obvious Department rules to be read in conjunction with MCAR §2.027. Although the Commissioner considers the suggestion to have some merit the Commissioner believes there are at least two reasons not to do so. First, a list is restrictive. The Department cannot anticipate future rules of the Department which may interact with 12 MCAR §2.027. Second, a listing may lead the general public to believe the listed rules are the only ones applicable. Therefore, the Commissioner does not find it necessary or reasonable to adopt the suggestion.

4. In Finding 20, the Hearing Examiner recommended that Section 2.027 C.4.b. be either deleted or amended to include standards to guide the reimbursement officer in determining when to request verification of financial information other than that listed in C.4.a. The Commissioner accepts the requirement and deletes Section 2.027 C.4.b. ✓ p. 5

   Because Section 2.027 C.4.b. is deleted, Section 2.027 C.4.a. can be incorporated into C.4. The Commissioner amends Section 2.027 C.4. to read:

   4. Verification required. This process shall be used to substantiate information entered on the signed financial information form. The ~~following information~~ Reimbursement Officer shall verify the patient's income, insurance benefits, property, deductions allowed to pay previously incurred debts, and the number of dependents claimed~~; and~~.

      This change is necessary and reasonable. It is not a substantial change.

   5. In Finding 23, the Hearing Examiner recommended the deletion of the final sentence of Section 2.027 C.8., and the substitution of a statement that the Department's rate determination does not become final until the Department has responded to a timely request for informal review. ✓ p. 6

   The Commissioner makes the following revision to implement the Hearing Examiner's recommendation:

   8. Review of determination. A person who disagrees with the Department's determination of ability to pay may request that the department review its decision. The request shall be made in writing within 15 calendar days of the date the order was mailed. The request for review shall include the reasons for disagreeing

with the determination order. ~~A request for review shall not extend the time for appeal given in Minn. Stat. §246.55.~~ When a person requests ~~a~~ review as provided in this paragraph, the determination shall not become final until the Department responds to the request for the review. The Department shall send the person a notice of the decision after review and a final determination order. p. 6.

The revision is necessary and reasonable. It is not substantial.

6. In Finding 28, the Hearing Examiner recommended that the Department consider restating Section 2.027 F.2.n. in an affirmative manner, to avoid possible confusion from an exclusion of an exclusion. The Commissioner finds the suggestion reasonable and amends Section 2.027 F.2.n. to read:

   n. Trust funds. ~~Unless~~ However, trust funds are not excluded from consideration if the trustee is required or has discretion to use the funds for paying the cost of care or the funds are designated for care, support, maintenance, or medical care~~; and~~ (even if the trust requires that public funds must first be exhausted); and p. 11

   This change is necessary and reasonable. It is not substantial.

7. All provisions of the rule, as amended, are necessary and reasonable. None of the amendments made are substantial changes.

CONCLUSIONS

1. The Conclusions of the Hearing Examiner are enumerated 1-9 in his Report. Those conclusions are accepted by the Commissioner and are incorporated by reference in these conclusions.

2. The Department has the authority to promulgate this rule based upon Minn. Stat. §§246.02, 246.51 and 253A.21, Subd. 6 (1980).

Dated: December 18, 1981

STATE OF MINNESOTA

COMMISSIONER OF PUBLIC WELFARE

DF-aoc

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF THE DEPARTMENT OF
PUBLIC WELFARE RULE GOVERNING
REIMBURSEMENT FOR COST OF CARE
OF PATIENTS OF A STATE HOSPITAL
(12 MCAR §2.027)

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on the fifteenth day of October, 1981 at 9:00 a.m., in Room A, Fourth Floor, Centennial Office Building, Saint Paul, Minnesota.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for the reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that this rule identified as 12 MCAR §2.027 is adopted this 18 day of December, 1981, pursuant to authority vested in me by Minnesota Statutes sections 253A.21, Subd. 6, 246.01 and 246.51 (1980), and shall read in its entirety as set forth in the attached Exhibit 1.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Arthur E. Noot

ARTHUR E. NOOT
COMMISSIONER

DF-aob

Corrected
work copy

Ex 10

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTIONS OF 12 MCAR §2.027 CONCERNING THE ADMINISTRATION OF REIMBURSEMENT FOR COST OF CARE OF PATIENTS OF A STATE HOSPITAL

STATEMENT OF NEED AND REASONABLENESS

12 MCAR §2.027 is proposed to establish procedures and standards by which the Commissioner of Public Welfare shall carry out his responsibility under Minn. Stat. §§246.50 through 246.55 (1980). The Commissioner's responsibilities under the cited statutes and this proposed rule are to determine an individual's ability to pay for his/her care and treatment as an inpatient or outpatient at a Minnesota state hospital. If the patient is unable to pay the cost of care, then the Commissioner must determine the ability of certain responsible relatives to pay for the patient's care. Because the statute defines the Commissioner's responsibilities in broad terms, it is necessary to establish the specific procedures and standards by which these determinations will be made.

There are nine state hospitals in Minnesota which admit people for care and treatment of mental illness, mental retardation or chemical dependency. Any person may receive care and treatment regardless of ability to pay. Persons receive care and treatment in the state hospitals pursuant to the Minnesota Hospitalization and Commitment Act, Minn. Stat. Ch.253A (1980). Under that Act, the patient may enter the hospital on precommitment court hold order, commitment, or voluntary admission. Minn. Stat. §§253A.03 and 253A.07 (1980). Persons may also receive services on an outpatient basis. Minn. Stat. §253A.15, Subd. 16 (1980).

The authority for the promulgation of this rule is found in Minn. Stat. §253A.21, Subd. 6 (1980). That section provides:

> The Commissioner shall establish such rules and regulations not inconsistent with the provisions of sections 253A.01 to 253.21 as he may find to be necessary for the proper and efficient administration thereof . . . .

While Minn. Stat. §246.51 requires the Commissioner to determine the ability of state hospital patients and their relatives to pay the cost of the care provided, the law provides no standards or procedures for the Commissioner to apply in making such determinations. Consequently, the Commissioner finds it necessary to promulgate this rule in order to assure that ability-to-pay determinations are made fairly, uniformly and in accordance with reasonable standards and procedures.

The procedural portions of the proposed rule are also authorized by Minn. Stat. §15.0412, Subd. 3 (1980).

In many instances, an effort was made to make the provisions of the proposed rule similar or identical to provisions of other Department rules. Particular attention was paid to 12 MCAR §2.047 (Medical Assistance), 12 MCAR

§2.044 (Aid to Families with Dependent Children and 12 MCAR §2.030 (Reimbursement for Cost of Care of Mentally Retarded or Epileptic or Emotionally Handicapped Children). (These rules will be referred to throughout this Statement of Need as Rule 47, Rule 44 and Rule 30, respectively.) The procedures and standards in those programs have been found to be reasonable and, where the circumstances are similar or the same, the provisions of those rules were carried over to this proposed rule.

A particular effort was made to make the standards in this proposed rule similar to the standards of the Medical Assistance program. Medical Assistance is a joint federal-state-county program for providing necessary medical and hospital care to needy persons. Approximately 55 percent of the cost of Medical Assistance is provided by the federal government. About one-half of state hospital patients receive or are eligible for Medical Assistance. By making the financial standards of the rule similar or identical to the medical assistance standards, the Department aims to maximize the use of federal Medical Assistance money to assist the state and counties to provide state hospital care. This is accomplished by assuring that a patient who devotes his or her income and resources to the payment of cost of care as provided in the proposed rule will thereby meet the financial eligibility requirements for Medical Assistance.

By making the provisions of this rule similar to Rule 47, the Department also assures that persons receiving services in state hospitals, at least partially at public expense, will be treated the same as persons receiving services in private hospitals, nursing homes and other facilities under the Medical Assistance program. Consequently, the proposed rule avoids the creation of an incentive to receive services at a state hospital rather than from a community resource.

Provisions from Rule §§2.044 and 2.047 which have been adapted for use in this proposal include those covering: completing and signing a financial information form, verification of income, property, health and life insurance benefits, number of dependents and housing costs.

Comments on the specific provisions of the proposed rule follow section by section.

A. This statement on Reimbursement for Cost of Care is needed to define the scope of the rule. It is reasonable in that it recognizes the relation between the rule, the underlying statutes, and the Department rules referred to above. Where questions arise concerning the interpretation of this rule, resort to the cited rules and interpretations of those rules may be helpful.

   This statement on provision of hospital services without regard to income is needed to affirm the requirement that the State provide hospital services to any person in need and unable to pay the cost of care. It is reasonable to require that state hospital patients be charged only according to ability to pay, and this is provided by the underlying statute.

B. Definitions are necessary to establish the meaning of terms used in this rule. The definitions are reasonable in that they reflect the common usage of the terms in the statute and elsewhere. Some of the definitions have substantive impact, and they are justified further below.

B.1. Business Expense. The exclusion of capital expenditures and depreciation from allowable business expense is necessary to prevent the patient from claiming as expenses (to reduce his or her liability for state hospital care) expenditures which increase the patient's equity in property. It is reasonable to expect a patient to use his/her excess assets to pay cost of care rather than to increase the patient's net worth.

The definition is the same as Rule 44, D.12.b.(8)(d).

B.2. Capital Expenditure. It is reasonable and necessary to define capital expenditures so as to differentiate between ordinary maintenance and capital improvements. A useful life of more than one year is a reasonable criterion of an expense for a capital improvement because it confirms to generally accepted accounting principles and also federal and state tax guidelines.

B.5. Dependent. It is necessary to distinguish those persons who have the right to rely on the financial resources of another person for support, and who, therefore, have a priority in use of the resources. It is reasonable to use the standard set by the State in defining "dependent" for tax purposes. It is reasonable and necessary to ensure that a person is not counted as a dependent more than once. It is also reasonable and necessary to provide a method for allocating the costs incurred when a dependent is supported by more than one person.

B.11 Inkind Income. It is necessary to establish a minimum value for the consideration of inkind income to avoid the necessity to report and evaluate gifts and other non-money receipts of minimal or moderate value. The $100 figure is reasonable in that it assures that nonmoney receipts of substantial value will be considered in determining ability to pay.

C. Determination Procedure.

Minn. Stat. §246.51 requires the Commissioner of Public Welfare (Commissioner) to determine what part of the cost of care, if any, the patient and responsible realtives are able to pay. It is necessary that the Commissioner carry out the required determination. The Commissioner has delegated to Reimbursement Officers in the Department's Reimbursement Division the authority to make the determination of the ability to pay. It is reasonable that the determination adhere to a procedure adopted to ensure uniformity of classification, compliance with law and fairness to all persons with a liability to pay.

C.1.a. It is necessary to specify times for determination in order to insure that the billing rate is based upon the person's current ability to pay. It is necessary to make a determination at the time of the patient's admission to the hospital and whenever the patient's financial status changes.

Changes may occur after the patient has been in the hospital for several months. Possible changes include expiration of sick leave benefits, hospital insurance coverage, reduced or depleted savings and liquid assets, and unforeseen expenses and financial circumstances. These changes may decrease the patient's ability to pay. On the other hand,

the person may inherit money or property or receive a windfall. These events increase the person's ability to pay. Therefore, a systematic schedule for redetermination of ability to pay is reasonable and necessary. One hundred and twenty days is a reasonable time as the majority of the mentally ill and chemically dependent patients have completed their treatment and returned to the community within this period. It is necessary and reasonable to provide systematically for a redetermination every year the patient con-tinues to receive care and treatment. A yearly redetermination will encompass not only changes noted above but also changes in federal and state benefits and entitlements.

The financial circumstances of a patient may change markedly at discharge: hospitalization benefits may cease; earned income will resume if employment is found; living costs will increase. It is reasonable to determine ability to pay at discharge.

C.1.b. Minn. Stat. §541.05 (1978) permits a creditor to claim money on an obligation within six years. It is necessary for the Department to re-evaluate periodically the patient's ability to pay any unpaid balance of the cost of care. It is necessary and reasonable to allow the patient to request a reevaluation if changed circumstances might reduce the ability to pay.

C.2.a. Minn. Stat. §246.51 requires the Commissioner to make an investigation to determine the patient's ability to pay. The determination of ability to pay requires the gathering of financial information about persons who have a liability to pay cost of care.

It is reasonable to conclude that the patient is the preferred source of the financial information concerning the patient's ability to pay. Personal contact by means of an interview is the most efficient way to obtain the information. It is reasonable to interview the patient.

It is reasonable and necessary to specify the circumstances which justify a decision not to interview certain patients. This section provides for a situation where the legal control of the patient's financial affairs lies with another person. It provides for patients who are unable to participate in an interview. For example, a patient may be severely retarded or emotionally disturbed.

C.2.b. Where the patient is unable to provide financial information, the Department must obtain the information from another source. It is necessary, therefore, to define who may give financial information on behalf of the patient. The individuals listed in the provision, with the exception of the county social worker, have a legal responsibility to the patient. Under Minn. Stat. §§253A.17, Subd. 9 and ~~293.07, Subd. 2~~ 253A.15 subd 12, the county social worker may work with state hospital patients. The persons enumerated are reasonable choices.

C.2.c. Minn. Stat. §246.51 requires the Commissioner to determine the ability of relatives of the patient to pay the cost of care when the patient is unable to pay the full cost. The determination of ability to pay requires the gathering of financial information about the persons who have a liability to pay. It is reasonable to conclude that

the responsible relative is the preferred source of the financial information. Personal contact by means of an interview is the most efficient way to obtain the information. It is reasonable and necessary to interview the responsible relatives.

C.3.a.-d. It is necessary and reasonable to give each person liable to pay according to ability information about the cost of care program, the Minnesota Government Data Practices Act, Minn. Stat. §§15.1611-15.1699, the right to assistance from a person of the interviewee's choice, and programs of financial assistance.

C.3.e. Financial data are necessary to determine ability to pay as required by the statute. It is also necessary to collect data in a uniform manner so that all persons are equitably treated in the determination procedure. Consequently, the requirement that the person complete the financial information form and provide verification information is reasonable.

C.4. Since uniformity and equity in the determination of the rate which a person is ordered to pay are contingent upon receiving complete and accurate information, it is necessary and reasonable to require verification of financial data. The provision is consistent with Department Rule 47, B.8. and Rule 44, B.6.

Only the most essential data related to either ability to pay or number of dependents are required to be verified. Other data must be verified only if doubtful. The provision is consistent with Department Rule 47, B.8. and Rule 44, B.7.

C.5. The requirement that a consent form for verification of data by a third party must identify the item of information requested provides the person authorizing disclosure clear knowledge of the kind of information being requested. It ensures an informed consent and protection of the person's right to privacy. The provision is necessary to comply with the Minnesota Government Data Practices Act. It is reasonable as it safeguards the person's rights. This provision is consistent with Rule 44, B.6. and Rule 47, B.8.

C.6. The underlying statute provides that any person requiring state hospital services is eligible to receive the services irrespective of ability to pay. Unlike private facilities, the state hospitals will only require payment according to ability to pay. To determine the ability to pay requires the cooperation and participation of the person on whom the statutes fix the liability.

Without knowledge of the person's specific financial circumstances, it is reasonable to use the statutory limitation on cost of care (Minn. Stat. §246.51) as the amount the person is able to pay. By failing to cooperate, the person chooses not to take advantage of the statutory benefit of charging only according to ability to pay.

Medical and hospitalization insurance is specifically intended to pay expenses incurred for care and treatment. If a patient is entitled to benefits from medical and hospitalization insurance, it is reasonable and necessary that the benefits be used to pay the cost of care. It is reasonable to require the written assignment of such benefits to the State to ensure their direct payment to the State.

C.7. It is necessary and reasonable to meet the statutory requirement of Minn. Stat. §246.52 that a determination order be issued.

C.8. It is necessary and reasonable to have a Department review process which a person can use, without cost and immediately upon receipt of a Determination Order, to disagree with the Department's determination of ability to pay. The time for requesting review is limited to 15 days so as not to prejudice the person's opportunity to appeal under Minn. Stat. §246.55.

C.9. Minn. Stat. §246.55 provides that a person may appeal the Determination Order to District Court. This provision simply gives affected persons notice of that right.

D.1. Minn. Stat. §246.51 states that the Commissioner of Public Welfare shall investigate and determine the ability of the patient to pay the cost of care. Insurance benefits, income and property are the financial resources that determine a patient's ability to pay. It is necessary and reasonable to determine ability to pay from these resources.

D.2.a. Medical and hospital insurance is purchased specifically to pay expenses incurred for care and treatment. If a patient is entitled to benefits from medical and hospital insurance, it is reasonable to expect the person to use the benefit toward payment of the cost of care. Further, it is reasonable to determine the person able to pay at least to the full extent of the insurance benefits available.

D.2.b. Insurance benefits are only one financial resource; the others are income and property. Thus, if insurance benefits do not meet the full cost of care, other resoruces may be available. It is necessary, therefore, to determine ability to pay from income and property.

D.3. Gross income may not provide a fair measurement of a patient's ability to pay because of the wide variation in family responsibilities, previous financial obligations and necessary deductions from gross income of the patient.

Both the federal and state income tax regulations base the individual's tax rate on net income. Use of net income safeguards the patient against undue hardship. This rule uses net income in recognition of this accepted practice that net income is the best measure of ability to pay.

It is reasonable, therefore, that net income be a resource available to pay the cost of care. It is consistent with Rule 44, D.12.b.(2) and (8).

D.4. Real and personal property are also financial resources of the patient and, therefore, measure the patient's ability to pay. It is reasonable to consider the patient's property as a resource when determining ability to pay. The provision is consistent with Rule 44, D.12.a. and Rule 47, C.4.b.(1) and (2).

E.1. Inkind income may considerably augment a person's resources by furnishing necessities or other items the person would ordinarily pay for. Each item, whether housing, car costs, food or clothing, has a market value which can be established through a receipt, published reference

document, or appraisal. A uniform system of considering inkind income is necessary to ensure fairness and uniformity in the determination process. It is reasonable to determine the value of the inkind item by a receipt or appraisal. This provision is consistent with Rule 47, C.4.a.(4)(a).

E.2. A lump sum contributes to the financial support of the patient. It is a source of income and properly used in determination of ability to pay. It is reasonable and necessary to require the patient to report this income to the Department.

A time limit is necessary to assure that the Department has the proper information to determine cost of care. A period of ten work days was chosen as a reasonable time limit as it allows for possible delay in mail delivery and any other impediments beyond the person's control and yet keeps the Department's records current. This provision is consistent with Rule 47, C.4.a.(7) and Rule 44, D.12.b.(9)(b).

E.3. Farmers and other persons may experience fluctuations in income and costs of operation from month to month. It is necessary to establish a method which will fairly reflect the person's ability to pay cost of care. It is reasonable to remove the seasonal variation by figuring an average monthly income and cost of operations.

E.4. Minn. Stat. §246.51 requires determination of ability to pay so that the patient is not caused undue hardship and the patient's resources are available to the patient and the dependents for necessary expenses. It is necessary to have a uniform method to ensure that these needs have first priority in use of the patient's resources. Determining ability to pay from gross income does not allow the patient to make deductions necessary for required expenses. Therefore, it is reasonable to set standards for calculating the net income available to pay the person's cost of care. The provision is consistent with Rule 44, D.12.b.(2) and D.12.b.(8)(b).

E.4.a. Payment of federal and state taxes is mandatory. The amount to be paid is regulated by federal and state laws. It is necessary to allow federal and state taxes to be deducted from the gross income of the patient. It is reasonable to permit deductions of the total amount from consideration as a resource. The provision is consistent with Rules 44, D.12.b.(8)(b)(i) and 47, C.4.a.(5)(e) and with allowable deductions on Federal and State Income Tax Returns.

E.4.b. Payments made by the individual under requirements of the Federal Insurance Contributions Act and Supplemental Medical Insurance are mandatory and, therefore, not available to the individual. It is, therefore, necessary and reasonable to allow these payments to be deducted from the gross income of the patient. The provision is consistent with Rules 44, D.12.b.(8)(b)(ii) and 47, C.4.a.(5)(d).

E.4.c. Unreimbursed child care costs are allowable deductions under federal and state tax regulations. It is necessary to provide for the care of children especially during the absence of a hospitalized or working parent. The provision is consistent with Rule 44, D.12.b.(8)(b)(iii).

E.4.d. If support payments ordered by the court are not paid, the authorities will take legal action to enforce the court order. The amount of payment is, therefore, not available to the patient. It is necessary and reasonable to allow deductions of these payments from gross income in determining ability to pay the cost of care.

Because the person is permitted to deduct support payments in the amount determined by the court to be necessary for the dependent, it is reasonable to prohibit the person from taking a further deduction for this particular dependent by including the dependent in determining the monthly Household Living Allowance under E.4.n.

E.4.e. A person appointed by the court to act on behalf of an individual during the incapacity of the individual is entitled by law to charge a fee for the services. The fee is paid from the assets of the individual. A patient in a State hospital may have an appointed guardian, conservator or trustee. It is necessary to pay the fee for the service. It is reasonable to permit the fee to be deducted from gross income in determining ability to pay.

D.4.f. A patient may have a continuing obligation to pay debts incurred for necessities purchased prior to hospitalization. If the patient fails to meet the obligation, the creditor may take legal action to recover the amount due. This action could work an undue hardship on the patient and family. It is reasonable and necessary to permit a patient to use monthly income to pay prior debts incurred for necessities.

A limit is established to prevent the patient who has large sums of outstanding obligations from using all resources to pay previously incurred bills. The amount of one hundred dollars allows the patient to budget systematic monthly payments which will maintain the patient's credit rating and insure continued provision of the items for the family and the discharged patient in the community. A limitation of $100 prevents the absorption of all the net assets of the patient by past debts. The resources of the patient must be used first for necessities for the patient and the patient's family, and then for payment for hospital care. Therefore, it is reasonable to limit the deductible payments to those made for specified necessities to maintain health and to provide transportation in the community. The limitation of allowable debts to those incurred for medical, dental, car, and utility costs recognizes the essential nature of these needs by the patient and the family. The limitations on amounts and kind are necessary and reasonable.

E.4.g. Many employers establish pension plans which mandate employee participation and contributions. Money paid as a mandatory contribution is usually not available for the employee's daily needs. Since it is not available, it is necessary and reasonable to allow it as a deduction from gross income in determining the net income and ability to pay the cost of care. The provision is consistent with Rules 47, C.4.a.(5)(a) and 44, D.12.b.(8)(c)(i).

An employed patient may necessarily incur transportation expenses in order to hold a job and produce income. It is reasonable to allow these expenses as deductions.

The method of determining the transportation allowance is the same as that used by the State for employees traveling on authorized State business. It is reasonable to be consistent with State policy. The allowance is larger than the one established in Rule 47, C.4.a.(5)(b).

The items included work uniforms, union dues, professional dues, tools, and equipment and are all standard deductions for persons itemizing deductions on state and federal tax returns.

It is reasonable to permit such deductions from the gross income of the patient in determining the net income and ability to pay. The provision is consistent with Rule 47, C.4.a.(5)(c),(f),(g) and (h) and Rule 44, D.12.b.(8)(~~b~~)(c)

E.4.h. Hospital and medical insurance premiums purchase insurance coverage of the medical and hospital expenses of the patient and his/her dependents. It is necessary and reasonable to allow the deductions of the premiums from the patient's income as they protect the patient from hardship and in this instance benefit the State by paying at least a portion of the per diem. The provision is consistent with Rule 47, C.4.a.(5)(h) and Rule 44, D.12.b.(8)(c)(vi).

E.4.i. Certain expenses are necessary in order to operate a business or a farm and to produce income from them. The business or farm may produce income which can support the patient and the patient's dependents. Federal and state tax laws permit an individual to deduct business expenses from gross income in calculating the net taxable income. It is reasonable to be consistent with such laws. The provision is also consistent with the Rule 44, D.12.b.(8)(e).

E.4.j. It is necessary and reasonable to allow business expenses incurred in providing room and board to be deducted from gross income. The provision is consistent with Rule 44, D.12.b.(8)(g), and modification shown in the Department's Instructional Bulletin #81-44.

E.4.k. It is necessary that a patient in a State hospital be allowed money for clothing and personal needs. The allowance of a standard amount is consistent with other programs of the Department. Minn. Stat. §256B.35 (1980) sets forth allowances for clothing and personal needs.

E.4.l. Operation of a child care center or home is a business. It is necessary to allow the deduction of expenses for operating a child care center or home. The patient may deduct actual expenses or use a standard deduction of 60% of the income earned from the center or home. The standard is based on a study AFDC Policy and Income From Child Care done by the Department in 1978. This provision is also consistent with the Rule 44, D.12.b.(8)(f).

E.4.m. The housing allowance recognizes the limited resources of the majority of patients who have to set budget priorities. It may encourage earlier return of the patient to the community, where, if necessary, outpatient treatment could be obtained in a familiar setting at a community facility.

It is reasonable to allow the actual cost of housing in the community. A Demographic Study of Non Income Maintenance Patients in Minnesota State Hospitals, March, 1980, showed that the majority of patients were discharged within 120 days of admission which is the time limit proposed in this rule. It is reasonable to use this limit to protect the patient's residence in the community and also to protect the interests of the State.

This provision is necessary to recognize that an inpatient with dependents is entitled to a housing allowance based on criteria similar to those for inpatients without dependents. A different method is needed to calculate the inpatient's share of the cost of housing in the community because the inpatients share the same residence as the dependents. The dependent's housing needs are met by the household living allowance in D.2.d.(14). The housing costs allowed for the inpatient are, therefore, a prorated share of the family's actual housing costs.

The Department's goal is to encourage outpatient treatment within the patient's own community wherever such treatment is medically indicated. The limitation of the number of times a housing allowance is permitted is additional encouragement to the discharged patient to remain in the community and to use community resources for treatment. The limitation is necessary and reasonable to support the Department's goal.

E.4.n. It is reasonable and necessary to permit a deduction for a monthly household living allowance. United States Department of Labor, Bureau of Labor Statistics (BLS) publication number 81-195, released April 22, 1981, Autumn 1980 Urban Family Budgets and Comparative Indexes for Selected Urban Areas was chosen as the most accurate and commonly used source from which to obtain a family budget. It is an annual publication and the one used was the most recent. Annually by July 1, the Bureau of Labor Statistics April publication which reports family budgets and comparative indexes as of the preceding autumn will be used by the Department to update the monthly household living allowance.

The annual family budget given in the publication is divided by 12 in order to compute a monthly figure. Because the publication's budgets are based on a four-person household, the monthly amount calculated from the annual figure is prorated by households with none or less than four persons. It is necessary and reasonable to choose a norm from the most widely used and most recently published data.

The urban standard for the Minneapolis-St. Paul area was the only available data for the state of Minnesota. The low budget was chosen as being most comparable to the standards for budgets in the AFDC program. The budget includes the costs of food, clothing, shelter, transportation, personal care, other family consumption (examples: recreation, education, reading, etc.) and other items such as occupational expenses, life insurance and contributions. Because this rule

provides in E.4.a., b. and h. for the deduction of all federal and state income taxes, payments for Social Security and all hospital and medical insurance premiums, these costs were excluded from the monthly household living allowance. It is necessary and reasonable to set a standard for income to be alloted as a monthly household living allowance for the dependents of the patient and for the outpatient living with his/her dependents.

Because BLS uses a four-person household, it was necessary to extrapolate the allowance for households of other sizes. In recognition of the fact that a one-person household is more expensive to maintain on a per capita basis than a large household, the ratio between the one-person and the four-person household was set at 40 percent, the two-person and four-person household at 60 percent and the three-person and four-person household at 80%. For each person beyond a four-person household, $178 would be added to the monthly household living allowance. These weightings are similar to the AFDC program standards. It is reasonable to use this weighting method to recognize the proportional effect of increasing family size.

The provisions clarify the number of persons in the household for the purpose of determining the household living allowance.

Factors affecting the cost of living may cause increases or decreases in the cost over a period of of time. It is reasonable and necessary to take into account changes in the cost of living and provide a reasonable method to adjust these standards.

F. Real and personal property are financial assets of the patient and, therefore, contribute to the patient's ability to pay. It is reasonable and necessary to consider property when determining ability to pay.

Consideration of a patient's property is consistent with Rule 44, D.12.a., and 47, C.4.b., and Minn. Stat. §256B.06, Subd. 1(7) and (8).

F.1.a. It is reasonable to exempt the value of the patient's homestead from consideration as a resource in order to safeguard the patient's residence in the community. A patient who expects to return to the community needs the security of having a familiar place to return to. It is also reasonable to protect the homestead of his/her dependents and any income producing property which will pay cost of care and support. Therefore, it is necessary to exempt the patient's homestead for a reasonable time. However, when the diagnosis of a patient without a spouse or dependents indicates a hospitalization longer than eighteen months, consideration should be given to either making the property income producing or selling it to pay cost of care and personal needs. Eighteen months is a reasonable time in which to obtain a complete picture of the patient's prognosis. According to the Demographic Study, March, 1980, 41% of the mentally ill patients, 90% of the chemically dependent patients, and 17% of the mentally retarded patients are hospitalized less than 120 days. The provision is consistent with the principle regarding homestead exemption found in the Department's Medical Assistance Manual IV G-4.

F.1.b. It is reasonable to exempt income producing property from consideration as a resource so that the patient will have an ongoing means of support to maintain him/herself and dependents in the community. The income from property is considered in determining ability to pay cost of care.

A contract for deed yielding income to the patient meets the criteria established for income producing property. Therefore, it is reasonable and necessary to exclude from consideration real property being sold on a contract for deed and for which the patient receives income. This provision is consistent with Minn. Stat. §256B.06 Subd. 1(7).

F.2.a. It is reasonable to exempt personal property which yields an income from consideration as a resource so that this income can be available to maintain the patient's dependents during hospitalization, pay his/her cost of care and yet be available upon the patient's return to the community.

It is reasonable to limit the exclusion to personal property which produces a net income as the purpose of the exclusion is to provide for the patient's dependents and pay cost of care. Its purpose is not to build up assets.

It is important to avoid causing the patient to completely deplete his/her resources and endure undue hardship. Wherever feasible, standards used for eligibility for Medical Assistance should be used in this program. Therefore, it is reasonable to include the standards of the Medical Assistance program in exempting personal property from consideration as a resource. The provision is consistent with Rule 47, D.~~3.b.(2)(a) and (b).~~ 12 a.(4)(d)

F.2.b. and c. The amounts of cash and liquid assets excluded from consideration are $2,000 for a single person and $10,000 for a married couple. The provision is consistent with Minn. Stat. §256B.06, Subd. 1.(8).

F.2.d. Minn. Stat. 256D.08, Subd. 1 (3) excludes from consideration as income Indian claim payments made by Congress to compensate for tribal land. It is reasonable to allow the same deductions here.

F.2.e. Minn. Stat. §462A.05, Subd. 15 (1980) provides for loans for low income families who need assistance in improving or purchasing homes. The statute states that the money is to be used for the purpose for which it is given. Consequently, the money is not available to pay for cost of care and its exclusion is necessary and reasonable.

F.2.f.-l. The items contained in these provisions are personal items or basic necessities. They are exempted from consideration in Rule 47, C.4.b.(2) ~~D.4.b.(2)~~, Minn. Stat. §256B.06, Subd.1(8) and Minn. Stat. §256B.07 and it is reasonable to exempt them in this rule.

F.2.m. Rule 47, C.4.b.(2)(a)(iii) and Rule 44, D.12.a.(5)(a) exempt a limited amount of life insurance values from consideration as property. It is necessary and reasonable to be consistent with other rules of the Department. It is furthermore reasonable to escalate the dollar amount

exempted in order to recognize inflation which has occurred since Rules 47 and 44 were adopted. Present policy of the Department permits recipients of either Aid to Families of Dependent Children or Medical Assistance benefits to exclude $1500 cash value of life insurance.

F.2.n. This rule treats trust funds as available to pay for cost of care whenever the trustee has discretion to use the funds for that purpose or whenever the funds are designated for maintenance or similar purposes. It is reasonable and necessary to make trust funds available to pay for care to the maximum extent possible.

F.2.o. Rule 44, D.12.a.(6) and Rule 47, C.4.b.(2)(a)(v) exempt prepaid burial accounts up to $750 in value plus accrued interest up to $200 from consideration as a property resource. This rule contains the same provision as Rules 44 and 47. It is necessary and reasonable to allow a patient sufficient funds to cover basic funeral expenses. It is reasonable to be consistent with other Rules of the Department.

F.3.a. It is reasonable to permit the Department to waive consideration of property in excess of the exemption when the waiver will prevent undue hardship, or will allow procurement of employment or medical care. This provision is consistent with Rule 44, D.12.a.(3)(a) and (b) and 47, C.4.b.(1)(a) and (2)(b).

Many people live in areas without readily available public transportation services. Many of these people must rely on their personal vehicles to get to work, obtain medical care and attend educational course to obtain or keep employment. It is reasonable and necessary to permit a second vehicle to a patient when his/her spouse and/or dependents need a second vehicle for these purposes.

Minn. Stat. §15.0412, Subd. 1a. provides that agencies may grant variances to rules if the procedures and standards for granting the variances are set out in the rule.

F.3.b. Patients who are dissatisfied with decisions about ability to pay have the right to request a Departmental review and/or appeal to District Court. It is necessary that each waiver request and the decision regarding it are documented in the patient's financial information file.

F.3.c. Because the decision to waive consideration of property as a resource is based on a unique set of circumstances, it is prudent to recognize that the circumstances may change. Property may become more salable as a result of change in the marketplace; title to property may have been cleared; the value may have increased or decreased. It is necessary, therefore, to provide for a sytematic review of the waiver.

To require annual review of the waiver dovetails with the requirement for an annual redetermination of ability to pay. It is reasonable that all of the patient's resources be examined at this time. This provision is consistent with Rule 47, C.4.b.(1)(a)(i)(bb).

F.4. Where transfers of non-exempt property are made without adequate conconsideration and the transferor intends or believes he/she will incur debts beyond his ability to pay or intends to avoid payment of debts, the transfer may be set aside in a legal action by present or future

creditors. Minn. Stat. §§513.20-513.32. This provision protects the state from such transfers by providing that the transfer will not be effective to remove the property from consideration in determining ability to pay. The limitation of $1,000 sets a reasonable value to protect the patient from harassment and to make the State's effort to recover cost efficient.

The provision is necessary to assure that property owned by the patient is used to pay for the patient's care. The provision is reasonable in that it is consistent with the Fraudulent Conveyance Act. The right to sue to set aside the conveyance would be ineffectual if the property could not be considered in determining the amount of the debt. Such transfers will have no affect on the provision of services to a patient. The review and appeal procedures are available to any patient aggrieved by the Department's determination.

It is reasonable, in assessing the value of transferred property to be considered as an available resource, to deduct the value or amount of any consideration received, since the consideration will be either available for consideration or excluded under other provisions of the rule.

F.5. It is necessary to ensure that the patient's property is used for the patient's care and to protect the interests of the State as provided in the Fraudulent Conveyance Act. It is reasonable, therefore, to require documentation of the circumstances surrounding the transfer.

F.6. Where the patient has no further obligation to the State, it is reasonable to exempt him/her from the provisions regarding transfer of property.

G.1. Minn. Stat. §246.51 requires the Commissioner to determine the ability of each responsible relative of the patient to pay cost of care, if the patient cannot pay the full cost. It is reasonable that the standards and procedures for making this determination be set out in this rule.

G.2. The determination of ability to pay requires the gathering of financial information about the responsible relatives who have a liability to pay cost of care. Personal contact by means of an interview is the most efficient way to obtain this information, and is therefore reasonable.

G.3. When the responsible relative has purchased medical and hospital insurance coverage for the patient, any benefits paid by the company are intended to meet medical and hospital costs of the patient. It is necessary that the benefits be used for the purpose for which they are paid. It is necessary and reasonable to require the responsible relative to inform the Department of the benefits available on behalf of the patient.

G.3.a. Insurance is carried to provide a financial resource to meet a specific need, in this case, the care and treatment of the patient-dependent of the responsible relative. The benefit is paid specifically to meet the cost of care charges of the patient-dependent. It is reasonable to consider these benefits as financial resources of the patient which will contribute to the patient's ability to pay.

G.3.b. Generally, a responsible relative's hospitalization and medical insurance will cover all of his/her dependents equally. However, the Department recognizes that in some circumstances insurance coverages may not be available for the patient who has a long history of hospitalization and medical care. Therefore, it is necessary and reasonable to investigate and verify the insurance coverage of the patient.

G.3.c. It is reasonable and necessary to request the responsible relative to provide verification of the insurance coverage he/she has on the patient so that the benefits can contribute to paying the patient's cost of care. It is also reasonable and necessary to request the responsible relative to assign the benefits to the Department. This provision is consistent with Minn. Stat. §256B.06 Subd. 1(11).

G.3.d. It is reasonable to recognize the contribution the responsible relative in paying the insurance premiums. Therefore, it is necessary and reasonable to permit the responsible relative who pays an insurance premium which provides hospital or medical benefits to the patient to deduct the cost of the premium from his/her obligation to pay.

G.4. Minn. Stat. §246.50, Subd. 6 defines the degree of responsible relationship between the patient and relative who is liable to pay cost of care.

Minn. Stat. §246.50 states that the parents of the minor child shall be liable for cost of care of the minor child patient up to age 18. The law adds no qualifier as to the extent of the liability of each parent in relation to each other. Since the payment schedule is based on household size, it is reasonable to require both parents to be individually liable for the cost of care of the child where they are divorced or separated.

Minn. Stat. §246.50, Subd. 6 gives the order of statutory liability of responsible relatives to pay cost of care. It is necessary to clarify the liability of two or more responsible relatives who have the same order of statutory liability. It is reasonable that a determination is made for each responsible relative who has an equal liability to pay the cost of care.

G.5. Minn. Stat. §246.51 states that a responsible relative who has less than $11,000 in annual gross earnings has no obligation to pay the cost of care. Since the limitation is based upon gross earnings, it is reasonable and necessary for consistency and fairness that the ability of other relatives to pay should be based upon gross earnings also.

G.5.a. Since an income of less than $11,000 removes the statutory obligation of the responsible relative, it is necessary and reasonable to verify the annual gross earnings of the responsible relatives.

G.5.b. This provision states the limitation set out in Minn. Stat. §246.51, and Laws of 1981, Chapter 360, Article I, Seciton 2, Subd. 5, as amended. It is necessary and reasonable to comply with the law.

G.5.c. — insert – see Ex 17

G.5.d. Minn. Stat. §246.50, Subd. 6 states that the spouse of a patient is liable for cost of care of the patient. It is necessary to clarify the obligation of the spouse in paying cost of care. It is reasonable to limit the determination for the spouse to the spouse's own income.

G.5.e. Minn. Stat. §246.50, Subd. 6 defines the term responsible relative. The definition does not include the spouse of the responsible relative. This provision is necessary to clarify the statutory definition of responsible relative.

G.6.a. It is reasonable and necessary to have a standard procedure to determine the ability for responsible relative to pay the cost of care. Verifying income is part of the standard procedure. An income tax return is an accepted method of verifying income. It also defines how the number of persons in a household shall be counted.

G.6.b. Any responsible relative will be offered the opportunity to simply agree to pay the statutory maximum. This will obviate the necessity for any inquiry except into insurance coverage.

G.7. The schedule of this provision sets a uniform standard for determining a responsible relative's ability to pay based on annual gross income and the responsible relative's household size which consists of the responsible relative and dependents. It treats all responsible relatives fairly and equitably. This provision is necessary to establish a standard; it is reasonable as it is based on amount of annual gross income and household size. The schedule is similar to that in Rule 30, C.1. which sets the payments required from parents of mentally retarded or epileptic or emotionally handicapped children who are in foster care or residential facilities. It is reasonable to use a similar standard for responsible relatives of patients who receive care in a state hospital. This avoids creation of an incentive to use state hospital placements rather than community resources. The maximum of 10% of the cost of care complies with the limitation in Minn. Stat. §246.51.

G.8. This provision is similar to other provisions of the proposed rule which set out a method for annual adjustments of income and payment levels based on changes in living costs. It is reasonable to use the same source for making the adjustment as used in E.4.n.

G.9.a. The Minnesota State Income Tax Return and the United States Income Tax Return, which most persons must file, show the annual gross income and number of dependents the responsible relative has. The person filing the return attests to its accuracy by signing the return. It is the most accurate source of verification of income. Therefore, it is reasonable and necessary to use either tax return to verify the responsible relative's income and number of dependents.

G.9.b. It is necessary to verify the insurance premium the responsible relative pays on behalf of the patient as this sum may be deducted from the responsible relative's liability to pay the patient's cost of care. It is reasonable to verify a fact which will provide monetary reduction of the responsible relative's obligation.

G.10. It is reasonable and necessary for the parents of a child-patient to pay for his/her clothing and personal needs as the child is a dependent of the parents and unable to support him/herself due to age. This provision is similar to Rule 30, C.3.

IEX-01

In the Matter of the Proposed
Adoption of the Department of
Public Welfare Rule Governing
Reimbursement for Cost of Care
of Patients of a State Hosital

STATEMENT OF COMPLIANCE
WITH RULE-MAKING
PROCEDURES

I, John Kerwin, do hereby declare that I have examined the rule and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

John L. Kerwin
Special Assistant - Attorney General

Dated:

LJ/mc

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hosital

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

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

That on the 12th day of January, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the (State of Minnesota Central Mail System for United States mailing (or) United States mail) at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter has been submitted to the Attorney General.

Linda M. Nelson

Subscribed and sworn to before me
this 12 day of January, 1982.

Margaret Holt

LJ/ma

Attachment

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

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing Reimbursement for Cost of Care of Patients of a State Hosital

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rule has been submitted to the Office of the Attorney General on this, January 12, 1982, for review as to form and legality. Pursuant to 1 MCAR §1.206 B., the Attorney General will not approve the rule for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rule after the hearing/publication in the State Register and before submission to the Attorney General, you may contact Jane Turner or Eleanor Weber.

LJ/mb