

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. 201 TEMP

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-10-83
DATE FOR REVIEW [illegible]
DATE DUE 8-17-83

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 8.8.83 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
6.28.83 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
7.8.83 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A 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

✓ Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

N/A Statement of Need and Reasonableness

✓ Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155
TELEPHONE: (612) 297-2040

August 11, 1983

Ted A. Martinez
Special Assistant
Attorney General
204 Administration Building
St. Paul, Minnesota 55155

RECEIVED
AUG 11 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Re: Proposed Temporary Rules of the Department of Public Welfare 12 MCAR §§ 2.05001-2.05016

Dear Mr. Martinez:

On August 10, 1983, the Department of Public Welfare and I received a copy of attorney Steve Mihalchick's August 9th, 1983 letter to you, enclosing comments from the Minnesota Association of Health Care Facilities (MAFCF) concerning the proposed temporary rules of the Department of Public Welfare numbered 12 MCAR §§ 2.05001-2.05016. These rules concern the determination of payment rates for nursing homes participating in the Medical Assistance Program.

This letter is DPW's response to the comments made by MAHCF. Because of the limited time available, these comments must necessarily be brief. However, I believe that, from the information presented, you will be able to conclude that the comments of MAHCF have either already been addressed in the temporary rules promulgated by DPW, or that the comments are ill-founded.

Many of MAHCF's comments attempt to turn your review into an evaluation of the need and reasonableness of the rule. We do not believe that that is your role. While the Attorney General's rules for reviewing rules do require the Attorney General to consider whether the rule is "unreasonable," (1 MCAR § 1.206 D.5.), the Attorney General's authority is obviously limited to determining whether a rule is unreasonable only in the grossest sense. If the Attorney General were to substitute his judgment for that of state agencies as to the need and reasonableness of proposed rules, the Attorney General would usurp the authority and discretion of state agencies to promulgate rules and administer the programs entrusted to them by the Legislature. I cannot imagine that the Attorney General would wish to assume this role.

MAHCF suggests that, for two reasons, you should not accord to the agency even the normal deference given in your rule reviews. First, MAHCF points out that DPW has had a very short

period of time in which to prepare the temporary rules. While this is true, I think you will agree that the DPW staff has done an outstanding job in drafting a comprehensive and comprehensible set of rules in a very complicated area, and that they have given careful consideration to the comments received from the public and have made the changes which are appropriate or necessary as a result of those comments. As a second reason why you should not give the normal deference to DPW's rule, MAHCF suggests that "there is very little expertise within the Department today." It is, of course, convenient for MAHCF to suggest that it has the expertise, while DPW does not. MAHCF's comment notes that there has been turnover within DPW. It is true that a key person within DPW was hired by Mr. Mihalchick's law firm approximately a year and one-half ago. Without minimizing the importance of this person to DPW, it must be stated that DPW has many other experienced and qualified persons who have been responsible for and had input in the rule drafting process.

This letter will address the individual comments made by MAHCF and will show that MAHCF's comments have either already been accepted and appropriate changes made, or that the comments are erroneous.

Throughout its comments, MAHCF repeatedly states that language of the rules simply duplicates language of the statutes, and that it is therefore improper to include the language within the rule. As you know, Minn. Stat. § 14.07, subd. 5 (1982), allows agencies to duplicate language contained in Minnesota Statutes, if the duplication "is crucial to the ability of a person affected by a rule to comprehend its meaning and effect." DPW has attempted to include statutory language in the rule only in instances where it is necessary to make the rule understandable. It does not seem reasonable to require the public to have a copy of the statute in hand and repeatedly shift back and forth between the rule and the statute in order to determine what the rule means. MAHCF does not explain its reasons for objecting to the duplication of the statutory language. If the rule is inconsistent with the statute, then clearly the rule must be changed. However, if the rule correctly states the requirements of the statute, and the inclusion of the statutory language makes the rule more comprehensible to members of the public, what reason is there to object? DPW believes that, without duplicating some statutory language in the rule, it would be very difficult for a person who is not intimately familiar with the statute and the rule to comprehend the terms of the rule.

While MAHCF raises many specific objections to the duplication of statutory language, DPW will not further address those individual comments. The following are DPW's responses to the other specific comments made by MAHCF.

Adequacy of Reimbursement (MAHCF Comments, pp. 5 and 6)

MAHCF notes that Minn. Stat. § 256B.41, subd. 1, as amended by Minn. Laws 1983, ch. 199, provides that the rules adopted by the Commissioner must "be based on methods and standards that the commissioner finds are adequate to provide for the costs that must be incurred for the care of residents in efficiently and economically operated nursing homes." MAHCF opines that DPW has never attempted to determine what costs must be incurred to provide care for residents, and asks the Attorney General to require DPW to make a finding that the standard has been met and to provide reasonable support for such a finding.

The statute does not require that the Commissioner make such a finding in the rulemaking proceeding. Such a finding is implicit in the Commissioner's promulgation of the rules and his conclusion that they are reasonable and necessary. DPW has not conducted a study, since the enactment of Chapter 199 to determine what costs must be incurred. Given the short period of time available, the Legislature obviously did not contemplate that such a study would be done. However, DPW does have a wealth of experience concerning what costs must be incurred to provide decent care to nursing home residents, based on the thousands of cost report reviews and on-site field audits conducted by DPW auditors over the past eleven years.

12 MCAR § 2.05001 B (MAHCF Comments, p. 6)

MAHCF objects to the inclusion of licensed boarding care facilities within the scope of the rule. The rule was changed in response to this comment. See Finding No. 1.

12 MCAR § 2.05002 F - Attached Fixtures (MAHCF Comments, p. 7)

MAHCF suggested that any modification of the term "attached fixtures" is inappropriate, since it relates to property-related costs which are frozen under the statute. DPW has changed the rule in response to this comment. See Finding No. 5.

12 MCAR § 2.05002 S - Final Rate (MAHCF Comments, p. 7)

MAHCF suggests that the definition of the term "final rate" is unnecessary, since it is not used in the temporary rules or in the statute. In fact, the term is used in both the rules and the statute. See 12 MCAR § 2.05011 B.1. and chapter 199, § 12, subd. 3.

12 MCAR § 2.05002 QQ - Real Estate Taxes And Special Assessments (MAHCF Comments, p. 7)

MAHCF suggests that these items should be a pass through and should be paid in the payment period beginning in the year in which the costs were incurred. DPW has changed the rule in response to this comment. See Finding No. 10. Under the revised provision of the rule, taxes will be a direct pass through. However, only the special assessments paid during the reporting year are allowable, under the rule as revised, since a facility may or may not pay the full amount of the assessment stated on its property tax statement.

12 MCAR § 2.05002 RR - Related Organization (MAHCF Comments, p. 7)

MAHCF complains that the definition of "related organization" is overly broad and impermissibly vague. In response to the comments of MAHCF and many other commentators, DPW revised the definition of "related organization" to parallel the definitions and concepts used in federal securities laws and regulations. DPW believes the definition is improved. While a term such as "related organization" can never be defined with absolute precision, the reliance on language from securities law will enable DPW and providers to rely on case law which has developed in that area in interpreting the terms. See Finding No. 11.

12 MCAR § 2.05002 UU - Top Management Personnel

MAHCF objects to the definition of top management personnel. This term was also used in the previous rule, 12 MCAR § 2.049 D.3.a. The definition in the new rule incorporates many of the terms from the old rule, but includes additional terms which provide additional specificity. For example, the inclusion of the terms "regional and district directors or managers" will make the rule more specific in its application to multi-facility organizations. MAHCF would prefer that the term be deleted, so that fewer persons are included within top management personnel, since the compensation of such personnel are subject to a limitation set forth in 12 MCAR § 2.05008 C. MAHCF also objects to the phrase "any other person performing the functions of an executive," stating that the term is impermissibly vague. That phrase, from the former rule, was recently interpreted in a contested case entitled In the Matter of the Contested Case of Richview Nursing Home, et al. v. Minnesota Department of Public Welfare, OAH File No. DPW-81-021-JL (Report of the Hearing Examiner dated May 16, 1983). One of the obvious reasons to carry over certain language from the former rule is that legal interpretations which have been made through administrative or judicial procedures may continue to be relied upon.

12 MCAR § 2.05003 - Cost Principles (MAHCF Comments, p. 8)

MAHCF complains that this section is "unduly long and involved," and therefore contrary to the legislation. Apart from its hollow generalizations about achieving simplicity and flexibility, MAHCF offers no reason why this provision is invalid.

12 MCAR § 2.05003 D.5. - General Cost Principles (MAHCF Comments, p. 8)

MAHCF objects to terms such as "management inefficiency," "unnecessary care," and "activities not commonly accepted in the nursing home care field," stating that such terms are unconstitutionally and unreasonably vague. These terms are carryovers from the prior rule. See 12 MCAR § 2.049 D.1.a. and b. DPW does not agree that the terms are unreasonably vague. Instead, they provide standards by which the agency and, if necessary, a Hearing Examiner or a court, may determine whether costs are allowable. A facility has recourse to administrative appeal if it believes a decision is based on "the whim of each DPW auditor" rather than upon a reasonable application of the standards stated in the rule.

12 MCAR § 2.05003 F - Capitalization (MAHCF Comments, p. 8)

This rule establishes criteria for determining when a cost will be capitalized and when it will be expensed. MAHCF contends that DPW has no authority to promulgate any rule with respect to property-related costs, with some specific exceptions. The statute does not prohibit DPW from promulgating rule provisions affecting property-related costs. The statute only provides that certain property-related costs are to be frozen and that certain others are to be calculated according to previous law and rule. The capitalization provision does not conflict with either of the cited statutory provisions. The concept of capitalization applies to both property and non-property costs. Whether a cost is capitalized or expensed will determine whether it is treated as a property-related cost or a non-property-related cost.

DPW believes that the objections of MAHCF and many others to the capitalization provision will be satisfied in large part because, in response to the many comments, DPW has increased the capitalization limits substantially. See Finding No. 22.

MAHCF also objects to the use of the phrase "such as land" in F.3., asserting that the term is impermissibly vague. A careful reading of F.3. shows that the phrase "such as land, land improvements" only provides examples of items which fit under the specific description given by the rule. Items which are not

depreciable under that provision are items "whose maintenance or construction are not the responsibility of the nursing home, and good will."

12 MCAR § 2.05004 C - Disposal of Assets of Related Organizations (MAHCF Comments, p. 8)

MAHCF complains that the provisions of the new rules concerning recapture of depreciation when assets of related organizations are disposed of goes beyond the rulemaking authority of the Commissioner, contending that the Commissioner has no authority relating to property-related costs. MAHCF grossly overstates the limitation of the statute. Chapter 199, § 12, subd. 3 provides that "property-related costs shall be reimbursed to each nursing home at the level recognized in the most recent cost report." The freeze only concerns the costs which must be reimbursed in the rate. It does not address in any manner the recapture of depreciation upon the sale of any assets of the nursing home or related organization.

Section 12, subd. 3 does provide that "The Commissioner shall promulgate temporary and permanent rules to recapture excess depreciation upon sale of a nursing home." The law does not, as MAHCF suggests, limit the recapture of depreciation to the sale of a building, nor does it apply any limitation to the depreciation recapture provisions which may be included in the rule. The law only requires that the rule must provide for depreciation recapture upon the sale of the nursing home. The law does not say that the rule cannot do more.

12 MCAR § 2.05006 E - Nursing Services Costs (MAHCF Comments, p. 8)

MAHCF's comment concerning the inclusion of insulin in the nursing service cost category has been incorporated into a change in the rule. See Finding No. 28. MAHCF states that it is unclear whether oxygen will continue to be a fee-basis item reimburseable under 12 MCAR § 2.047. It will. The rule, at 12 MCAR § 2.05006 E.12 (formerly 13) does not state that "oxygen" must be included within the nursing service category; it only states that the "administration of oxygen" is a nursing service. MAHCF's suggestion that this provision of the rule attempts to shift items from reimbursement on a fee-basis to inclusion in the per diem rate is simply erroneous. It does not.

12 MCAR § 2.05008 C - Top Management Compensation Limitation (MAHCF Comments, p. 9)

The facility states that the top management compensation limitation should be applied only to the rate year beginning July 1,

1983. That is not correct, and in fact, would be inconsistent with the statute. Chapter 199, § 12, subd. 1.

12 MCAR § 2.05009 - Non-allowable Costs (MAHCF Comments, p. 9)

MAHCF objects to the list of non-allowable costs included in this section, apparently believing it is too long. However, the Legislature specifically authorized the Commissioner to specify by rule costs which would not be allowed, even though those costs were not included on the list of non-allowable costs specified in the statute. Chapter 199, § 13, subd. 1.

MAHCF also complains that the rule (12 MCAR § 2.05009 A.) disallows the costs of all contributions, whereas the Legislature only disallowed the cost of political contributions. MAHCF ignores the fact that, as noted above, the Legislature authorized the Commissioner to designate additional unallowable costs. The same is true of MAHCF's comment concerning association dues (12 MCAR § 2.05009 C).

MAHCF comments that the disallowance of costs for ancillary services is a duplication of an earlier provision, and that DPW can either offset revenue or disallow related costs, but not both. This comment is satisfied by a change made to 12 MCAR § 2.05003 B., stating that income must be offset only to the extent that the cost to which applies was claimed as a nursing home cost. See Finding No. 14.

MAHCF complains that the rule disallows working capital interest expense for the rate year beginning July 1st, 1984. DPW deleted this provision in response to comments of MAHCF and others. See Finding No. 53.

MAHCF objects to the provision of 12 MCAR § 2.05009 Z disallowing interest charged by DPW on settlements or rate adjustments. MAHCF suggests that, if the rule will treat interest income from such rate adjustments as a credit against costs on the facility's cost report, then corresponding interest expense from such adjustments should be an allowable cost. DPW does not believe that it is appropriate to treat such interest expenses as allowable costs. What sense does it make for DPW to charge interest, if DPW then pays the interest for the facility through the per diem rate? DPW did not contemplate that it would ever go beyond the 120-day period in making a payment after it was determined to be due, so no provision for this was made in the rule. In the unlikely event that DPW is ever required to pay interest in such a situation, DPW will not require the interest to be included as an offset against costs.

12 MCAR § 2.05010 C.2. - Regional Groupings (MAHCF Comments, p. 10)

MAHCF correctly surmises that these rules simply adopted the existing Rule 49 groupings. The law requires the Commissioner to group nursing homes according to geographic location. Chapter 199, § 12, subd. 1. The law also requires the Commissioner to "consider the use of the standard metropolitan statistical areas when developing groups by geographic location." DPW did consider the use of these groups, but determined that there was not universal agreement that the use of such groups for these purposes was appropriate. DPW obviously did not have time to conduct any detailed study into a revision of the groupings and, consequently, continued the old groupings. There is nothing in the law to suggest that this was impermissible. Given the extremely limited time, it was probably the only reasonable option available to DPW. There will be opportunity to consider other groupings when the permanent rule is promulgated.

12 MCAR § 2.05011 B.1. - Property-Related Cost Freeze (MAHCF Comments, p. 11)

MAHCF incorrectly asserts that DPW's authority to adjust the frozen property costs for rate limitations in effect before the effective date of Chapter 199 relates only to certain types of limitations set forth in MAHCF's comments. In fact, Chapter 199, § 12, subd. 3, simply states that such costs must be "adjusted for rate limitations in effect before the effective date of this section." The law does not except any types of rate limitations.

12 MCAR § 2.05011 G.2. - Depreciation Recapture From Buyer (MAHCF Comments, p. 11)

MAHCF contends that DPW has no authority to require that depreciation recapture be paid by the buyer, rather than the seller, of the nursing home. The former rule (12 MCAR § 2.049 D.4.a(6)(b) required that depreciation recapture be paid by the buyer, rather than the seller. MAHCF's assertion is inconsistent with their immediately preceding paragraph, in which they state that depreciation recapture was to be accomplished under the standards of the former rule. The provision is reasonable, since the buyer and seller can take the depreciation recapture into account in negotiating the terms of the sales agreement, and since the seller may not be available for DPW to recapture the depreciation from after the sale is completed. There is nothing in the law to preclude this provision.

12 MCAR § 2.05011 G.1.c.-e. - Recapture of Full Depreciation Expense After July 1st, 1983 and 120 Day Payment (MAHCF Comments, p. 11)

DPW has changed the rule in response to these comments. See Findings Nos. 62 and 63.

12 MCAR § 2.05011 G.1.a. - Amount of Depreciation Recaptured (MAHCF Comments, p. 11)

MAHCF complains that the rule fails to reasonably define the term "excess depreciation" from the statute. The rule does clearly define the amount of depreciation to be recaptured, which may or may not be all of the depreciation which has been allowed on the facility's cost report.

12 MCAR § 2.05013 B. - Private Pay Rate Limitation (MAHCF Comments, p. 12)

MAHCF states that there is no authority for the Commissioner to impose a private pay rate limitation. However, Chapter 199, § 10 authorizes the Commissioner to establish by rule "procedures for determining rates" which will include "methods and standards." There is nothing in Chapter 199 which precludes the Commissioner from continuing the private pay rate limitation from Rule 49. MAHCF suggests that the provision conflicts with Minn. Stat. § 256B.48, subd. 1 (a) which provides that the private pay rates may not exceed the Medical Assistance rate. The Legislature apparently did not agree with MAHCF's contention, because the private pay rate limitation had been in effect in Rule 49 for several years when the Legislature passed the "Equalization Law" in 1976. MAHCF's concerns that the private pay limitation may interfere with facilities' appeal rights has been satisfied by changes in the rule. See Findings No. 65 and 83.

12 MCAR § 2.05015 E. (formerly D.) - Access to Tax Returns (MAHCF Comments, p. 12)

MAHCF objects to the provision allowing the Commissioner to request state and federal income tax returns, asserting that the provision is unreasonable and beyond the Commissioner's authority. MAHCF offers no legal citation to support its assertion that the Commissioner may not require that facilities provide access to these tax returns, when necessary. DPW has attempted to accommodate the concern about confidentiality of such information by amending the rule to state that facilities must only provide "access" to such documents, rather than providing the actual documents to be included in the state's files. See Finding No. 78.

12 MCAR § 2.05016 B. - Appeal Procedures (MAHCF Comments, p. 12)

MAHCF rightly points out that the proposed rule omitted the requirement of the filing of a notice of intent to appeal. DPW has corrected this error in the promulgated rule. See Finding No. 82.

I hope that the above information is helpful to you in evaluating the comments submitted by MAHCF. DPW believes that no changes in the rule are required as a result of MAHCF's comments. DPW requests that you approve the rules as promulgated by the Commissioner.

Your consideration is appreciated.

Sincerely,

JOHN L. KIRWIN
Special Assistant
Attorney General

JLK/mm

cc: Steve M. Mihalchick

BROEKER, HARTFELDT, HEDGES & GRANT
ATTORNEYS AT LAW

2850 METRO DRIVE, SUITE 800
MINNEAPOLIS (BLOOMINGTON) MINNESOTA 55420
TEL. (612) 854-5263

JOHN M. BROEKER*
WILL HARTFELDT
STEVEN R. HEDGES
DAVID A. GRANT
STEVE M. MIHALCHICK*
BARBARA J. BLUMER
SAMUEL D. ORBOVICH
TERRI A. HAGEMEYER
HOWARD J. RUBIN
JAMES W. INGISON
FRANCES L. ROBINSON
PETER H. BACHMAN

*ADMITTED IN MINNESOTA AND WISCONSIN

ALL OTHERS ADMITTED IN MINNESOTA

WISCONSIN OFFICE
BROEKER, HARVEY, HOUGH & HARTFELDT
FIRST WISCONSIN PLAZA, SUITE 313
1 SOUTH PINCKNEY STREET
MADISON, WISCONSIN 53701
TEL. (608) 255-2180

WALTER L. HARVEY
JAMES E. HOUGH
KATHRYN M. COLLINS

OF COUNSEL
THORPE MERRIMAN

ALL ADMITTED IN WISCONSIN

August 9, 1983

HAND DELIVERED

Mr. Ted A. Martinez
Special Assistant Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Temporary Rules of the Department of Public Welfare
12 MCAR §§2.05001-2.05016

Dear Mr. Martinez:

Enclosed are our comments to the Attorney General regarding the legality of the proposed rules. We are submitting these without yet having had a chance to see the adopted temporary rules.

We would like to accept your offer to have a conference with you to explain our position on the rules, particularly in any areas in which you might have questions. We understand that an attorney representing DPW should be present. That is certainly agreeable because any ex parte contacts with you during the review period regarding the merits would be inappropriate. I will make myself available at any time you request.

I would also like the opportunity to review the entire record as soon as possible and I will call to arrange that.

A copy of this letter and the comments is being delivered to Eleanor Weber of the Department of Public Welfare in compliance with 1 MCAR §1.206 C.

Very truly yours,

BROEKER, HARTFELDT, HEDGES & GRANT

By _____
Steve M. Mihalchick

SMM:bew
Enclosure

cc: Eleanor Weber
John Kirwin

cc Judm.
8-10-83
p

WILDFANG, RUDE, McINTOSH, MURRAY
CHARTERED ATTORNEYS AT LAW

270 Grain Exchange Building
Minneapolis, Minnesota 55415
612-338-5636

K. Craig Wildfang
James W. Rude
Andrew C. McIntosh
Patrick Murray

August 8, 1983

Mr. Ted Martinez
Special Assistant Attorney General
204 Administration Building
St. Paul, Minnesota 55155

Re: Proposed Temporary Rule Governing the Determination of Welfare Per Diem Rates for Nursing Homes Under the Title XIX Program (12 MCAR §§ 2.05001-2.05016)

Dear Mr. Martinez:

The undersigned hereby submits comments on the above-referenced temporary rules on behalf of Good Neighbor Care Centers, Inc. The purpose of these comments is to identify certain defects of the proposed temporary rule which may assist your office in reviewing the rule as to form and legality pursuant to Minn. Stat. § 14.32 (1982). Because the final version of the proposed temporary rules was not available for review prior to our submission of these comments, the comments are directed to the originally proposed version. We anticipate that the Department will have made only minor changes, but to the extent changes have been made we will attempt to supplement these comments in a timely manner.

By way of general comments, we would note the importance of this rule. The rule governs the determination of rates for nursing home care of over 40,000 elderly residents in over 400 nursing homes in Minnesota. These nursing homes provide jobs for over 40,000 Minnesotans, and have total annual revenues of over $600 million. Obviously, to the extent that there are legal questions regarding this rule, such questions must be analyzed and seriously considered. We trust that your office will do so.

Specific Comments

12 MCAR § 2.05001

B. In paragraph B the rule purports to apply to "licensed boarding care facilities participating in the Minnesota supplemental aid program". In paragraph A of this section, the authorities cited for these temporary rules are Minn. Stat. §§ 256B.04, Subd. 2, 256B.27, 256B.41, and 256B.502. These authorities provide, respectively, in relevant part:

§ 256B.04
Subd. 2. Make uniform rules and regulations, not inconsistent with law, for carrying out and enforcing the provisions hereof in an efficient, economical, and impartial manner, and to the end that the medical assistance system may be administered uniformly throughout the state.... (emphasis supplied)

§ 256B.27
Subdivision 1. In the interests of efficient administration of the medical assistance to the needy program and incident to the approval of rates and charges therefor.... (emphasis supplied)

§ 256B.41
Subdivision 1. Authority. The commissioner shall establish, by rule, procedures for determining rates for care of residents of nursing homes which qualify as vendors of medical assistance, and for implementing the provisions of sections 256B.41, 256B.421, 256B.431, 256B.47, 256B.48, 256B.50, and 256B.502. The procedures shall be based on methods and standards that the commissioner finds are adequate to provide for the costs that must be incurred for the care of residents in efficiently and economically operated nursing homes and shall specify the costs that are allowable for establishing payment rates through medical assistance. (emphasis supplied)

§ 256B.502
The commissioners of health and public welfare shall promulgate temporary and permanent rules necessary to implement Laws 1983, chapter 199, sections 1 to 15 except as otherwise indicated in accordance with sections 14.01 to 14.38.

There is nothing in these cited authorities, or anywhere else in law, authorizing the Commissioner to adopt temporary rules for determining rates paid pursuant to the Minnesota Supplemental Aid Program, Minn. Stat. §§ 256D.35-.42. Therefore, the applicability of these rules must be limited to nursing homes participating in the medical assistance program.

12 MCAR § 2.05002

B. This paragraph defines the term "actual allowable historical operating cost" in a way inconsistent with the statutory definition in Minn. Stat. § 256B.421, Subd. 2. Obviously, the statutory definition takes precedence and the Commissioner is attempting to exceed his statutory authority, thereby rendering the definition invalid under Minn. Stat. § 14.45.

D. This paragraph defines the word "addition" but our review of the rule reveals no instance in which this word is used. On the other hand, the word "capacity" is used frequently but is not defined in the definitions section of the rules. In any case, any measure of an "addition" or "capacity" utlizing the number of licensed beds, rather than the number of beds certified to provide care to MA residents, is inconsistent with the statutory authority in §§ 256B.04 and 256B.41 quoted above. The sole purpose of the proposed rules is to determine "welfare" rates (i.e. M.A. rates), see § 2.05001.B.

F. To the extent that the definition of "attached fixtures" in this paragraph purports to modify the calculation and payment of property-related costs, the definition is invalid. Minn. Stat. § 256B.431, Subd. 3 provides, in relevant part:

> Subd. 3. Property-related costs. For rate years beginning July 1, 1983 and July 1, 1984, property-related costs shall be reimbursed to each nursing home at the level recognized in the most recent cost report received by December 31, 1983 and audited by March 1, 1983, and may be subsequently adjusted to reflect the costs recognized in the final rate for that cost report, adjusted for rate limitations in effect before the effective date of this section. Property-related costs include: depreciation, interest, earnings or investment allowance, lease, or rental payments. No adjustments shall be made as a result of sales or reorganizations of provider entities. (emphasis supplied)

Clearly any attempted modification of the property-cost calculation is inconsistent with the explicit language of the statute.

G.4. See comments to § 2.05001.B., supra.

N. See comments to § 2.05002.F., supra.

Q. See comments to § 2.05002.F., supra.

DD. This paragraph defines "Metropolitan group" to include "all nursing homes located in Koochiching, Itasca, Aitkin, Carlton, Lake, Cook, Scott, Hennepin, Ramsey, St. Louis, Anoka, Washington, Dakota, and Carver." The purpose of this definition, of course, is to establish the 60th percentile limitations by grouping similar facilities together for cost comparison. This grouping, however, is irrational. There is simply no rational basis for concluding that a nursing home in Two Harbors (Lake County) is more similar to a nursing home in Minneapolis (Hennepin County) than it is to a nursing home in Baudette (Lake of the Woods County), which is in the "Non-Metropolitan group" (see § 2.05002.HH). Further, there is no rational basis for concluding that a nursing home in the Twin Cities' bedroom community of Buffalo (Wright County) is more similar to non-Metropolitan nursing homes such as one in St. James (Watonwan County) than to a nursing home in Watertown (Carver County) just across the county line. Not only do these groupings lack a rational basis in the Constitutional sense, they also conflict with the statutory directive. Minn. Stat. § 256B.431, Subd. 1 provides, inter alia:

> In determining the rates, the commisioner shall group nursing homes according to different levels of care and geographic location.... The commissioner shall consider the use of the standard metropolitan statistical areas when developing groups by geographic location....

It should be noted that, according to the State demographer, both Wright and Chisago Counties are included in the Twin Cities SMSA. This proposed temporary rule must be rejected as utterly lacking either a rational basis or statutory support.

QQ. The definition of "real estate taxes and special assessments" is inconsistent with the clear intent of the Legislature in enacting Laws 1983, Ch. 199. In § 12 thereof, Minn. Stat. § 256B.431, Subd. 2(c), the Legislature specifically required that the Commissioner include the actual real estate tax liability for each nursing home, not the tax liability of two years previous.

RR. This definition is unconstitutionally vague as applied. It defines "related organization" as an organization "which...is associated with or affiliated with the nursing home". This defination, as applied later in the rule, see § 2.05004, and as enforced by 12 MCAR § 2.064, imposes serious consequences, including criminal penalties, for overstating, misreporting, etc. costs charged by related organizations. And yet, the definition is so vague as to not give adequate notice of what a "related organization"

really is. The Due Process Clause requires that a law or regulation notify a person of reasonable intelligence precisely what it prohibits so that the person may act accordingly. See, e.g., Windfaire, Inc. v. Bisbee, 523 F.Supp. 868 (D.C. Ga. 1981); Diebold, Inc. v. Marshall, 585 F.2d 1327 (6th Cir. 1978). This rule fails to meet this Constitutional standard, and therefore must be clarified.

12 MCAR § 2.05003

F. This provision also appears designed to modify the present calculation of property-related costs, contrary to clear legislative intent. See comments to § 2.05002.F., supra.

12 MCAR § 2.05008

D. The absolute limitation on top management personnel compensation is contrary to the clear intent of the Legislature. Chapter 199, § 12, Subd. 1, Minn. Stat. § 256B.431, Subd. 1, provides, inter alia:

> The commissioner shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. (emphasis supplied)

The proposed rule appears to impose an absolute limitation rather than only a limitation on costs recognized for purposes of the trending mandated by § 12, Subd. 2. Since the proposal is contrary to the statute, it must be rejected.

12 MCAR § 2.05009

C. This proposal makes assessments made by, or dues charged by,associations or professional organizations for litigation and lobbying costs "nonallowable", and specifically requires the reporting of such expenditures. This proposed rule is not only directly contrary to the clear language of the statute, and the intent of the Legislature, but is also blatantly unconstitutional. Minn. Stat. § 256B.48, Subd. 2 (1982) formerly provided that:

> The following costs shall not be recognized as allowable to the extent that these costs cannot be demonstrated to the state agency to be directly related to the provision of patient care....(6) dues paid to a nursing home or hospital association.

Chapter 199, § 14 amended this provision to delete the nonrecognition of dues paid to a nursing home or hospital association. The proposal in the temporary rules to disallow portions of such dues is directly contrary to the legislation and must be rejected.

In addition, such a proposal would violate the First Amendment rights of members of such organizations. It is beyond dispute that the freedom to associate for the purposes of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. Abood v. Detroit Bd. of Education, 431 U.S. 209, 97 S.Ct. 1782, rehearing denied, 433 U.S. 915, 97 S.Ct. 2989 (1977). Also, collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. In re Primus, 436 U.S. 412, 98 S.Ct. 1893 (1978). Governmental action which inhibits or curtails such fundamental rights must undergo the most rigorous and strict scrutiny. The Eighth Circuit has held, in a case out of Minnesota, that the state may abridge associational freedom only upon a showing of a subordinating interest which is compelling. Savola v. Webster, 644 F.2d 743 (8th Cir. 1981). In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976), the Supreme Court held that:

> The First Amendment protects political association as well as political expression. The constitutional right of association explicated in NAACP v. Alabama, 357 U.S. 499, 460, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958), stemmed from the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." 424 U.S. at 15, 96 S.Ct. at 632-633.

With this background, then, the disallowance of association dues spent on lobbying or litigation must be strictly scrutinized and may survive only upon a showing of a compelling state interest.

In evaluating and understanding the abridgement caused by the dues disallowance, the statutory requirement (§ 256B.48, Subd. 1(a)) that rates charged to private pay patients must not exceed those paid by the State under Medical Assistance must also be considered. The result of the dues disallowance for MA purposes, and the equal rates requirement, means that nursing homes have no other source of revenue with which to carry on their fundamental rights to associate. It is clear that the abridgement, therefore, is not merely an incidental one, but rather a substantial curtailment of First Amendment freedoms. Not only has the Department failed to offer a compelling state interest in support of this proposal, they have offered no state interest in support thereof.

This proposal, therefore, must be withdrawn because it conflicts with the statute and because it is an unconstitutional abridgement of the First Amendment rights of nursing homes.

Y. This proposal to disallow interest for working capital needs, beginning July 1, 1984, is contrary to the legislation to the extent it modifies the property cost reimbursement freeze mandated by the statute. See comments to § 2.05002.F., supra.

12 MCAR § 2.05011

There are a number of provisions in this section which may have the effect of modifying the property-cost reimbursement, which is inconsistent with the legislation, see comments to § 2.05002.F., supra.

12 MCAR § 2.05015

D. The proposal to require the submission of state and federal tax returns "for the nursing home, any related organization, and any individual having an ownership interest in the nursing home" clearly exceeds the statutory authority conferred upon the Commissioner by Chapter 199, § 14. Tax returns are indisputably confidential documents under both state and federal law, and any requirement to submit such documents should only be adopted based upon a clear showing of necessity. No such showing has been made, and therefore the proposal should be deleted.

Necessary Additional Provisions

Although the proposed rules are comprehensive, and, indeed, in some respects more comprehensive than necessary, there is one provision which is not included which should be added. Minn. Stat. § 14.05, Subd. 4 provides:

> Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

This statute recognizes the need for flexibility in the administration and enforcement of rules, and is particularly appropriate for utilization in a rule as complex as proposed 12 MCAR § 2.05001 et seq. We believe the Department should comply with the mandate of § 14.05, Subd. 4 and adopt rules setting forth standards and procedures by which variances shall be granted and denied. Such an addition would greatly improve the proposed rules.

Conclusion

We hope you will carefully scrutinize the proposed rules in light of the above comments. We believe that the legal defects in the rule require your disapproval of the rules and the return of the rules to the Department for appropriate changes. As indicated initially, to the extent changes have been made in the proposed rules by the Department prior to their submission to you, we will attempt to supplement these comments before the expiration of your five-day review period.

Very truly yours,

WILDFANG, RUDE, MC INTOSH, MURRAY
CHARTERED

K. Craig Wildfang

KCW/jks

cc: William Hargiss
Honorable Hubert H. Humphrey III

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO LEONARD W. LEVINE
Commissioner of Public Welfare

DATE: 8/15/83

ATTN: JOHN KIRWIN, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes Under the Title XIX Program (12 MCAR §§ 2.05001 - 2.05016)

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;

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.

TAM:dw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Public Welfare

Bureau of Support Services

Adopted Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes under the Title XIX Program

Temporary Rules as Adopted

12 MCAR S 2.05001 [Temporary] Authority and applicability.

A. Authority.

1. Minnesota Statutes, section 256B.04, subdivision 2 authorizes the commissioner to promulgate uniform rules for carrying out and enforcing the provisions of Minnesota Statutes, chapter 256B.

2. Minnesota Statutes, section 256B.27, authorizes the commissioner to require any reports, information, and audits of medical vendors necessary for the approval of rates and charges.

3. Minnesota Statutes, section 256B.41, authorizes the commissioner to establish procedures for determining nursing home rates and for implementing the provisions of Minnesota Statutes, chapter 256B.

4. Minnesota Statutes, section 256B.502, authorizes the commissioner to adopt temporary and permanent rules to implement the provisions of Laws of Minnesota 1983, chapter 199, concerning the establishment of nursing home rates.

B. Applicability. Rules 12 MCAR SS 2.05001-2.05016 [Temporary] establish procedures for determining the per diem welfare rates for all nursing homes participating in the medical assistance program ~~and for licensed boarding care facilities participating in the Minnesota supplemental aid program~~.

12 MCAR S 2.05002 [Temporary] Definitions.

A. Applicability. As used in 12 MCAR SS 2.05001-2.05016 [Temporary], the following terms have the meanings given them.

B. Actual allowable historical operating cost per diem. "Actual allowable historical operating cost per diem" means the

per diem payment for ~~actual~~ operating costs allowed by the commissioner for the most recent reporting year.

C. Actual resident days. "Actual resident days" means a nursing home's resident days adjusted for lesser care resident days according to 12 MCAR S 2.05010 A. [Temporary].

D. Addition. "Addition" means an extension, enlargement, or expansion of the nursing home facility for the purpose of increasing the number of licensed beds or improving resident care.

E. Applicable credit. "Applicable credit" means a receipt or expense reduction as a result of a purchase discount, rebate, refund, allowance, ~~interest-income,~~ income from ~~incidental services, sale of equipment or salvage~~ the sale of goods or services not covered by the per diem rate, adjustment for ~~erroneous charges~~ overcharges, insurance claims settlement, or any other adjustment reducing cost of the nursing home.

F. Betterment. "Betterment" means the renovation or replacement of part of an existing asset to improve its function or to exceed its useful life.

~~F. Attached fixtures. "Attached fixtures"~~ G. Building service equipment. "Building service equipment" means ~~building service equipment or other~~ equipment affixed to the building and not easily subject to transfer such as wiring, electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, and built-in refrigerators or freezers.

~~G.~~ H. Care levels. "Care levels" means the classifications of nursing service provided by a nursing home. They are:

1. Skilled nursing facility (SNF), a skilled nursing facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health;

2. Intermediate care facility I (ICF I), an intermediate care facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health;

3. Intermediate care facility II (ICF II), an intermediate care facility as defined by federal regulations and as licensed as a boarding care facility by the Department of

Health;

~~4.--Licensed-boarding-care-facilities-participating-in-the Minnesota-supplemental-aid-program.~~

~~H.~~ I. Commissioner. "Commissioner" means commissioner of public welfare.

~~I.~~ J. Cost category. "Cost category" means any one of the cost groupings set forth in 12 MCAR S 2.05006 [Temporary].

~~J.~~ K. Cost groups. "Cost groups" means the groupings of cost categories used for rate setting purposes. The groups are: operating costs, property-related costs, and costs for real estate taxes and special assessments.

~~K.~~ L. Cost report. "Cost report" means the document specified by the commissioner on which the nursing home provides the statistical and financial information required by the commissioner for rate determination.

~~L.~~ M. Desk audit. "Desk audit" means the determination of the payment rate based on the commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the nursing home.

~~M.~~ N. Department. "Department" means the Department of Public Welfare.

~~N.~~ O. Depreciable equipment. "Depreciable equipment" means equipment which must be capitalized under 12 MCAR S 2.05003, F.1. [Temporary].

~~O.~~ P. Direct cost. "Direct cost" means a cost that can be identified with a specific cost category.

~~P.~~ Q. Extraordinary repair. "Extraordinary repair" means a ~~major~~ repair which ~~is-costly-in-relation-to-the-value-of-the asset,-should-increase~~ increases the use value of the asset, or ~~prolong~~ prolongs its useful life.

~~Q.~~ R. Facility. "Facility" means the building in which a nursing home is located and all ~~attached-fixtures~~ other depreciable assets of the nursing home. Facility does not include the land, land improvements, or any supplies or equipment which are not ~~attached-fixtures~~ depreciable.

~~R.~~ S. Field audit. "Field audit" means the on-site

examination, verification, and review of the financial records, statistical records, and related supporting documentation of the nursing home and any related organization.

~~S.~~ T. Final rate. "Final rate" means the rate established after any adjustment by the commissioner including, but not limited to, adjustments resulting from the cost report reviews, field audits, and ~~resolution~~ resolutions of appeals.

~~T.~~ U. Fringe benefits. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

~~U.~~ V. General and administrative costs. "General and administrative costs" means costs for administering the nursing home as specified in 12 MCAR S 2.05006 G. [Temporary].

~~V.~~ W. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the application of appropriate limitations such as those on general and administrative costs.

~~W.~~ X. Hospital attached facility. "Hospital attached facility" means a facility which is under common ownership and operation with a licensed hospital and shares with the hospital services such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

~~X.~~ Y. Indirect cost. "Indirect cost" means a cost that is incurred for a common purpose or joint purpose of benefiting more than one cost category and not readily assignable to the cost category benefited.

~~Y.~~ Z. Interagency board for quality assurance. "Interagency board for quality assurance" means the board established by Minnesota Statutes, section 144A.31.

~~Z.~~ AA. Land improvement. "Land improvement" means an improvement to the land on which the nursing home is located such as paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and

sidewalks, if replacement is the responsibility of the nursing home.

~~AA.~~ BB. Leasehold improvement. "Leasehold improvement" means an improvement on leased property that reverts to the owner of the property upon termination of the lease.

~~BB.~~ CC. Lesser care resident day. "Lesser care resident day" means a day on which services are provided to a resident who requires a lower level of care than the care level for which the nursing home is certified.

~~CC.--Major-betterment.--"Major-betterment"-means-the renovation-or-replacement-of-part-of-an-existing-asset-to increase-the-asset's-efficiency,-value,-or-useful-life.~~

DD. Metropolitan group. "Metropolitan group" means all nursing homes located in Koochiching, Itasca, Aitkin, Carlton, Lake, Cook, Scott, Hennepin, Ramsey, St. Louis, Anoka, Washington, Dakota, and Carver counties.

EE. Minor equipment. "Minor equipment" means equipment that is not depreciable equipment. Examples of minor equipment are bed pans, kitchen utensils, cleaning utensils, and wastebaskets.

FF. Necessary service. "Necessary service" means a function pertinent to the nursing home's operation that, if not performed by the individual, would have required the nursing home to employ or assign another person to perform it.

GG. Net cost. "Net cost" means the actual cost minus proceeds from insurance, salvage, or disposal.

HH. Nonmetropolitan group. "Nonmetropolitan group" means nursing homes located in counties which are not in the metropolitan group.

II. Nursing home. "Nursing home" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.58.

JJ. Operating costs. "Operating costs" means the day-to-day costs of operating the nursing home in compliance with licensure and certification standards. Operating cost categories are: nursing, including nurses and nursing assistants training;

dietary; laundry and linen; housekeeping; plant operation and maintenance; other care-related services; general and administrative; payroll taxes; fringe benefits, including clerical training; and real estate taxes and actual special assessments paid.

KK. Payment rate. "Payment rate" means the rate which is determined by adding together the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate, and which becomes effective on July 1 of each year for payment to the nursing home for services rendered through June 30 of the following year.

LL. Payroll taxes. "Payroll taxes" means the employer's share of social security withholding taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes or costs.

MM. Private paying resident. "Private paying resident" means a nursing home resident who is not a medical assistance recipient for the date of service and whose payment rate is not established by another third party, including the veterans administration or medicare.

NN. Property-related costs. "Property-related costs" means all directly identifiable costs, other than personnel costs, associated with the financing and ownership of the nursing home's real estate and depreciable equipment, including depreciation, interest, rental or lease payments, and earning or investment allowance. For the rate years beginning July 1, 1983 and July 1, 1984, property-related costs shall also include working capital interest.

OO. Rate year. "Rate year" means the fiscal year for which a payment rate is effective, from July 1 through the following June 30.

PP. Real estate. "Real estate" means land, land improvements, and facilities~~, and attached fixtures~~ used directly for resident care.

QQ. Real estate taxes and special assessments. "Real estate taxes and special assessments" means ~~all actual special~~

~~assessments-paid-and~~ the real estate tax liability shown on the annual property tax statement of the nursing home for the calendar year during which the ~~reporting-year-ends~~ rate year begins and the actual special assessments and related interest paid during the reporting year. The term does not include personnel costs~~,-interest,~~ or fees for late payment.

RR. Related organization. "Related organization" means ~~an organization-which-furnishes-services,-facilities,-or-supplies to-a-nursing-home-and-which:~~

~~1.--is-associated-with-or-affiliated-with-the-nursing home;-or~~

~~2.--has-control-of-or-is-controlled-by-the-nursing-home. "Control"-means-the-situation-in-which-an-individual-or-an organization-has-the-power,-directly-or-indirectly,-to-influence or-direct-significantly-the-actions-or-policies-of-an organization-or-institution;-or~~

~~3.--is-under-common-ownership-with-the-nursing-home. "Common-ownership"-means-the-situation-in-which-an-individual-or an-organization-owns-equity-in-the-nursing-home-and-in-the organization-serving-the-nursing-home.~~ a person which furnishes goods or services to a nursing home and which is an affiliate of a nursing home, a close relative of an affiliate of a nursing home, or an affiliate of a close relative of an affiliate of a nursing home. As used in this provision:

1. An "affiliate" is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

2. A "person" is an individual, a corporation, a partnership, an association, a trust, and unincorporated organization, or a government or political subdivision.

3. A "close relative of an affiliate of a nursing home" is an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a nursing home is no more remote than first cousin.

4. "Control" including the terms "controlling," "controlled by," and "under common control with" is the

possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting sercurities, by contract or otherwise.

SS. Reporting year. "Reporting year" means the period from October 1 to September 30, immediately preceding the rate year, for which the nursing home submits its cost report, and which is the basis for the determination of the payment rate for the following rate year.

TT. Resident day. "Resident day" means a day for which nursing services are rendered and billed, or a day on which a bed is held and billed.

UU. Top management personnel. "Top management personnel" means owners, board members, corporate officers, regional and district directors or managers, administrators, including the nursing home administrator required by Minnesota Statutes, section 144A.04, subdivision 5, or any other person performing functions as an executive. Persons performing functions only as nursing home department heads are not included in this definition.

VV. Useful life. "Useful life" means the length of time an asset is expected to provide economic service before needing replacement as determined pursuant to 12 MCAR S 2.049 in effect on May 1, 1983.

WW. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program ~~or Minnesota supplemental aid program~~.

12 MCAR S 2.05003 [Temporary] Cost principles.

Nursing homes must use the cost principles in A.-F. to report costs. The commissioner shall use these cost principles to determine allowable costs.

A. General and administrative costs. General and administrative costs must not be allocated as a direct or indirect cost to any other cost categories except as provided in 12 MCAR S 2.05007 A.3. [Temporary].

B. Applicable credits. Applicable credits must be used to

offset or reduce the expenses of the nursing home to the extent that the cost to which the credits apply was claimed as a nursing home cost.

C. Adequate documentation.

1. General principles. Adequate documentation must:

a. be maintained in orderly, well-organized files;

b. not include documentation of two or more related nursing homes in one set of files;

c. include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery destination address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or nursing homes; and

d. include contracts, agreements, amortization schedules, mortgages, ~~and~~ other debt instruments, and all other ~~relevant~~ documents necessary to explain nursing home's costs or revenues.

2. Documentation of compensation. Compensation for personal services, regardless of whether treated as direct or indirect costs, must be documented on payroll records. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees which are chargeable to more than one cost category must be supported by time distribution records. The method used must produce a proportional distribution of actual time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must reflect an amount proportionate to a full-time basis.

3. Documentation of mileage; motor vehicle log. Except for utility vehicles used exclusively for nursing home business the nursing home must maintain a motor vehicle log that shows personal, and nursing home, ~~and resident~~ usage. Mileage paid for the use of a private vehicle must be documented.

4. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost

allocations made to cost categories and to levels of care.

D. Other cost principles. For rate setting purposes, a cost must satisfy the following criteria:

1. The cost is recognized as ordinary, necessary, and related to resident care.

2. The cost is what a prudent and cost conscious business person would pay for the specific ~~goods~~ good or ~~services~~ service in the open market in an arm's length transaction.

3. The cost is for goods or services actually provided to the nursing home.

4. The cost effects of transactions that ~~are conceived for the purpose~~ have the effect of circumventing these rules are not allowable under the principle that the substance of the transaction shall prevail over form.

5. Costs that ~~relate~~ are incurred due to management inefficiency, unnecessary care or facilities, ~~noncompetitive~~ agreements not to compete, ~~and~~ or activities not commonly accepted in the nursing home care field are not allowable.

E. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the nursing home's owners or employees. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

a. salaries, wages, bonuses, vacations, sick leave, and fringe benefits paid for managerial, administrative, professional, and other services;

b. amounts paid by the nursing home for the personal benefit of the owners or employees;

c. the costs of assets and services which the owner or employee receives from the home;

d. deferred compensation and individual retirement accounts (IRA's);

e. the costs of supplies, equipment, ~~and~~ or services for personal use ~~and~~ or any other in-kind ~~benefit~~ benefits received by the owners or employees; and

f. payment to nonpaid workers, and to organizations of nonpaid workers, that have arrangements with the nursing home for the performance of services by the nonpaid workers.

2. The nursing home must have a written policy for payment of compensation for personal services. The policy must:

a. relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual; and

b. result in consistent treatment of employees working in similar situations within the nursing home~~;-and~~

~~c.--relate-the-compensation-paid-within-the-nursing home-to-that-paid-by-comparable-nursing-homes-for-comparable services~~.

3. Only services which are necessary services shall be compensated.

4. Except for accrued vacation and sick leave, compensation must be actually paid, whether by cash or negotiable instrument, within 75 days after the close of the reporting period. If payment is not made within the allowable period, the unpaid compensation shall be disallowed in that reporting year and shall not be an allowable cost in future reporting years.

5. A payment that represents a return on equity capital is not allowable as compensation.

F. Capitalization.

1. Expenditures incurred on or after July 1, 1983, for land improvements, facilities, equipment, extraordinary repairs, additions, ~~major~~ betterments, and leasehold improvements must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit ~~value~~ cost of ~~$150~~ $500 or more. Expenditures incurred on or before June 30, 1983, shall be capitalized and depreciated in accordance with 12 MCAR S 2.049 in effect on May 1, 1983.

The purchase or purchases of ~~the same~~ equipment, other than minor equipment, during a reporting year which have a unit cost of less than ~~$150~~ $500 but have an aggregate cost in excess of

~~$1,000~~ $2,500 must be capitalized and depreciated.

2. Leases and rentals must be capitalized according to generally accepted accounting principles. If the lease payments are paid to a related organization, the lease or rental agreement must be capitalized and allowable costs shall be computed as though the lease did not exist.

3. Items such as land, land improvements whose maintenance or construction are not the responsibility of the nursing home, and good will shall not be depreciable assets.

12 MCAR S 2.05004 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to services, facilities, and supplies directly or indirectly furnished to the nursing home by any related organization are includable in the allowable cost of the nursing home at the cost to the related organization if these costs do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

B. Exception to limitation on related organization costs. If the related organization in the normal course of business sells services, facilities, or supplies to ~~outsiders~~ nonrelated organization's, the cost to the nursing home shall be the ~~outsider's~~ nonrelated organization's price provided that sales to ~~outsiders~~ nonrelated organizations constitute at least ~~75~~ 50 percent of total annual sales.

C. Disposal of assets of related organizations. Subject to the provisions of 12 MCAR SS 2.05001-2.05016 [Temporary], the cost of ownership of an asset which is used by the nursing home may be included in the allowable cost of the nursing home even though it is owned by a related organization. When the asset is sold or otherwise disposed of by the related organization and the depreciation is included in the general and administrative category, any gain realized by the organization must be offset against the nursing home's general and administrative cost category. Where a nursing home claims depreciation on an asset owned by a related organization, and ~~the nursing home terminates participation in the medical assistance or Minnesota~~

~~supplemental-aid-program,-or~~ the asset is sold or otherwise disposed of by the related organization, the allowable depreciation is subject to the recapture provisions of 12 MCAR S 2.05011 G. [Temporary].

D. Sales or reorganization of related organization. No adjustment to property-related costs may be made as a result of sales or reorganization of the related organization. Sales or reorganizations of the related organizations are subject to the provisions of C.

12 MCAR S 2.05005 [Temporary] Allowable operating costs.

A. Licensure and certification costs. Subject to the provisions of 12 MCAR SS 2.05001-2.05016 [Temporary] all costs of meeting the licensure and certification standards listed in 1.-3. are allowable operating costs for the purpose of setting nursing home rates. The standards are:

1. standards of SNF services or ICF services as set out by federal regulations;

2. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations; and

3. other requirements for licensing under state law or rules that must be met to provide nursing and boarding care services.

B. Routine service costs. Subject to the provisions of 12 MCAR SS 2.05001-2.05016 [Temporary] all costs of routine services including nursing, dietary, and support services as defined in 12 MCAR S 2.05006 [Temporary] are allowable operating costs for the purpose of setting nursing home rates.

12 MCAR S 2.05006 [Temporary] Reporting of costs by cost category.

All costs for routine services must be reported in cost categories A.-J.

A. Dietary services. The costs listed in 1.-3. are included in the dietary services cost category:

1. direct costs of normal and special diet food including

raw food, dietary supplies, food preparation and serving, and special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, even if written as a prescription item by a physician;

2. the ~~salary~~ personnel costs of the supervisor, dieticians, chefs, cooks, dishwashers, and other employees assigned to the kitchen and dining room including the salaries or fees of dietary consultants;

3. the costs of training to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain or update skills needed in performing the employee's present duties.

B. Laundry and linen services. The costs listed in 1. and 2. are included in the laundry and linen services cost category:

1. direct costs of linen and bedding, the laundering of resident clothing, other laundering, and laundry supplies; and

2. the ~~salaries~~ personnel costs of the supervisor, ~~seamstresses~~ sewers and menders, ironers, and other laundry employees.

C. Housekeeping services. The costs listed in 1. and 2. are included in the housekeeping services cost category:

1. direct costs of housekeeping, including cleaning and lavatory supplies; and

2. the ~~salaries~~ personnel costs of the supervisor, housekeepers, and other cleaning personnel.

D. Plant operation and maintenance services. The costs listed in 1. and 2. are included in the plant operations and maintenance cost category:

1. direct costs for maintenance and operation of the building and grounds, including fuel, electricity, water, sewer, supplies and parts to repair and maintain equipment and facilities, minor equipment, and tools; and

2. the ~~salaries~~ personnel costs of the supervisor, engineers, heating-plant employees, independent contractors, and other maintenance personnel.

E. Nursing services. Direct costs associated with nursing

services including 1.-24. are included in the nursing services cost category:

1. nursing assessment of the health status of the resident and the planning of appropriate interventions to overcome identified problems and maximize resident strengths;

2. bedside care and services;

3. care and services according to the order of the attending physicians;

4. monitoring procedures such as vital signs, urine testing, weight, intake and output, and observation of the body system;

5. administration of oral, sublingual, rectal, and local medications topically applied, and appropriate recording of resident's responses;

6. drawing blood and collecting specimens for submission to laboratories;

7. prevention of skin irritation and decubitus ulcers;

8. routine changing of dressings;

9. training, assistance, and encouragement for self-care as required for feeding, grooming, ambulation, toilet, and other activities of daily living including transportation within the nursing home facility;

10. supportive assistance and training in resident transfer techniques including transfer from bed to wheelchair or wheelchair to commode;

~~11. restorative-nursing-measures-to-help-the-resident reach-or-maintain-the-resident's-best-level-of-functioning including-passive-range-of-motion,-ambulation,-transfer,-and activities-of-daily-living,-including-teaching-and-follow-up;~~

~~12.~~ care of residents with casts, braces, splints, and other appliances requiring nursing care or supervision;

~~13.~~ 12. administration of oxygen;

~~14.~~ 13. use of nebulizers;

~~15.~~ 14. maintenance care of resident's colostomy, illeostomy, and urostomy;

~~16.--arrangements-for-obtaining-medical,-dental,-and~~

~~hospital care;~~

~~17.~~ 15. administration of parenteral medications, including intravenous solutions;

~~18.~~ 16. administration of tube feedings;

~~19.~~ 17. nasopharyngeal aspiration required for maintenance of a clean airway;

~~20.~~ 18. care of suprapubic catheters and urethral catheters;

~~21.~~ 19. care of tracheostomy, gastrostomy, and other tubes in a body;

~~22.~~ 20. all costs of equipment and supplies that are used to complement the services in the nursing services cost category, including:

a. items stocked at nursing stations or on the floor and distributed or used individually, including: alcohol, applicators, cotton balls, incontinence pads, disposable ice bags, dressings, bandages, water pitchers, tongue depressors, disposable gloves, enemas, enema equipment, soap and water, medication cups, diapers, plastic waste bags, sanitary products, thermometers, hypodermic needles and syringes, and clinical reagents or similar diagnostic agents; and

b. drugs which according to federal law do not require a prescription ~~and insulin which is required by a resident's plan of care.~~;

~~23.~~ 21. costs for education or training of nursing service personnel; except for nurses aid training, educational costs are limited to either meeting the requirements of laws or regulations for keeping an employee's salary, status, or position or for maintaining or updating skills needed in performing the employee's present duties; and

~~24.~~ 22. personnel costs of persons performing nursing services including salaries of the director, and assistant director of nursing, supervising nurses, medical records personnel, registered professional nurses, licensed practical nurses, nurses aides, orderlies, attendants, and the salaries or fees of physicians or other professionals performing consulting

services on medical care which are not reimbursed separately on a fee for service basis.

F. Other care-related services. The costs listed in 1.-3. are included in the other care-related services cost category:

1. direct costs of other ~~direct~~ care-related services, such as recreational or religious activities, arts and crafts, and social services which are not reimbursed separately on a fee for service basis;

2. the ~~salaries~~ personnel costs of recreational therapists and aides, rehabilitation therapists and aides, chaplains, arts and crafts instructors and aides, social workers and aides, and other care-related personnel including salaries or fees of professionals performing consultation services in these areas which are not reimbursed separately on a fee for service basis; and

3. the costs of training to meet the requirements of laws or regulations for keeping an employee's salary, status, or position, or to maintain or update skills needed in performing the employee's present duties.

G. General and administrative services. Direct costs for administering the overall activities of the nursing home are included in the general and administrative cost category. These direct costs include:

1. business office functions;

2. travel expenses;

3. all motor vehicle operating expenses ~~for vehicles such as vans or utility vehicles~~;

4. telephone and telegraph charges;

5. office supplies;

6. licensing and permit fees;

7. insurance, except as included as a fringe benefit;

8. personnel costs including help wanted ads, and the salaries or fees of administrators, assistant administrators, medical directors, accounting and clerical personnel, data processing personnel, and receptionists;

9. professional fees for services such as legal,

accounting, and data processing services;

10. management fees, and the cost of management and administrative consultants;

11. central, affiliated, or corporate office costs at cost;

12. business meetings and seminars;

13. postage;

14. training for top management personnel and other than direct resident care related personnel that either meets the requirements of laws, rules, or regulations to keep an employee's salary, status, or position or to maintain or update skills needed to perform the employee's present duties;

15. membership fees for associations and professional organizations which are directly related to resident care;

16. subscriptions to periodicals which are directly related to ~~resident-care~~ the operation of the nursing home;

17. telephone, television, and radio services provided in areas ~~designed~~ designated for use by the general resident population, such as lounges and recreation rooms;

18. security services or security personnel;

19. joint commission on accreditation of hospitals survey;

20. advertising; and

~~20.~~ 21. board of director's fees.

H. Payroll taxes and fringe benefits. Only the costs for 1.-8. are included in the payroll taxes and fringe benefits cost category:

1. the employer's share of the social security withholding tax;

2. state and federal unemployment compensation taxes or costs;

3. group life insurance;

4. group health and dental insurance;

5. workers' compensation insurance;

6. either a United States Internal Revenue Service-approved ~~approved~~ pension plan or a United States Internal Revenue Service approved profit-sharing plan, but not

both;

7. governmentally required retirement contributions; and

8. uniform allowance.

I. Real estate taxes and special assessments. Real estate ~~tax liability for each proprietary nursing home and actual~~ taxes and special assessments ~~paid~~ for each nursing home are included in the real estate taxes and special assessments cost category.

J. Property-related costs. Depreciation, interest, investment allowance, lease, or rental payments are included in the property-related cost category. For the rate years beginning July 1, 1983 and July 1, 1984, property-related costs shall also include working capital interest.

12 MCAR S 2.05007 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost category allocation principles shall be as provided in 1.-4.

1. Cost classification to cost categories is the process of charging costs to the appropriate cost categories and compiling a total cost for each cost category to be recorded on the cost report. Nursing homes must classify costs in accordance with the cost categories defined in 12 MCAR S 2.05006 [Temporary]. Any costs that cannot be specifically classified to a cost category shall be classified to the general and administrative cost category.

2. Classification of costs, except salary costs of individuals with multiple duties, to the cost categories in 12 MCAR S 2.05006 [Temporary] shall use direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the nursing home.

3. In instances in which a person other than top management personnel has multiple duties, the person's salary cost shall be allocated to the cost categories in 12 MCAR S 2.05006 [Temporary] on the basis of time distribution records that show actual time spent on various activities.

In a nursing home of 60 or fewer beds, part of the salary or salaries of top management personnel may be allocated to

other cost categories to the extent justified in records kept by the nursing home. Central, affiliated, or corporate office costs representing services of ~~required~~ consultants required by law or regulation in areas including, but not limited to, dietary, pharmacy, social services, or other resident care related activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home.

4. Except as provided in 3., no general and administrative costs may be allocated to other cost categories.

B. Specific care level cost allocation procedures for multi-care level nursing homes. Specific cost allocation procedures are necessary to determine costs assignable among care levels within a multi-care level nursing home. Costs will be allocated between the levels of skilled care, intermediate care I, intermediate care II, and other care levels as appropriate. Nursing homes must choose one of the allocation methods given in each cost category in 1.-10. The method chosen must result in a reasonable identification of costs by care level. Once an allocation method is chosen, it cannot be changed unless the nursing home demonstrates to the commissioner, based on changed circumstances, that it is impossible or impractical for the nursing home to continue to use the method originally chosen or that the method originally chosen no longer results in a reasonable identification of costs by care level.

1. Dietary services cost allocation must be based on:

a. regularly validated time or cost studies;

b. the number of meals served; or

c. the actual resident days.

2. Laundry and linen services cost allocation must be based on:

a. the dry weight of laundry processed for each level of care; or

b. actual resident days.

3. Housekeeping services cost allocation must be based on:

a. regularly validated time or cost studies;

b. the ratio of square feet of floor space devoted directly to each care level; or

~~b.~~ c. actual resident days.

4. Plant operation and maintenance cost allocation must be based on:

a. the ratio of square feet of floor space devoted directly to each care level; or

b. actual resident days.

5. Nursing service cost allocation must be based on direct identification in the routine classification of transactions when costs are recorded in the books and records of the nursing home, such as invoice and time record account classification. If direct identification cannot be used, costs must be allocated on the basis of actual resident days in each care level weighted by the maximum allowable nursing care and attendant hours for each level of care.

6. Cost allocation for other care-related services must be based on:

a. direct identification of services provided to residents of each level of care; or

b. actual resident days.

7. General and administrative costs must be allocated in the same proportion as the combined cost of nursing, other care-related, dietary, laundry, housekeeping, and plant operations costs are allocated to different care levels.

8. Fringe benefits and payroll tax costs must be allocated on the same basis as general and administrative costs. Effective for rate years beginning July 1, 1984, and after, fringe benefits and payroll tax costs must be allocated in the same proportion as the combined cost of salaries in all other cost categories for each level of care.

9. Real estate taxes and special assessments allocation must be based on the same ratio used for property-related costs.

10. Property-related costs.

a. A nursing home shall allocate property-related

costs on the basis of the method of allocation used by the nursing home in the most recent cost report received by December 31, 1982, and audited by March 1, 1983.

b. A newly constructed nursing home whose interim rate is first effective on or after July 1, 1983, shall allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level or actual resident days. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

c. A nursing home which changes beds from one care level to another care level may allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level, or actual resident days in the next rate year. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

d. Notwithstanding the provisions in a.-c., if, in any year the actual resident days in any care level exceed the certified capacity at that care level, the nursing home shall allocate property-related costs based on actual resident days for that reporting year. In subsequent years, the nursing home shall use its previous method of allocation if the certified capacity is no longer exceeded.

12 MCAR S 2.05008 [Temporary] Limitations on costs.

A. Cost principles. All allowable costs are limited by the cost principles defined in 12 MCAR S 2.05003 [Temporary].

B. General and administrative limitation. Within each care level, the commissioner shall disallow any portion of the general and administrative cost category that exceeds the stated percentages of the expenditures in all operating cost categories other than fringe benefits, payroll taxes, and general and administrative as given in 1.-4.

1. Ten percent for nursing homes with more than 100 certified beds in total.

2. Twelve percent for nursing homes with less than 101

but more than 40 certified beds in total.

3. Fourteen percent for nursing homes with 40 or fewer certified beds in total.

4. Fifteen percent for convalescent and nursing care units attached to hospitals for the rate year beginning July 1, 1983. In subsequent years, the general and administrative limit for convalescent and nursing care units attached to hospitals shall be as given in 1.-3.

C. Nursing care and attendant limitations.

1. The maximum number of nursing hours per actual resident day for which costs shall be allowed are as follows:

a. SNF, 2.9 hours;

b. ICF I, 2.3 hours; and

c. ICF II, 1 hour.

For the purposes of 12 MCAR SS 2.05001-2.05016 [Temporary], the ~~computation of nursing hours must not include~~ nursing home may exclude hours for vacation, holidays, sick leave, classroom training, and coffee breaks from the computation of nursing hours. If the actual average nursing hours per actual resident day exceed the limits in a.-c., the limitation to nursing costs must be calculated by multiplying the ratio of the limit to the average actual nursing hours per actual resident day for the year times the actual cost per actual resident day. This limitation must not be applied to nursing homes that qualify for exception under 12 MCAR S 2.05010 C.6., a. or b. [Temporary], or nursing homes mandated by a correction order from the Department of Health to provide additional nursing care.

2. The maximum number of attendant hours per actual resident day for which costs of a boarding care nursing home shall be allowed is one hour per actual resident day. If the actual average attendant hours per actual resident day exceeds this limit, the limitation on attendant costs must be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per actual resident day for the year times the actual cost per actual resident day.

D. Top management personnel compensation limitations.

1. Compensation of top management personnel shall be limited to the cumulative compensation per bed limitation as determined annually. The calculation of this limitation is based on the nursing home's daily average number of licensed beds without regard to care level during the reporting year. The schedule is:

Number of Licensed Beds	Cumulative Annual Compensation Per Bed Limitation (1983)
First 50 beds	$593
Each bed over 50	$297

The above limits shall apply to the reporting year ending in the year specified.

2. For determining top management personnel compensation limitations, compensation must not include fringe benefits, vacation, and sick leave if the same benefits are made available to all or substantially all of the nursing home's employees.

3. The cumulative compensation per bed limitation in 1. shall be increased by six percent for the reporting year ending September 30, 1984.

4. For the rate year beginning July 1, 1983, the maximum annual top management personnel compensation per nursing home shall be $35,000. For the rate years beginning on or after July 1, 1984, the maximum annual top management personnel compensation per nursing home shall be $42,000.

5. Compensation of top management personnel in a nursing home with 61 or more licensed beds must not be allocated to other than top management functions.

6. Reasonable compensation of an assistant administrator is not subject to the limitations in 1.-5.

12 MCAR S 2.05009 [Temporary] Nonallowable costs.

The costs listed in A.-EE. are not allowable for purposes of setting payment rates but must be identified on the nursing home's cost report. These costs are:

A. all contributions, including charitable contributions, and contributions to political action committees or campaigns;

B. salaries and expenses of a lobbyist;

C. assessments made by or the portion of dues charged by associations or professional organizations for litigation except for successful challenges to decisions by agencies of the state of Minnesota, lobbying costs, or contributions to political action committees or campaigns. Where the breakdown of dues charged to a nursing home is not provided, the entire cost shall be disallowed;

D. advertising designed to encourage potential residents to select a particular nursing home, except for Yellow Pages advertisments of reasonable size and cost;

E. assessments levied by the commissioner of health for uncorrected violations;

F. all activities not related to resident care such as flowers, or gifts, ~~bonuses~~ for employees or owners, employee parties, and business meals;

G. all costs related to purchase of and care for pets;

H. all penalties and interest charges from governmental agencies, and bank overdraft or late payment charges;

I. all costs of sponsoring employee, youth, or adult activities such as athletic teams and beauty contests;

J. premiums on owner's or board member's life insurance policies, except that premiums on an owner's or board member's life insurance policy shall be allowed if the policy is included in the group policy provided for all employees;

K. personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment;

L. Membership or other fees for social, fraternal, sports, health, or similar organizations;

M. training programs for anyone except employees or volunteers in the nursing home;

N. training programs to meet the minimum educational requirements of a position ~~except for nurses aides~~, education that leads to a degree, or education that qualifies the employee for a new trade or profession. This limitation shall not apply to training or education for nurses aids or training to meet the

requirements of laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain or update skills needed in performing the employee's present duties;

O. all bad debts and related bad debt collection fees;

P. all costs of fund raising activities;

Q. all costs of functions ~~normally~~ reimbursed by charges to residents, employees, or visitors, such as the operating cost, direct and indirect, of a pharmacy, beauty shop, gift shop, coffee shop, apartment, day care center, and functions not related to resident care;

R. operating costs for activities to the extent that such activities are financed by gifts or grants from public ~~or private~~ funds;

S. telephone, television, and radio service provided in a resident's room;

T. costs of noncompetitive agreements;

U. all identifiable costs of services provided by a licensed medical therapeutic or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

1. purchase of service fees paid to the vendor or his agent who is not an employee of the nursing home or the compensation of the practitioner who is an employee of the nursing home;

2. allocated compensation and related costs of any nursing home personnel assisting in providing these services; and

3. allocated cost of any operating or property-related cost for providing these services such as: housekeeping, laundry, maintenance, medical records, payroll taxes, space, utilities, equipment, supplies, bookkeeping, secretarial, insurance, and supervisory and administrative staff costs.

If any of the expenses in 1.-3. are incurred by the nursing home, these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated by the nursing home, including any charges by the nursing home

to the vendor;

V. all costs for which adequate documentation is not maintained or provided as required by 12 MCAR SS 2.05001-2.05016 [Temporary];

~~W. costs incurred by owners or employees while conducting the business of or performing services for professional organizations or associations;~~

~~X.~~ legal and related expenses for unsuccessful challenges to decisions by governmental agencies;

~~Y. interest for financing working capital needs, beginning with the rate year starting July 1, 1984;~~

~~Z.~~ X. any fringe benefits or payroll taxes associated with disallowed salary costs;

~~AA.~~ Y. costs associated with sales or reorganizations of nursing homes;

~~BB.~~ Z. interest charged by the department on depreciation recapture settlements or rate adjustments;

~~CC.~~ AA. any portion of the total general and administrative cost category which exceeds the limitations in 12 MCAR S 2.05008 B.1.-4. [Temporary];

~~DD.~~ BB. cost incurred for activities directly related to influencing employees with respect to unionization; and

~~EE.~~ CC. all costs determined to be nonallowable in accordance with 12 MCAR SS 2.05001-2.05016 [Temporary].

12 MCAR S 2.05010 [Temporary] Rate determination for operating costs.

A. Determination of actual resident days. The total number of actual resident days shall be calculated by multiplying the lesser care resident days times the appropriate factor from the following table and subtracting that product from the number of resident days.

	Certification	
Level of Care Provided	SNF Beds	ICF I Beds
SNF	not applicable	not applicable
ICF I	.15	not applicable
ICF II	.50	.40

For the rate year beginning July 1, 1983, the total number of lesser care resident days which may be adjusted as set forth above must not exceed 15 percent of the total number of resident days. For the rate year beginning July 1, 1984, the total number of lesser care resident days which may be adjusted as set forth above must not exceed ten percent of the total number of resident days. This limitation ~~may~~ shall be waived by the commissioner ~~for up to one year to accommodate a transition period during which the nursing home obtains the proper care level certification~~ if the nursing home demonstrates in writing that it is taking appropriate action to change care level certification as necessary to accommodate the lesser care residents. The waiver shall extend until the certification is changed but shall not exceed one year.

B. Establishment of actual allowable historical operating costs per diem.

1. For the rate year beginning July 1, 1983, and ending on June 30, 1984, the actual allowable historical operating costs shall be determined ~~from~~ as reported in the most recent cost report received by December 31, 1982, and audited by March 1, 1983, and shall be updated to June 30, 1983, by using a nine percent annual rate of increase after applying the general and administrative cost limitation in 12 MCAR S 2.05008 C. [Temporary].

2. For rate years beginning July 1, 1984, the commissioner shall annually review and adjust the historical operating costs incurred by the nursing home during the reporting year preceding the rate year. The review and adjustment must comply with the provisions of 12 MCAR SS 2.05001-2.05016 [Temporary].

3. After review and adjustment the total allowable historical operating costs shall be divided by actual resident days in order to compute the nursing home's actual allowable historical operating cost per diem.

C. Establishment of 60th percentile of actual allowable historical operating costs per diem.

1. For purposes of establishing the 60th percentile, the total real estate tax and the special assessments must be excluded from the actual allowable historical operating cost per diem of a nursing home.

2. Each year the actual allowable historical operating cost per diems must be grouped according to the level of care, geographic location of the nursing home, and attachment to hospitals. The following groups are established:

Metropolitan SNF, Nonmetropolitan SNF,
Metropolitan ICF I, Nonmetropolitan ICF I,
Metropolitan ICF II, Nonmetropolitan ICF II,
Statewide Boarding Care,
Statewide hospital attached nursing homes: SNF,
Statewide hospital attached nursing homes: ICF I, and
Statewide hospital attached nursing homes: ICF II.

3. Within each group the actual allowable historical operating cost per diems shall be ranked from lowest to highest.

4. The number of actual allowable historical operating cost per diems in the group shall be increased by one and shall be multiplied by 0.6 to establish the 60th percentile rank.

5. The actual allowable historical operating cost per diem that has a rank corresponding to the 60th percentile becomes the 60th percentile actual allowable historical operating cost per diem for that group. If the 60th percentile falls between two per diems in the group, the 60th percentile actual allowable historical operating cost per diem is the prorated value between the two per diems.

6. In establishing the groups set forth at C.2., the commissioner shall exclude:

a. a skilled level of care in a nursing home whose skilled care residents' average length of stay is less than 180 days. The average length of stay for skilled care is determined by dividing the actual resident skilled days for the historical reporting year of the nursing home by the total skilled discharges for the historical reporting year of the nursing home;

b. a nursing home, or that part of a nursing home

which is licensed and rendering services under the provisions of 12 MCAR S 2.080 on or before June 1, 1983;

c. a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more, during its interim rate period; and

d. a new care level in nursing homes that on June 1, 1983, have obtained approval for changes in certification level but have no historical costs in that level during the reporting period.

D. Establishment of the operating cost payment rate.

1. For the rate year beginning on July 1, 1983, and ending on June 30, 1984, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem increased by six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased by six percent plus 80 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

2. For the rate year beginning on July 1, 1984, and ending on June 30, 1985, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem, increased at an annual rate of six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased at an annual rate of six percent, plus 75 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

3. A nursing home or part of a nursing home falling within the exclusions of C.6.a. or b. shall receive as its operating cost payment rate:

a. for the rate year beginning July 1, 1983, and ending June 30, 1984, its actual allowable historical operating cost per diem increased by six percent; and

b. for the rate year beginning July 1, 1984, and ending June 30, 1985, its actual allowable historical operating cost per diem, increased at an annual rate of six percent.

E. Efficiency incentive.

1. If the actual historical operating cost per diem incurred by a nursing home is less than the nursing home's operating cost payment rate established for the rate year, the nursing home may keep the difference as an efficiency incentive except as provided in 12 MCAR S 2.05013 C. [Temporary].

2. If a nursing home's actual historical operating cost per diem is greater than the operating cost payment rate established for that rate year, there shall be no retroactive cost settlement.

3. If a desk or field audit indicates that a reduction in expenditures for direct resident care might cause a detrimental effect on quality of care, the nursing home must be referred for investigation to the commissioner of health, the interagency board for quality assurance, and the Surveillance and Utilization Review section of the department.

12 MCAR S 2.05011 [Temporary] Rate determination for property-related costs.

A. Capacity days. The number of capacity days shall be determined by multiplying the number of the nursing home's licensed beds by the number of days in the nursing home's reporting period. Capacity days may be adjusted under one or more of the conditions given in 1.-4.

1. Nursing homes qualifying for the lesser care rate under the provisions of 12 MCAR S 2.05014 B. [Temporary] must adjust the capacity days by the formula and limitations provided for in 12 MCAR S 2.05010 A. [Temporary].

2. For nursing homes applying for a certificate of need after August 15, 1972, and choosing to assign a greater proportion of costs to single bed rooms, the number of capacity

days shall be increased by multiplying the number of licensed single bed rooms by 1.5.

~~3. Usable or operable bed capacity shall be used for purposes of the calculations required by 1. and 2. if the nursing home justifies in writing, to the satisfaction of the commissioner, that licensed beds is an inappropriate measure of capacity. The usable or operable bed capacity adjustment must not be in effect for more than one reporting year and must not be recognized after July 1, 1985.~~ For purposes of the calculations required by 1. and 2., the commissioner shall allow the nursing home to use the number of beds in operation rather than licensed beds if the nursing home demonstrates in writing that:

a. the space is not being used as a resident room, the space is being used for another purpose related to the operation of the nursing home, and that the use of the space for a purpose other than a resident room is necessary for the operation of the nursing home; or

b. the facility is required by a governmental agency to take the bed or beds out of operation.

4. Notwithstanding the provisions of 1.-3., the total of capacity days must not be reduced below:

a. ninety-three percent for nursing homes with more than 60 beds;

b. ninety-one percent for nursing homes with 60 or fewer beds; and

c. ninety percent for newly constructed nursing homes or nursing homes with a nursing home capacity increase of 50 percent or more.

B. Nursing homes constructed prior to July 1, 1983. The property-related cost base for a nursing home constructed prior to July 1, 1983, shall be determined by 1.-4.

1. For the rate years beginning on July 1, 1983, and July 1, 1984, the property-related costs include the allowable depreciation, interest, investment allowance, and lease or rental payment expenses at the dollar level recognized in the

most recent cost report received by the commissioner by December 31, 1982, and audited by March 1, 1983. These costs must be subsequently adjusted to reflect the costs recognized in the final rate for that cost report, adjusted for rate limitations in effect May 1, 1983.

2. Property-related costs as determined in 1. shall be reduced to the extent that costs included in property-related costs in the most recent cost report received by the commissioner by December 31, 1982, and audited by March 1, 1983, are included in a different cost category under 12 MCAR SS 2.05001-2.05016 [Temporary]. Along with the cost report filed with the commissioner, the nursing home shall clearly identify those costs which have been reclassified.

3. Adjustments to property-related costs for the cost of repairs, replacements, renewals, betterments, or improvements to existing buildings ~~and attached fixtures~~ and building service equipment are subject to the provisions of E. and shall be allowed if:

a. the cost incurred is reasonable, necessary, and ordinary;

b. the net cost is greater than $5,000;

c. the nursing home's property-related costs per diem are equal to or less than the average property-related costs per diem within its group; and

d. the adjustment is shown in the depreciation and interest schedules submitted to and approved by the commissioner.

These adjustments shall be calculated pursuant to the rules and statutes in effect on May 1, 1983. Additional interest allowed by 3. must be limited to the interest on indebtedness incurred ~~in the acquisition for which depreciation is adjusted~~ for repairs, replacements, renewals, betterments, or improvements permitted under 3.

4. No adjustments shall be made as a result of sales or reorganizations of nursing homes.

C. Newly constructed nursing homes; nursing homes with a capacity increase of 50 percent or more. The property-related

cost base for a newly constructed nursing home or a nursing home that increases its capacity 50 percent or more and that meets the conditions of Minnesota Statutes, section 144A.071 shall be determined by estimating the depreciation, interest, and investment allowance on the newly constructed nursing home or portion of a nursing home pursuant to the statutes and rules in effect on May 1, 1983. The property-related cost base shall be fixed at the level recognized at the time of settle-up. For the following rate years, the payment rate shall be calculated according to provisions of A. and B.

D. Nursing homes with a capacity increase of less than 50 percent. The property-related cost base for a nursing home that increases its capacity by less than 50 percent shall be increased to recognize costs incurred during the reporting year, provided that the nursing home meets the requirements of Minnesota Statutes, section 144A.071. The increased base shall be included in the calculation of a the payment rate for the rate year ~~following-the-reporting-year~~ in which the cost was incurred. The increase in the property-related cost base is subject to the provisions of E. and must include depreciation, interest, and investment allowance calculated pursuant to the statutes and rules in effect on May 1, 1983. The capacity day divisor shall be calculated pursuant to A. and F.

E. Basis of depreciable assets. The total basis of depreciable nursing home assets, whether constructed or purchased, must not exceed the following maximum limits per bed for licensed beds in rooms with two or more beds per room, and per bed for licensed single bed rooms; except that for licensed single bed rooms built prior to August 15, 1972, the basis must not exceed $16,500 per bed for a maximum of five percent of licensed beds:

Year beginning	Two or more bed rooms	Single bed rooms
Prior to January 1, 1974	$11,000	$16,500
January 1, 1974	13,000	19,500
January 1, 1975	14,820	22,230

January 1, 1976	15,413	23,119
January 1, 1977	16,406	24,608
January 1, 1978	18,109	27,162
January 1, 1979	20,010	30,014
January 1, 1980	22,971	34,457
January 1, 1981	25,544	38,316
January 1, 1982	26,591	39,887
January 1, 1983	27,309	40,964

On January 1, 1984, and January 1, 1985, the limit shall be adjusted as determined by the commissioner according to the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce. This limit does not apply to changes required by a governmental agency.

F. Computation of property-related cost payment rates. The property-related cost payment rate shall be computed by dividing total property-related costs by 96 percent of capacity days for nursing homes with more than 60 beds or 94 percent of capacity days for nursing homes with 60 or fewer beds. For the nursing home whose residents' average length of stay is 180 days or less, the nursing home may choose to divide the nursing home's property-related costs by the actual resident days to compute the nursing home's annual property-related cost payment rate. For a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more the interim property-related costs shall be determined pursuant to statutes and rules in effect on May 1, 1983.

G. Recapture of depreciation.

1. If 20 percent or more of the nursing ~~home-facility-or any-portion-of-the-nursing-home's-depreciable-equipment-or-land improvements-is~~ home's depreciable assets are sold at a price in excess of ~~its~~ the cost of the assets as reduced by the total of the depreciation used in the determination of property-related costs under 12 MCAR S 2.05011 [Temporary] and 12 MCAR S 2.049, depreciation recapture to be paid to the ~~commissioner~~ department shall be determined as follows:

a. The gross amount to be recaptured shall be the

lesser of the total actual gain on the sale or the allowable depreciation after November 1, 1972.

b. The gross recapture amount as determined in a. must be allocated to fiscal periods from November 1, 1972, through the date of sale. The gross recapture amount must be allocated to each fiscal period in the same ratio as depreciation amounts allowed under 12 MCAR S 2.05011 [Temporary] and 12 MCAR S 2.049. The amount allocated to each period must be divided by the total actual resident days in that period to determine a per diem cost for the period. The net recapture must then be determined by multiplying the welfare days by the per diem cost for each fiscal period.

c. The ~~portion of the~~ total net recapture amount determined above ~~and allocated to fiscal periods prior to July 1, 1983~~ shall be reduced by one percent for each month of continuous ownership ~~for the period beginning with~~ since the date of acquisition of the nursing home facility ~~through June 30, 1983~~.

~~d.--The portion of the net recapture allocated to rate years on or after July 1, 1983 shall be subject to full recapture.~~

~~e.--The total net recapture shall be the total of c. and d.~~

2. The new owner shall pay to the commissioner the total net recapture amount in ~~e.~~ c. within ~~120 days~~ two years of receiving formal notification of the amount due. Interest charges shall be assessed on balances outstanding after ~~the 120-day deadline~~ 120 days of receiving formal notification of the amount due. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes in effect on the 121st day after the formal notification.

~~3.--A nursing home which terminates participation in the medical assistance or Minnesota supplemental aid program and which is subject to the recapture provisions shall submit an appraisal of the assets of the nursing home.--If the commissioner determines that the appraisal submitted by the~~

~~nursing-home-may-not-accurately-show-the-value-of-the-nursing home-assets,-the-commissioner-may-obtain-an-appraisal-of-the assets-and-may-determine-the-amount-to-be-recaptured-according to-the-appraisal.~~

12 MCAR S 2.05012 [Temporary] Rate determination for real estate taxes and special assessments.

The total real estate taxes and actual special assessments must be divided by actual resident days to compute the payment rate for real estate taxes and special assessments.

12 MCAR S 2.05013 [Temporary] Total payment rate determination.

A. Total payment rate. The total payment rate must be the sum of the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate.

B. Private payment rate. The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. The private payment rate limitation shall not apply to any retroactive increase to a payment rate established under this rule.

C. Adjustment of payment rate; individual nursing homes. If the commissioner finds unallowable expenditures, errors, or omissions in the nursing home's historical operating costs, the nursing home's actual allowable historical operating cost per diem and subsequently affected payment rates must be adjusted. If the adjustment results in an underpayment to the nursing home, the commissioner shall pay to the nursing home the underpayment amount within 120 days of formal notification to the nursing home. If the adjustment results in an overpayment to the nursing home, the nursing home shall pay to the commissioner the entire overpayment within 120 days of receiving the formal notification from the commissioner. Interest charges shall be assessed on underpayment or overpayment balances outstanding after the deadlines. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect on the 121st day

after the formal notification.

D. Adjustment of payment rate; group. When resolution of appeals or on-site field audits of the records of nursing homes within a group result in adjustments to the 60th percentile of the payment rates within the group in any reporting year, the 60th percentile established for that group must be increased or decreased by the adjustment amount for the rate year following the reporting year during which the adjustment was made or the appeal was resolved. No redetermination of the existing 60th percentile may be made as a result of adjustments to cost reports.

12 MCAR S 2.05014 [Temporary] Special rate setting procedures.

A. Newly constructed nursing homes. Interim payment rates and settle-up payment rates for a newly constructed nursing home or one with a capacity increase of 50 percent or more shall be established in accordance with 1.-9.

1. A newly constructed nursing home or one with a capacity increase of 50 percent or more may, upon written application to the commissioner, receive an interim payment rate. The nursing home shall submit cost reports and other supporting information as required in 12 MCAR SS 2.05001-2.05016 [Temporary] to the extent applicable for the reporting year in which the nursing home plans to begin operation. The nursing home must state the reason for noncompliance with any provisions of 12 MCAR SS 2.05001-2.05016 [Temporary]. The effective date of the interim payment rate shall be the first day a medical assistance recipient resides in the newly constructed beds.

2. An interim payment rate for a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall be established as in a.-d.

a. The interim operating cost payment rate shall be computed by dividing the projected operating costs by the anticipated actual resident days. The interim operating cost payment rate must not exceed 110 percent of the 60th percentile increased by six percent in effect for the nursing home's group, except that for a nursing home meeting the provisions of 12 MCAR

S 2.05010 C.6.a. [Temporary] the interim operating cost payment rate must not exceed 110 percent of the highest operating cost payment rate for that type of nursing home in effect during that rate year.

b. The interim property-related cost payment rate shall be computed by dividing the projected property-related cost for any newly constructed nursing home or portion of a nursing home by 93 percent of capacity days for the nursing home. A nursing home included in 1. may elect to use anticipated actual resident days in place of 93 percent of capacity days.

c. The interim real estate tax and special assessments payment rate shall be computed by dividing the projected real estate tax and special assessments by the anticipated actual resident days.

d. The total interim payment rate shall be the sum of the interim payment rates computed in a.-c.

3. ~~A-newly-constructed-nursing-home's~~ The interim payment rate must not be in effect more than 17 months. ~~A-nursing-home that-has-a-starting-date~~ Where the interim payment rate begins between May 1 and September 30, the nursing home must file a settle-up cost ~~report~~ reports for the ~~reporting-year-ending-on~~ period from the beginning of the interim payment rate through September 30 of the following year. ~~A-nursing-home-that-has-a starting-date~~ When the interim payment rate begins between October 1 and April 30, the nursing home must file a settle-up cost ~~report~~ reports for the ~~reporting-year-ending-on-the-first September-following-the-starting-date~~ period from the beginning of the interim payment rate to the first September 30 following the beginning of the interim payment rate.

~~The-interim-payment-rate-period-for-a-nursing-home-with-a capacity-increase-of-50-percent-or-more-shall-coincide-with-the reporting-year-and-may-not-be-in-effect-for-more-than-12-months.~~

4. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rates were in effect for periods before and after July

1, 1983, shall submit the two cost reports given in a. and b.

a. The first cost report must include all costs and statistical information for the entire interim rate period in accordance with 12 MCAR S 2.049.

b. The second cost report must include all costs and statistical information of the entire interim rate period in accordance with 12 MCAR SS 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the property-related cost payment rate.

c. Each cost report shall be used to determine a settle-up payment rate. The settle-up payment rate determined in a. shall be applied to the period ending June 30, 1983. The settle-up payment rate determined in b. shall be applied to the period beginning July 1, 1983, for the duration of the interim period.

5. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rate was in effect on or after July 1, 1983, must file a cost report in accordance with 12 MCAR SS 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the settle-up property-related cost payment rate.

6. For periods which begin after June 30, 1983, the settle-up operating cost payment rate must not exceed 110 percent of the 60th percentile <u>increased by six percent</u> in effect for the nursing home's group, or for a nursing home meeting the requirements of 12 MCAR S 2.05010 C.6.a. [Temporary], 110 percent of the highest operating cost payment rate for that type of nursing home during the same period or periods.

7. The provisions of 12 MCAR S 2.05010 B.1. and D.2. [Temporary] relating to the updating of operating costs and per diems must not be applied for the settle-up operating cost payment rate.

8. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall continue to

receive the interim payment rate ~~after-submission-of-the-cost report-for-the-period-October-1-through-June-30~~ until the settle-up payment rate ~~for-the-following-year~~ is determined in accordance with 12 MCAR SS 2.05001-2.05016 [Temporary]~~,-except that-the-property-related-cost-payment-rate-shall-be-computed-by dividing-property-related-costs-by-the-percentage-of-capacity days-specified-in-12-MCAR-S-2.05011-F.-[Temporary]~~.

~~9. The-interim-payment-rate-is-subject-to-retroactive adjustment-against-the-settle-up-payment-rates-and-the-payment rate-developed-for-the-remaining-nine-months-of-the-current-rate year.--Interest-charges-must-be-assessed-as-provided-in-12-MCAR S-2.05013-C.-[Temporary]~~ When the settle-up payment rate is computed, the payment rate for the interim payment rate period shall be retroactively adjusted to the settle-up payment rate.

The payment rate for the nine months following the interim payment rate period shall be determined according to the settle-up payment rate, except that the property-related cost payment rate shall be computed by dividing property-related costs by the percentage of capacity days specified in 12 MCAR S 2.05011 F. [Temporary]. Interest charges shall be assessed as provided in 12 MCAR S 2.05013 C. [Temporary].

B. Lesser care levels in nursing homes without certification classification. Nursing homes providing care to ~~welfare~~ medical assistance recipients requiring less care than the care level for which the nursing home is certified shall receive a payment rate calculated as follows:

1. The ICF I payment rates in a SNF nursing home shall be ~~determined-as-follows:~~

~~a.--The-nursing-home's-operating-cost-payment-rate shall-be-the-lesser-of~~ 85 percent of the established SNF ~~operating-cost~~ total payment rate ~~or-the-60th-percentile-of-the prior-reporting-year-increased-by-six-percent-in-effect-for-the appropriate-ICF-I-group.~~

~~b.--The-nursing-home's-property-related-cost-payment rate-shall-be-85-percent-of-the-established-SNF-property-related cost-payment-rate.~~

c.--The-nursing-home's-real-estate-tax-and-special assessments-cost-payment-rate-shall-be-85-percent-of-the established-SNF-real-estate-cost-payment-rate-and-special assessments-cost-payment-rate.

d.--The-maximum-lesser-care-total-payment-rate-may-not exceed-85-percent-of-the-SNF-total-payment-rate.

2. The ICF II payment rates in a SNF nursing home shall be determined-as-follows:

a.--The-nursing-home's-operating-cost-payment-rate-must be-the-lesser-of 50 percent of the established SNF operating cost payment rate or-the-60th-percentile-of-the-prior-reporting year-increased-by-six-percent-in-effect-for-the-appropriate-ICF II-group.

b.--The-nursing-home's-propery-related-cost-payment rate-must-be-50-percent-of-the-established-SNF-property-related cost-payment-rate.

c.--The-nursing-home's-real-estate-tax-and-special assessments-cost-payment-rate-must-be-50-percent-of-the established-SNF-real-estate-tax-and-special-assessments-cost payment-rate.

d.--The-maximum-lesser-care-total-payment-rate-must-not exceed-50-percent-of-the-SNF-total-payment-rate.

3. The ICF II payment rates in an ICF I nursing home shall be determined-as-follows:

a.--The-nursing-home's-operating-cost-payment-rate-must be-the-lesser-of 60 percent of the established ICF I operating cost payment rate or-the-60th-percentile-of-the-prior-reporting year-increased-by-six-percent-in-effect-for-the-appropriate-ICF II-group.

b.--The-nursing-home's-property-related-cost-payment rate-must-be-60-percent-of-the-established-ICF-I property-related-cost-payment-rate.

c.--The-nursing-home's-real-estate-tax-and-special assessments-cost-payment-rate-must-be-60-percent-of-the established-ICF-I-real-estate-tax-and-special-assessments-cost payment-rate.

~~d.--The-maximum-lesser-care-total-payment-rate-must-not exceed-60-percent-of-the-established-ICF-I-total-payment-rate.~~

C. Care classification additions. Nursing homes adding certified levels of care classifications shall receive the lesser care rates defined in B. until the regularly scheduled cost report is submitted. For nursing homes adding higher certified levels of care, the same percentage shall be used to determine the higher care payment rates~~,-subject-to-the limitations-of-the-60th-percentile-increased-by-six-percent-in the-appropriate-higher-care-level-group~~.

D. Private room rate. A private room rate of 115 percent of the established payment rate for the applicable care level in an individual nursing home shall be allowed for a medical assistance recipient when the private room is deemed a medical necessity for the individual resident or others who are affected by the resident's condition. Conditions requiring a private room must be determined by the attending physician and approved by the county welfare or human services board. These provisions apply only to a nursing home applying for a certificate of need for construction of new nursing home beds after August 15, 1972.

12 MCAR S 2.05015 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. No later than December 31 of each year, the nursing home must submit an annual cost report for the reporting year ending September 30 ~~which-conforms-to-the-uniform accounting-system-defined-in~~ on forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. In addition, the nursing home shall obtain an annual audit of its financial records from an independent certified public accountant or licensed public accountant. The examination shall be conducted in accordance with generally accepted auditing standards as promulgated and adopted by the American Institute of Certified Public Accountants. For a nursing home whose fiscal year does not end between July 1 and September 30, 1983, and which has not previously had an audited financial statement, this requirement

shall not apply until the cost report is submitted for the reporting year ending September 30, 1984. A governmentally owned nursing home may comply with these auditing requirements by submitting the audit report prepared by the state auditor. Reports, supporting documentation, and worksheets shall include:

1. general nursing home information and statistical data as requested on the cost report form;

2. reports of historical costs with supporting calculations and worksheets;

3. a complete statement of fees and charges, including the rate or rates charged to private paying residents, as audited by a certified public accountant licensed in Minnesota or by a public accountant as defined by Minnesota Statutes, section 412.222;

4. a copy of its audited financial statements that correspond to the nursing home's fiscal year ending during the cost reporting year. The audited financial statements must include a balance sheet, income statement, statement of retained earnings, statement of changes in financial position (cash and working capital methods), appropriate notes to the financial statements, any applicable supplemental information, and the certified public accountant's or licensed public accountant's opinion. If the financal statements are not sufficiently detailed or the nursing home's fiscal year is different from the cost reporting year, the ~~audited financial statement's~~ nursing home must provide supplemental information ~~must provide and explain all adjustment amounts necessary to compare~~ that reconciles costs on the financial statements with costs on the cost report;

5. certified public accountant's and licensed public accountant's audit workpapers which support the audited financial statements and cost reports, upon request of the commissioner;

6. a statement of ownership for the nursing home, including the name, address, and proportion of ownership of all owners of privately-held or closely-held corporations and

partnerships which have an interest of five percent or more in the nursing home and publicly-held corporations which have an interest of 15 percent or more;

7. separate audited financial statements that correspond to the fiscal year ~~ending~~ ended during the cost reporting year for any other nursing home owned in whole or part by the same owners;

8. upon request, separate audited financial statements which correspond to the fiscal year ~~ending~~ ended during the cost reporting year for any related organization doing business with the nursing home if the related organization has not previously had an audited financial statement, the related organization must furnish the audited financial statements within 90 days after the end of the fiscal year following the commissioner's request;

9. copies of leases, purchase agreements, and other documents related to the lease or purchase of the nursing home;

10. copies of leases, purchase agreements, or other documents related to the purchase or acquisition of equipment, goods, and services which are claimed as allowable costs, if requested by the commissioner;

11. a listing of nursing home debt outstanding during the reporting year, and the name of the lender, the term of debt, interest rate of debt, interest and principal payments for the current year and all remaining years, and the original amount of debt;

12. complete depreciation schedules calculated in accordance with 12 MCAR S 2.049;

13. an explanation in the cost report, of all adjustments to the cost report and the applicable rule citations; and

14. other relevant information required by the commissioner to support a payment rate request.

B. Additional information required from hospital attached nursing homes. In addition to the reports required in A., hospital attached nursing homes shall provide:

1. Copies of medicare cost report worksheets as required

by the commissioner. In addition to the stepdowns required by medicare, the nursing home shall provide individual stepdowns for the areas listed below, which are equal to or reconcilable with the medicare cost report:

a. general and administrative cost categories;

b. depreciation, interest, and property-related costs;

c. real estate taxes and special assessments, if applicable;

d. fringe benefits and payroll taxes; and

e. all other cost categories, including nursing services, other care-related services, dietary, housekeeping, laundry and linen, and plant operation and maintenance.

2. Reconciliation with the medicare stepdown for all stepdowns listed in 1.a.-e.

C. Reporting requirements: real estate taxes and special assessments. Real estate taxes and special assessments shall be reported as follows:

1. For the rate year beginning July 1, 1983, the nursing home must submit a copy of its statement of property taxes payable in 1983 within 30 days of the request by the commissioner.

2. For rate years effective July 1, 1984, and after, the nursing home must submit a copy of its statement of property tax payable for the calendar year in which the rate year begins by April 5 of that calendar year.

3. Special assessments and related interest paid during the reporting year must be shown on the cost report.

D. Method of accounting. The accrual method of accounting in accordance with generally accepted accounting principles is the only method acceptable for purposes of satisfying reporting requirements. If a government-owned nursing home demonstrates that the use of the accrual method of accounting is not applicable to the nursing home and that a cash or modified accrual method of accounting more accurately reports the nursing home's financial operations, the commissioner shall permit the nursing home to use a cash or modified accrual method of

accounting.

~~D.~~ E. Records. The nursing home shall maintain statistical and accounting records in sufficient detail to support information contained in the nursing home's required reports and audited statement ~~in sufficient detail~~ for at least four years following submission of a cost report. Upon request of the commissioner, the nursing home shall provide access to federal and state income tax returns for the nursing home, any related organization, and any individual having an ownership interest in the nursing home as specified in A.6.

~~E.~~ F. Exceptions. If differences arise between these rules and generally accepted accounting principles, 12 MCAR SS 2.05001-2.05016 [Temporary] shall prevail.

~~F.~~ G. Report certification. Reports required in this section must be accompanied by a certification of the person having over 50 percent effective ownership or the chief financial officer if there is no majority owner, and the administrator or chief operating executive. If reports have been prepared by a person other than these individuals, a separate statement signed by the preparer shall also be included stating the terms of the preparer's employment and charges for preparation of the report.

~~G.~~ H. Reporting deadlines and extensions.

1. Required annual reports must be submitted to the commissioner by December 31. The reports must cover the reporting year ending on September 30 of that year.

2. The commissioner may reject any report filed by a nursing home that is incomplete or inaccurate or may require other ~~relevant~~ additional information necessary to support the payment rate request. The corrected report or the additional information requested must be returned to the commissioner within ~~15~~ 20 days of the request or the report must be rejected. The commissioner may extend this time if the nursing home makes a written showing of extreme good cause and if the commissioner determines that the delay in receipt of the information will not prevent the commissioner from establishing

rates in a timely manner as required by law.

If the report is rejected, the commissioner shall reduce the payment rate to the nursing home to 80 percent of its most recently established payment rate. The reduced payment rate shall be in effect until ~~the first day of the month following the month in which~~ the information is completely and accurately filed. Reinstatement of the full payment rate ~~may~~ shall not be retroactive.

3. In unusual circumstances, the commissioner may grant one 15-day extension of the reporting deadline. To receive such an extension, a nursing home must submit a written request by December 1. The commissioner must notify the nursing home of his decision to grant or deny an extension by December 15.

4. If documentation concerning real estate taxes and special assessments is not furnished as provided in C., the documentation may subsequently be furnished only by amendment to the report pursuant to J.2. Until this information is furnished pursuant to C. or J.2., no amount shall be allowed for costs in the nursing home's rate.

~~H.~~ I. Effective date and noncompliance.

1. The commissioner shall provide to all nursing homes notice of the payment rate by May 1 of each year. The payment rate is effective from July 1 of that year to June 30 of the following year. For the rate year beginning on July 1, 1983, the commissioner shall issue the payment rate notice no later than June 15, 1983.

2. Failure to provide required reports, documentation, and worksheets required in A.1.-14. shall result in the reduction of the payment rate to 80 percent of the payment rate in effect on the first day of the fourth calendar month after the close of the nursing home's reporting year. The reduced payment rate shall be in effect until ~~the first day of the month following the month in which~~ the information is completely and accurately filed. Reinstatement of the full payment rate ~~may~~ shall not be retroactive.

~~I.~~ J. Audits, amended reports, false reports, exceptions.

1. The department shall subject all reports and supporting documentation to desk audit and field examinations to determine compliance with 12 MCAR SS 2.05001-2.05016 [Temporary].

a. If these audits reveal inadequacies in nursing home recordkeeping and accounting practices, the commissioner shall require that the nursing home engage competent professional assistance to properly prepare required reports. Failure to remedy these inadequacies within 90 days shall result in the application of the penalties in ~~H.2.~~ I.2. Retroactive adjustments may be made as a result of desk and field audit findings.

b. If any field examination shows lack of adequate documentation, the commissioner shall require the nursing home to produce the additional documentation within 15 days. If the documentation is not provided, the costs shall be disallowed.

2. Nursing homes may file amendments to previously filed reports when:

a. mathematical errors or omissions in the report are discovered, if the amendment would result in at least a five-cent per resident day or $2,000 adjustment, whichever is less for each reporting year. The commissioner shall make retroactive adjustments to the payment rate of an individual nursing home if the amendment is filed within one year of the filing of the original cost report to be amended~~.~~;

b. a nursing home increases its capacity by less than 50 percent as described in 12 MCAR S 2.05011 D. [Temporary]. No redetermination of the 60th percentile shall be made as a result of amendments to cost reports.

3. If a nursing home knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall:

a. immediately adjust the nursing home's payment rate to recover the entire overpayment within the rate year; or

b. terminate the commissioner's agreement with the nursing home; or

c. prosecute under applicable state or federal law; or

d. use any combination of a., b., and c.

12 MCAR S 2.05016 [Temporary] Appeal procedures.

A. Scope of appeals. A decision by the commissioner may be appealed by the nursing home or a county welfare or human services board where all of the following conditions are met:

1. the appeal, if successful, would result in a change in the nursing home's payment rate;

2. the appeal arises from application of the provisions of 12 MCAR SS 2.05001-2.05016 [Temporary]; and

3. the dispute over the decision cannot be resolved informally between the commissioner and the appealing party.

B. Filing of appeals. To be effective, an appeal must meet the following criteria:

1. The nursing home must notify the commissioner of its intent to appeal within 30 days of receiving the payment rate determination or decision which is being appealed. The appeal must be filed, in writing, within 60 days ~~after the commissioner issued~~ of receiving the payment rate ~~notification~~ determination or decision which is being appealed.

2. The appeal shall specify:

a. each disputed item and the reason for the dispute;

b. the computation and the amount that the appealing party believes to be correct;

c. an estimate of the dollar amount involved in each disputed item;

d. the authority in statute or rule upon which the appealing party is relying in each dispute; and

e. the name and address of the person or firm with whom contacts may be made regarding the appeal.

C. Resolution of appeal. The appeal shall be heard in accordance with the contested case provisions set forth in Minnesota Statutes, chapter 14 and rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

D. Payment rate during appeal period. Notwithstanding any appeal filed pursuant to 12 MCAR SS 2.05001-2.05016 [Temporary], the payment rate established by the commissioner shall be the rate paid to the nursing home while the appeal is pending. Any nursing home appealing pursuant to this rule is subject to the limitations of 12 MCAR S 2.05013 [Temporary] B. pending resolution of the appeal. The nusing home may give private paying residents notice, as required by Minnesota Statutes, section 256B.47, subdivision 2, of the rate which will be charged pending appeal and the rate which will be charged if the nursing home prevails in the appeal. If such notice is given and the nursing home prevails in the appeal, the nursing home may adjust the private payment rate retroactive to the first day of the period covered by the appeal or to the 31st day after giving the notice, whichever is later.

E. Payments after resolution of appeal. Upon resolution of the appeal, any overpayments or underpayments shall be paid in accordance with 12 MCAR S 2.05013 [Temporary] C.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

RD353

Agency: Department of Public Welfare

Division:

Agency Contact: Bob Hamper

Rule Numbers: 12 MCAR SS 2.05001-2.05016

Title: Adopted Temporary Rules Relating to Nursing Home Rates

Type of Rules: Temporary

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

APPROVED AS TO LEGALITY
August 15 1983
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0956
Date: August 15, 1983

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 23 1983
Joan Anderson Growe
Secretary of State

3:35 P.M.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes Under the Title XIX Program (12 MCAR §§2.05001 - 2.05016)

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on July 4, 1983, as a proposed temporary rule pursuant to Minnesota Statutes sections 14.29 - 14.36.

After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as temporary rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes Under the Title XIX Program (12 MCAR §§2.05001 - 2.05016) are adopted this 8th. day of August, 1983, pursuant to authority vested in me by Minnesota Statutes sections 256B.04, subdivision 2; 256B.27; 256B.41; and Laws of Minnesota 1983, Chapter 199.

STATE OF MINNESOTA



COMMISSIONER OF PUBLIC WELFARE

STATE OF MINNESOTA

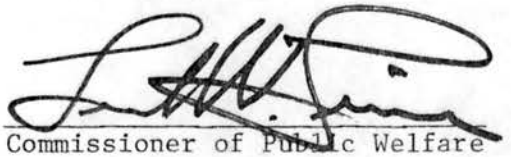
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES OF THE STATE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE DETERMINATION OF WELFARE PER DIEM RATES FOR NURSING HOMES UNDER THE TITLE XIX PROGRAM (12 MCAR §§2.05001 - 2.05016)

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 16 day of June, 1983, that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA



Commissioner of Public Welfare

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF PROPOSED TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PER DIEM RATES FOR NURSING HOMES UNDER THE TITLE XIX PROGRAM (12 MCAR §§2.05001 - 2.05016).

AFFIDAVIT OF MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 28th day of June, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Temporary Rules by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and association who have requested that their names be placed on file with the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 29 day of June, 1983.

Margaret Holt

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

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF PROPOSED TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PER DIEM RATES FOR NURSING HOMES UNDER THE TITLE XIX PROGRAM (12 MCAR §§2.05001 - 2.05016).

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 4:00, P.M., this 28th day of June, 1983.

Wendy Johnson

Chapter Six B

Local Participation Home Improvement Loans

12 MCAR § 3.055 [Temporary] Funds.

A. Request for funds. A local government that wishes to receive an allocation of funds to make local participation home improvement loans shall submit a request for funds that includes the following items, which may be further described by the agency:

1. a description of the proposed program;

2. a description of program requirements to be imposed by the local government that are not set forth in this chapter;

3. an analysis of the need for the proposed program in the community;

4. a demonstration of financial feasibility of the proposed program;

5. evidence that an adequate delivery mechanism is available for the proposed program; and

6. the specific funding amount requested and the time period, that is within the maximum time period set by the agency, during which the funds will be expended.

B. Deadline for requests for funds. The agency shall give notice that it will accept requests for funds to make local participation home improvement loans from local governments for the period specified by the agency. This period may not be less than 30 days.

12 MCAR § 3.056 [Temporary] Eligible applications.

An application for a local participation home improvement loan must meet all of the requirements of 12 MCAR § 3.051.

12 MCAR § 3.057 [Temporary] Eligible improvements.

An improvement financed with the proceeds of a local participation home improvement loan must meet all of the requirements of 12 MCAR § 3.052.

Department of Public Welfare
Bureau of Support Services

Proposed Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes under the Title XIX Program (12 MCAR §§ 2.05001-2.05016)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 199.

Persons interested in these rules have until July 25, 1983 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Eleanor Weber
Support Services Bureau
Department of Public Welfare
4th Floor, Centennial Building
St. Paul, MN 55155
(612) 297-4301

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality. The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As provided by Laws of Minnesota 1983, chapter 199, these temporary rules are to be promulgated by August 15, 1983, and will be retroactive to and effective as of July 1, 1983. These temporary rules shall be effective for up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the commissioner gives notice of continuation of each additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 720 days after their effective date without following the procedures in Minnesota Statutes, section 14.13 to 14.20

12 MCAR §§ 2.05001-2.05016 establish procedures for determining the per diem welfare rates for all nursing homes participating in the Medical Assistance program and for licensed boarding care facilities participating in the Minnesota Supplemental Aid program.

These temporary rules will not result in any additional state or county spending beyond the amount of funds appropriated under Laws of Minnesota 1983, chapter 199.

Copies of this notice and the proposed temporary rules may be obtained by contacting Claudia Eliason (612/296-2738).

Leonard W. Levine
Commissioner of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.05001 [Temporary] Authority and applicability.

A. Authority.

1. Minnesota Statutes, section 256B.04, subdivision 2 authorizes the commissioner to promulgate uniform rules for carrying out and enforcing the provisions of Minnesota Statutes, chapter 256B.

2. Minnesota Statutes, section 256B.27, authorizes the commissioner to require any reports, information, and audits of medical vendors necessary for the approval of rates and charges.

3. Minnesota Statutes, section 256B.41, authorizes the commissioner to establish procedures for determining nursing home rates and for implementing the provisions of Minnesota Statutes, chapter 256B.

4. Minnesota Statutes, section 256B.502, authorizes the commissioner to adopt temporary and permanent rules to implement the provisions of Laws 1983, chapter 199, concerning the establishment of nursing home rates.

B. Applicability. Rules 12 MCAR §§ 2.05001-2.05016 [Temporary] establish procedures for determining the per diem welfare rates for all nursing homes participating in the medical assistance program and for licensed boarding care facilities participating in the Minnesota supplemental aid program.

12 MCAR § 2.05002 [Temporary] Definitions.

A. Applicability. As used in 12 MCAR §§ 2.05001-2.05016 [Temporary], the following terms have the meanings given them.

B. Actual allowable historical operating cost per diem. "Actual allowable historical operating cost per diem" means the per diem payment for actual operating costs allowed by the commissioner for the most recent reporting year.

C. Actual resident days. "Actual resident days" means a nursing home's resident days adjusted for lesser care resident days according to 12 MCAR § 2.05010 A. [Temporary].

D. Addition. "Addition" means an extension, enlargement, or expansion of the nursing home facility for the purpose of increasing the number of licensed beds or improving resident care.

E. Applicable credit. "Applicable credit" means a receipt or expense reduction as a result of a purchase discount, rebate, refund, allowance, interest income, income from incidental services, sale of equipment or salvage, adjustment for erroneous charges, insurance claims settlement, or any other adjustment reducing cost.

F. Attached fixtures. "Attached fixtures" means building service equipment or other equipment affixed to the building and not easily subject to transfer such as wiring, electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, and built-in refrigerators or freezers.

G. Care levels. "Care levels" means the classifications of nursing service provided by a nursing home. They are:

1. Skilled nursing facility (SNF), a skilled nursing facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health;

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.

2. Intermediate care facility I (ICF I), an intermediate care facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health;

3. Intermediate care facility II (ICF II), an intermediate care facility as defined by federal regulations and as licensed as a boarding care facility by the Department of Health;

4. Licensed boarding care facilities participating in the Minnesota supplemental aid program.

H. Commissioner. "Commissioner" means commissioner of public welfare.

I. Cost category. "Cost category" means any one of the cost groupings set forth in 12 MCAR § 2.05006 [Temporary].

J. Cost groups. "Cost groups" means the groupings of cost categories used for rate setting purposes. The groups are: operating costs, property-related costs, and costs for real estate taxes and special assessments.

K. Cost report. "Cost report" means the document specified by the commissioner on which the nursing home provides the statistical and financial information required by the commissioner for rate determination.

L. Desk audit. "Desk audit" means the determination of the payment rate based on the commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the nursing home.

M. Department. "Department" means the Department of Public Welfare.

N. Depreciable equipment. "Depreciable equipment" means equipment which must be capitalized under 12 MCAR § 2.05003, F.1. [Temporary].

O. Direct cost. "Direct cost" means a cost that can be identified with a specific cost category.

P. Extraordinary repair. "Extraordinary repair" means a major repair which is costly in relation to the value of the asset, should increase the use value of the asset, or prolong its useful life.

Q. Facility. "Facility" means the building in which a nursing home is located and all attached fixtures. Facility does not include the land, land improvements, or any supplies or equipment which are not attached fixtures.

R. Field audit. "Field audit" means the on-site examination, verification, and review of the financial records, statistical records, and related supporting documentation of the nursing home and any related organization.

S. Final rate. "Final rate" means the rate established after any adjustment by the commissioner including, but not limited to, adjustments resulting from the cost report reviews, field audits, and resolution of appeals.

T. Fringe benefits. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

U. General and administrative costs. "General and administrative costs" means costs for administering the nursing home as specified in 12 MCAR § 2.05006 G. [Temporary].

V. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the application of appropriate limitations such as those on general and administrative costs.

W. Hospital attached facility. "Hospital attached facility" means a facility which is under common ownership and operation with a licensed hospital and shares with the hospital services such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

X. Indirect cost. "Indirect cost" means a cost that is incurred for a common purpose or joint purpose of benefiting more than one cost category and not readily assignable to the cost category benefited.

Y. Interagency board for quality assurance. "Interagency board for quality assurance" means the board established by Minnesota Statutes, section 144A.31.

Z. Land improvement. "Land improvement" means an improvement to the land on which the nursing home is located such as paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and sidewalks, if replacement is the responsibility of the nursing home.

AA. Leasehold improvement. "Leasehold improvement" means an improvement on leased property that reverts to the owner of the property under termination of the lease.

BB. Lesser care resident day. "Lesser care resident day" means a day on which services are provided to a resident who requires a lower level of care than the care level for which the nursing home is certified.

CC. Major betterment. "Major betterment" means the renovation or replacement of part of an existing asset to increase the asset's efficiency, value, or useful life.

DD. Metropolitan group. "Metropolitan group" means all nursing homes located in Koochiching, Itasca, Aitkin, Carlton, Lake, Cook, Scott, Hennepin, Ramsey, St. Louis, Anoka, Washington, Dakota, and Carver counties.

EE. Minor equipment. "Minor equipment" means equipment that is not depreciable equipment. Examples of minor equipment are bed pans, kitchen utensils, cleaning utensils, and wastebaskets.

FF. Necessary service. "Necessary service" means a function pertinent to the nursing home's operation that, if not performed by the individual, would have required the nursing home to employ another person to perform it.

GG. Net cost. "Net cost" means the actual cost minus proceeds from insurance, salvage, or disposal.

HH. Nonmetropolitan group. "Nonmetropolitan group" means nursing homes located in counties which are not in the metropolitan group.

II. Nursing home. "Nursing home" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.58.

JJ. Operating costs. "Operating costs" means the day-to-day costs of operating the nursing home in compliance with licensure and certification standards. Operating cost categories are: nursing, including nurses and nursing assistants training; dietary; laundry and linen; housekeeping; plant operation and maintenance; other care-related services; general and administrative; payroll taxes; fringe benefits, including clerical training; and real estate taxes and actual special assessments paid.

KK. Payment rate. "Payment rate" means the rate which is determined by adding together the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate, and which becomes effective on July 1 of each year for payment to the nursing home for services rendered through June 30 of the following year.

LL. Payroll taxes. "Payroll taxes" means the employer's share of social security withholding taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

MM. Private paying resident. "Private paying resident" means a nursing home resident who is not a medical assistance recipient fot the date of service and whose payment rate is not established by another third party, including the veterans administration or medicare.

NN. Property-related costs. "Property-related costs" means all directly identifiable costs, other than personnel costs, associated with the financing and ownership of the nursing home's real estate and depreciable equipment, including depreciation, interest, rental or lease payments, and earning or investment allowance.

OO. Rate year. "Rate year" means the fiscal year for which a payment rate is effective, from July 1 through the following June 30.

PP. Real estate. "Real estate" means land, land improvements, facilities, and attached fixtures used directly for resident care.

QQ. Real estate taxes and special assessments. "Real estate taxes and special assessments" means all actual special assessments paid and real estate tax liability shown on the annual property tax statement of the nursing home for the calendar year during which the reporting year ends. The term does not include personnel costs, interest, or fees for late payment.

RR. Related organization. "Related organization" means an organization which furnishes services, facilities, or supplies to a nursing home and which:

1. is associated with or affiliated with the nursing home; or

2. has control of or is controlled by the nursing home. "Control" means the situation in which an individual or an organization has the power, directly or indirectly, to influence or direct significantly the actions or policies of an organization or institution; or

3. is under common ownership with the nursing home. "Common ownership" means the situation in which an individual or an organization owns equity in the nursing home and in the organization serving the nursing home.

SS. Reporting year. "Reporting year" means the period from October 1 to September 30, immediately preceding the rate year, for which the nursing home submits its cost report, and which is the basis for the determination of the payment rate for the following rate year.

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.

TT. Resident day. "Resident day" means a day for which nursing services are rendered and billed, or a day on which a bed is held and billed.

UU. Top management personnel. "Top management personnel" means owners, board members, corporate officers, regional and district directors or managers, administrators, including the nursing home administrator required by Minnesota Statutes, section 144A.04, subdivision 5, or any other person performing functions as an executive. Persons performing functions only as nursing home department heads are not included in this definition.

VV. Useful life. "Useful life" means the length of time an asset is expected to provide economic service before needing replacement.

WW. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program or Minnesota supplemental aid program.

12 MCAR § 2.05003 [Temporary] Cost principles.

Nursing homes must use the cost principles in A.-F. to report costs. The commissioner shall use these cost principles to determine allowable costs.

A. General and administrative costs. General and administrative costs must not be allocated as a direct or indirect cost to any other cost categories.

B. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the nursing home.

C. Adequate documentation.

1. General principles. Adequate documentation must:

a. be maintained in orderly, well-organized files;

b. not include documentation of two or more related nursing homes in one set of files;

c. include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery destination address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or nursing homes; and

d. include contracts, agreements, amortization schedules, mortgages, and other debt instruments, and all other relevant documents.

2. Documentation of compensation. Compensation for personal services, regardless of whether treated as direct or indirect costs, must be documented on payroll records. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees which are chargeable to more than one cost category must be supported by time distribution records. The method used must produce a proportional distribution of actual time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must reflect an amount proportionate to a full-time basis.

3. Documentation of mileage; motor vehicle log. The nursing home must maintain a motor vehicle log that shows personal, nursing home, and resident usage. Mileage paid for the use of a private vehicle must be documented.

4. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost allocations made to cost categories and to levels of care.

D. Other cost principles. For rate setting purposes, a cost must satisfy the following criteria:

1. The cost is recognized as ordinary, necessary, and related to resident care.

2. The cost is what a prudent and cost conscious business person would pay for the specific goods or services in the open market in an arm's length transaction.

3. The cost is for goods or services actually provided to the nursing home.

4. The cost effects of transactions that are conceived for the purpose of circumventing these rules are not allowable under the principle that the substance of the transaction shall prevail over form.

5. Costs that relate to management inefficiency, unnecessary care or facilities, noncompetitive agreements, and activities not commonly accepted in the nursing home care field are not allowable.

E. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the nursing home's owners or employees. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

a. salaries, wages, and fringe benefits paid for managerial, administrative, professional, and other services;

b. amounts paid by the nursing home for the personal benefit of the owners or employees;

c. the costs of assets and services which the owner or employee receives from the home;

d. deferred compensation and individual retirement accounts (IRA's);

e. supplies, equipment, and services for personal use and any other in-kind benefit received by the owners or employees; and

f. payment to nonpaid workers, and to organizations of nonpaid workers, that have arrangements with the nursing home for the performance of services by the nonpaid workers.

2. The nursing home must have a written policy for payment of compensation for personal services. The policy must:

a. relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual;

b. result in consistent treatment of employees working in similar situations within the nursing home; and

c. relate the compensation paid within the nursing home to that paid by comparable nursing home for comparable services.

3. Only services which are necessary services shall be compensated.

4. Compensation must be actually paid, whether by cash or negotiable instrument, within 75 days after the close of the reporting period. If payment is not made within the allowable period, the unpaid compensation shall be disallowed in that reporting year and shall not be an allowable cost in future reporting years.

5. A payment that represents a return on equity capital is not allowable as compensation.

F. Capitalization.

1. Expenditures for land improvements, facilities, equipment, extraordinary repairs, additions, major betterments, and leasehold improvements must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit value of $150 or more.

The purchase or purchases of the same equipment during a reporting year which have a unit cost of less than $150 but have an aggregate cost in excess of $1,000 must be capitalized and depreciated.

2. Leases and rentals must be capitalized according to generally accepted accounting principles. If the lease payments are paid to a related organization, the lease or rental agreement must be capitalized and allowable costs shall be computed as though the lease did not exist.

3. Items such as land, land improvements whose maintenance or construction are not the responsibility of the nursing home, and good will shall not be depreciable assets.

12 MCAR § 2.05004 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to services, facilities, and supplies furnished to the nursing home by any related organization are includable in the allowable cost of the nursing home at the cost to the related organization if these costs do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

B. Limitation on related organization costs. If the related organization in the normal course of business sells services, facilities, or supplies to outsiders, the cost to the nursing home shall be the outsider's price provided that sales to outsiders constitute at least 75 percent of total sales.

C. Disposal of assets of related organizations. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary], the cost of ownership of an asset which is used by the nursing home may be included in the allowable cost of the nursing home even though it is owned by a related organization. When the asset is sold or otherwise disposed of by the related organization and the depreciation is included in the general and administrative category, any gain realized by the organization must be offset against the nursing home's general and administrative cost category. Where a nursing home claims depreciation on an asset owned by a related organization, and the nursing home terminates participation in the medical assistance or Minnesota supplemental aid

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.

program, or the asset is sold or otherwise disposed of by the related organization, the allowable depreciation is subject to the recapture provisions of 12 MCAR § 2.05011 G. [Temporary].

D. Sales or reorganization of related organization. No adjustment to property-related costs may be made as a result of sales or reorganization of the related organization. Sales or reorganizations of the related organizations are subject to the provisions of C.

12 MCAR § 2.05005 [Temporary] Allowable operating costs.

A. Licensure and certification costs. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary] all costs of meeting the licensure and certification standards listed in 1.-3. are allowable operating costs for the purpose of setting nursing home rates. The standards are:

1. standards of SNF services or ICF services as set out by federal regulations;

2. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations; and

3. other requirements for licensing under state law or rules that must be met to provide nursing and boarding care services.

B. Routine service costs. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary] all costs of routine services including nursing, dietary, and support services as defined in 12 MCAR § 2.05006 [Temporary] are allowable operating costs for the purpose of setting nursing home rates.

12 MCAR § 2.05006 [Temporary] Reporting of costs by cost category.

All costs for routine services must be reported in cost categories A.-J.

A. Dietary services. The costs listed in 1.-3. are included in the dietary services cost category:

1. direct costs of normal and special diet food including raw food, dietary supplies, food preparation and serving, and special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, even if written as a prescription item by a physician;

2. the salary of the supervisor, dieticians, chefs, cooks, dishwashers, and other employees assigned to the kitchen and dining room including the salaries or fees of dietary consultants;

3. the costs of training to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain skills needed in performing the employee's present duties.

B. Laundry and linen services. The costs listed in 1. and 2. are included in the laundry and linen services cost category:

1. direct cost of linen and bedding, the laundering of resident clothing, other laundering, and laundry supplies; and

2. the salaries of the supervisor, seamstresses, ironers, and other laundry employees.

C. Housekeeping services. The costs listed in 1. and 2. are included in the housekeeping services cost category:

1. direct costs of housekeeping, including cleaning and lavatory supplies; and

2. the salaries of the supervisor, housekeepers, and other cleaning personnel.

D. Plant operation and maintenance services. The costs listed in 1. and 2. are included in the plant operations and maintenance cost category:

1. direct costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts to repair and maintain equipment and facilities, minor equipment, and tools; and

2. the salaries of the supervisor, engineers, heating-plant employees, independent contractors, and other maintenance personnel.

E. Nursing services. Direct costs associated with nursing services including 1.-24. are included in the nursing services cost category:

1. nursing assessment of the health status of the resident and the planning of appropriate interventions to overcome identified problems and maximize resident strengths;

2. bedside care and services;

3. care and services according to the order of the attending physicians;

4. monitoring procedures such as vital signs, urine testing, weight, intake and output, and observation of the body system;

5. administration of oral, sublingual, rectal, and local medications topically applied, and appropriate recording of resident's responses;

6. drawing blood and collecting specimens for submission to laboratories;

7. prevention of skin irritation and decubitus ulcers;

8. routine changing of dressings;

9. training, assistance, and encouragement for self-care as required for feeding, grooming, ambulation, toilet, and other activities of daily living including transportation within the nursing home facility;

10. supportive assistance and training in resident transfer techniques including transfer from bed to wheelchair or wheelchair to commode;

11. restorative nursing measures to help the resident reach or maintain the resident's best level of functioning including passive range of motion, ambulation, transfer, and activities of daily living, including teaching and follow-up;

12. care of residents with casts, braces, splints, and other appliances requiring nursing care or supervision;

13. administration of oxygen;

14. use of nebulizers;

15. maintenance care of resident's colostomy, illeostomy, and urostomy;

16. arrangements for obtaining medical, dental, and hospital care;

17. administration of parenteral medications, including intravenous solutions;

18. administration of tube feedings;

19. nasopharyngeal aspiration required for maintenance of a clean airway;

20. care of suprapubic catheters and urethral catheters;

21. care of tracheostomy, gastrostomy, and other tubes in a body;

22. all costs of equipment and supplies that are used to complement the services in the nursing services cost category, including:

a. items stocked at nursing stations or on the floor and distributed or used individually, including: alcohol, applicators, cotton balls, incontinence pads, disposable ice bags, dressings, bandages, water pitchers, tongue depressors, disposable gloves, enemas, enema equipment, soap and water, medication cups, diapers, plastic waste bags, sanitary products, thermometers, hypodermic needles and syringes, and clinical reagents or similar diagnostic agents; and

b. drugs which according to federal law do not require a prescription and insulin which is required by a resident's plan of care.

23. training of nursing service personnel except for nurses aid training, educational costs are limited to either meeting the requirements of laws or regulations for keeping an employee's salary, status, or position or for maintaining skills needed in performing the employee's present duties; and

24. personnel costs of persons performing nursing services including salaries of the director, and assistant director of nursing, supervising nurses, medical records personnel, registered professional nurses, licensed practical nurses, nurses aides, orderlies, attendants, and the salaries or fees of physicians or other professionals performing consulting services on medical care which are not reimbursed separately on a fee for service basis.

F. Other care-related services. The costs listed in 1.-3. are included in the other care-related services cost category:

1. direct costs of other direct services, such as recreational or religious activities, arts and crafts, and social services which are not reimbursed separately on a fee for service basis;

2. the salaries of recreational therapists and aides, chaplains, arts and crafts instructors and aides, social workers and aides, and other care-related personnel including salaries or fees of professionals performing consultation services in these areas which are not reimbursed separately on a fee for service basis; and

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.

3. the costs of training to meet the requirements of laws or regulations for keeping an employee's salary, status or position, or to maintain skills needed in performing the employee's present duties.

G. General and administrative services. Direct costs for administering the overall activities of the nursing home are included in the general and administrative cost category. These direct costs include:

1. business office functions;

2. travel expenses;

3. motor vehicle operating expenses for vehicles such as vans or utility vehicles;

4. telephone and telegraph charges;

5. office supplies;

6. licensing and permit fees;

7. insurance, except as included as a fringe benefit;

8. personnel costs including help wanted ads, and the salaries or fees of administrators, assistant administrators, medical directors, accounting and clerical personnel, data processing personnel, and receptionists;

9. professional fees for services such as legal, accounting, and data processing services;

10. management fees, and the cost of management and administrative consultants;

11. central, affiliated, or corporate office costs at cost;

12. business meetings and seminars;

13. postage;

14. training for top management personnel and other than direct resident care related personnel that either meets the requirements of laws, rules, or regulations to keep an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;

15. membership fees for associations and professional organizations which are directly related to resident care;

16. subscriptions to periodicals which are directly related to resident care;

17. telephone, television, and radio services provided in areas designed for use by the general resident population, such as lounges and recreation rooms;

18. security services or security personnel;

19. advertising; and

20. board of director's fees.

H. Payroll taxes and fringe benefits. Only the costs for 1.-8. are included in the payroll taxes and fringe benefits cost category:

1. the employer's share of the social security withholding tax;

2. state and federal unemployment compensation taxes;

3. group life insurance;

4. group health and dental insurance;

5. workers' compensation insurance;

6. either a United States Internal Revenue Service-approved approved pension plan or a United States Internal Revenue Service approved profit-sharing plan, but not both;

7. governmentally required retirement contributions; and

8. uniform allowance.

I. Real estate taxes and special assessments. Real estate tax liability for each proprietary nursing home and actual special assessments paid for each nursing home are included in the real estate taxes and special assessments cost category.

J. Property-related costs. Depreciation, interest, investment allowance, lease, or rental payments are included in the property-related cost category.

12 MCAR § 2.05007 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost category allocation principles shall be as provided in 1.-4.

1. Cost classification to cost categories is the process of charging costs to the appropriate cost categories and compiling a total cost for each cost category to be recorded on the cost report. Nursing homes must classify costs in accordance with the cost categories defined in 12 MCAR § 2.05006 [Temporary]. Any costs that cannot be specifically classified to a cost category shall be classified to the general and administrative cost category.

2. Classification of costs, except salary costs of individuals with multiple duties, to the cost categories in 12 MCAR § 2.05006 [Temporary] shall use direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the nursing home.

3. In instances in which a person other than top management personnel has multiple duties, the person's salary cost shall be allocated to the cost categories in 12 MCAR § 2.05006 [Temporary] on the basis of time distribution records that show actual time spent on various activities.

In a nursing home of 60 or fewer beds, part of the salary or salaries of top management personnel may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central, affiliated, or corporate office costs representing services of required consultants in areas including, but not limited to, dietary, pharmacy, social services, or other resident care related activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home.

4. Except as provided in 3., no general and administrative costs may be allocated to other cost categories.

B. Specific care level cost allocation procedures for multi-care level nursing homes. Specific cost allocation procedures are necessary to determine costs assignable among care levels within a multi-care level nursing home. Costs will be allocated between the levels of skilled care, intermediate care I, intermediate care II, and other care levels as appropriate. Nursing homes must choose one of the allocation methods given in each cost category in 1.-10. The method chosen must result in a reasonable identification of costs by care level. Once an allocation method is chosen, it cannot be changed unless the nursing home demonstrates to the commissioner, based on changed circumstances, that it is impossible or impractical for the nursing home to continue to use the method originally chosen or that the method originally chosen no longer results in a reasonable identification of costs by care level.

1. Dietary services cost allocation must be based on:
   a. regularly validated time or cost studies;
   b. the number of meals served; or
   c. the actual resident days.
2. Laundry and linen services cost allocation must be based on:
   a. the dry weight of laundry processed for each level of care; or
   b. actual resident days.
3. Housekeeping services cost allocation must be based on:
   a. the ratio of square feet of floor space devoted directly to each care level; or
   b. actual resident days.
4. Plant operation and maintenance cost allocation must be based on:
   a. the ratio of square feet of floor space devoted directly to each care level; or
   b. actual resident days.

5. Nursing service cost allocation must be based on direct identification in the routine classification of transactions when costs are recorded in the books and records of the nursing home, such as invoice and time record account classification. If direct identification cannot be used, costs must be allocated on the basis of actual resident days in each care level weighted by the maximum allowable nursing care and attendant hours for each level of care.

6. Cost allocation for other care-related services must be based on:
   a. direct identification of services provided to residents of each level of care; or

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.

b. actual resident days.

7. General and administrative costs must be allocated in the same proportion as the combined cost of nursing, other care-related, dietary, laundry, housekeeping, and plant operations costs are allocated to different care levels.

8. Fringe benefits and payroll tax costs must be allocated on the same basis as general and administrative costs.

9. Real estate taxes and special assessments allocation must be based on the same ratio used for property-related costs.

10. Property-related costs.

a. A nursing home shall allocate property-related costs on the basis of the method of allocation used by the nursing home in the most recent cost report received by December 31, 1982 and audited by March 1, 1983.

b. A newly constructed nursing home whose interim rate is first effective on or after July 1, 1983, shall allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level or actual resident days. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

c. A nursing home which changes beds from one care level to another care level may allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level, or actual resident days in the next rate year. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

d. Notwithstanding the provisions in a.-c., if the actual resident days in any care level exceed the certified capacity at that care level, the nursing home shall allocate property-related costs based on actual resident days.

12 MCAR § 2.05008 [Temporary] Limitations on costs.

A. Cost principles. All allowable costs are limited by the cost principles defined in 12 MCAR § 2.05003 [Temporary].

B. General and administrative limitation. Within each care level, the commissioner shall disallow any portion of the general and administrative cost category that exceeds the stated percentages of the expenditures in all operating cost categories other than fringe benefits, payroll taxes, and general and administrative as given in 1.-4.

1. Ten percent for nursing homes with more than 100 certified beds in total.

2. Twelve percent for nursing homes with less than 101 but more than 40 certified beds in total.

3. Fourteen percent for nursing homes with 40 or fewer certified beds in total.

4. Fifteen percent for convalescent and nursing care units attached to hospitals for the rate year beginning July 1, 1983. In subsequent years, the general and administrative limit for convalescent and nursing care units attached to hospitals shall be as given in 1.-3.

C. Nursing care and attendant limitations.

1. The maximum number of nursing hours per actual resident day for which costs shall be allowed are as follows:

a. SNF, 2.9 hours;

b. ICF I, 2.3 hours; and

c. ICF II, 1 hour.

For the purposes of 12 MCAR §§ 2.05001-2.05016 [Temporary], the computation of nursing hours must not include hours for vacation, holidays, sick leave, classroom training, and coffee breaks. If the actual average nursing hours per actual resident day exceed the limits in a.-c., the limitation to nursing costs must be calculated by multiplying the ratio of the limit to the average actual nursing hours per actual resident day for the year times the actual cost per actual resident day. This limitation must not be applied to nursing homes that qualify for exception under 12 MCAR § 2.05010 C.6., a. or b. [Temporary], or nursing homes mandated by a correction order from the Department of Health to provide additional nursing care.

2. The maximum number of attendant hours per actual resident day for which costs of a boarding care nursing home shall be allowed is one hour per actual resident day. If the actual average attendant hours per actual resident day exceeds this limit, the limitation on attendant costs must be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per actual resident day for the year times the actual cost per actual resident day.

D. Top management personnel compensation limitations.

1. Compensation of top management personnel shall be limited to the cumulative compensation per bed limitation as determined annually. The calculation of this limitation is based on the nursing home's daily average number of licensed beds without regard to care level during the reporting year. The schedule is:

Number of Licensed Beds	Cumulative Annual Compensation Per Bed Limitation (1983)
First 50 beds	$593
Each bed over 50	$297

The above limits shall apply to the reporting year ending in the year specified.

2. For determining top management personnel compensation limitations, compensation must not include fringe benefits if the same benefits are made available to all or substantially all of the nursing home's employees.

3. The cumulative compensation per bed limitation in 1. shall be increased by six percent for the reporting year ending September 30, 1984.

4. The maximum annual top management personnel compensation per nursing home shall be $35,000.

5. Compensation of top management personnel in a nursing home with 61 or more licensed beds must not be allocated to other than top management functions.

12 MCAR § 2.05009 [Temporary] Nonallowable costs.

The costs listed in A.-EE. are not allowable for purposes of setting payment rates but must be identified on the nursing home's cost report. These costs are:

A. all contributions, including charitable contributions, and contributions to political action committees or campaigns;

B. salaries and expenses of a lobbyist;

C. assessments made by or the portion of dues charged by associations or professional organizations for litigation, lobbying costs, or contributions to political action committees or campaigns. Where the breakdown of dues charged to a nursing home is not provided, the entire cost shall be disallowed;

D. advertising designed to encourage potential residents to select a particular nursing home, except for Yellow Pages advertisements of reasonable size and cost;

E. assessments levied by the commissioner of health for uncorrected violations;

F. all activities not related to resident care such as flowers, gifts, bonuses, employee parties, and business meals;

G. all costs related to purchase of and care for pets;

H. all penalties and interest charges from governmental agencies, and bank overdraft or late payment charges;

I. all costs of sponsoring employee, youth, or adult activities such as athletic teams and beauty contests;

J. premiums on owner's or board member's life insurance policies;

K. personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment;

L. membership or other fees for social, fraternal, sports, health, or similar organizations;

M. training programs for anyone except employees or volunteers in the nursing home;

N. training programs to meet the minimum educational requirements of a position except for nurses aides, education that leads to a degree, or education that qualifies the employee for a new trade or profession;

O. all bad debts and related bad debt collection fees;

P. all costs of fund raising activities;

Q. all costs of functions normally reimbursed by charges to residents, employees, or visitors, such as the operating cost, direct and indirect, of a pharmacy, beauty shop, gift shop, coffee shop, apartment, day care center, and functions not related to resident care;

R. operating costs for activities to the extent that such activities are financed by gifts or grants from public or private funds;

S. telephone, television, and radio service provided in a resident's room;

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.

T. costs of noncompetitive agreements;

U. all identifiable costs of services provided by a licensed medical therapeutic or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

1. purchase of service fees paid to the vendor or his agent who is not an employee of the nursing home or the compensation of the practitioner who is an employee of the nursing home;

2. allocated compensation and related costs of any nursing home personnel assisting in providing these services; and

3. allocated cost of any operating or property-related cost for providing these services such as: housekeeping, laundry, maintenance, medical records, payroll taxes, space, utilities, equipment, supplies, bookkeeping, secretarial, insurance, and supervisory and administrative staff costs.

If any of the expenses in 1.-3. are incurred by the nursing home, these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated by the nursing home, including any charges by the nursing home to the vendor;

V. all costs for which adequate documentation is not maintained or provided as required by 12 MCAR §§ 2.05001-2.05016 [Temporary];

W. costs incurred by owners or employees while conducting the business of or performing services for professional organizations or associations;

X. legal and related expenses for unsuccessful challenges to decisions by governmental agencies;

Y. interest for financing working capitol needs, beginning with the rate year starting July 1, 1984;

Z. any fringe benefits or payroll taxes associated with disallowed salary costs;

AA. costs associated with sales or reorganizations of nursing homes;

BB. interest charged by the department on depreciation recapture settlements or rate adjustments;

CC. any portion of the total general and administrative cost category which exceeds the limitations in 12 MCAR § 2.05008 B.1.-4. [Temporary];

DD. cost incurred for activities directly related to influencing employees with respect to unionization; and

EE. all costs determined to be nonallowable in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary].

12 MCAR § 2.05010 [Temporary] Rate determination for operating costs.

A. Determination of actual resident days. The total number of actual resident days shall be calculated by multiplying the lesser care resident days times the appropriate factor from the following table and subtracting that product from the number of resident days.

	Certification	
Level of Care Provided	SNF Beds	ICF I Beds
SNF	not applicable	not applicable
ICF I	.15	not applicable
ICF II	.50	.40

For the rate year beginning July 1, 1983, the total number of lesser care resident days which may be adjusted as set forth above must not exceed 15 percent of the total number of resident days. For the rate year beginning July 1, 1984, the total number of lesser care resident days which may be adjusted as set forth above must not exceed ten percent of the total number of resident days. This limitation may be waived by the commissioner for up to one year to accommodate a transition period during which the nursing home obtains the proper care level certification.

B. Establishment of actual allowable historical operating costs per diem.

1. For the rate year beginning July 1, 1983 and ending on June 30, 1984, the actual allowable historical operating costs shall be determined from the most recent cost report received by December 31, 1982 and audited by March 1, 1983, and shall be updated to June 30, 1983, by using a nine percent annual rate of increase after applying the general and administrative cost limitation in 12 MCAR § 2.05008 C. [Temporary].

2. For rate years beginning July 1, 1984, the commissioner shall annually review and adjust the historical operating costs incurred by the nursing home during the reporting year preceding the rate year. The review and adjustment must comply with the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary].

3. After review and adjustment the total allowable historical operating costs shall be divided by actual resident days in order to compute the nursing home's actual allowable historical operating cost per diem.

C. Establishment of 60th percentile of actual allowable historical operating costs per diem.

1. For purposes of establishing the 60th percentile, the total real estate tax and the special assessments must be excluded from the actual allowable historical operating cost per diem of a nursing home.

2. Each year the actual allowable historical operating cost per diems must be grouped according to the level of care, geographic location of the nursing home, and attachment to hospitals. The following groups are established:

Metropolitan SNF,	Nonmetropolitan SNF,
Metropolitan ICF I,	Nonmetropolitan ICF I,
Metropolitan ICF II,	Nonmetropolitan ICF II,
Statewide Boarding Care,	
Statewide hospital attached nursing homes:	SNF,
Statewide hospital attached nursing homes:	ICF I, and
Statewide hospital attached nursing homes:	ICF II.

3. Within each group the actual allowable historical operating cost per diems shall be ranked from lowest to highest.

4. The number of actual allowable historical operating cost per diems in the group shall be multiplied by 0.6 to establish the 60th percentile rank.

5. The actual allowable historical operating cost per diem that has a rank corresponding to the 60th percentile becomes the 60th percentile actual allowable historical operating cost per diem for that group. If the 60th percentile falls between two per diems in the group, the 60th percentile actual allowable historical operating cost per diem is the prorated value between the two per diems.

6. In establishing the groups set forth at C.2., the commissioner shall exclude:

a. a skilled level of care in a nursing home whose skilled care residents' average length of stay is less than 180 days. The average length of stay for skilled care is determined by dividing the actual resident skilled days for the historical reporting year of the nursing home by the total skilled discharges for the historical reporting year of the nursing home;

b. a nursing home, or that part of a nursing home which is licensed and rendering services under the provisions of 12 MCAR § 2.080 on or before June 1, 1983;

c. a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more, during its interim rate period; and

d. a new care level in nursing homes that on June 1, 1983, have obtained approval for changes in certification level but have no historical costs in that level during the reporting period.

D. Establishment of the operating cost payment rate.

1. For the rate year beginning on July 1, 1983, and ending on June 30, 1984, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem increased by six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased by six percent plus 80 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

2. For the rate year beginning on July 1, 1984, and ending on June 30, 1985, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem, increased at an annual rate of six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased at an annual rate of six percent, plus 75 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

3. A nursing home or part of a nursing home falling within the exclusions of C.6.a. or b. shall receive as its operating cost payment rate:

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. for the rate year beginning July 1, 1983 and ending June 30, 1984, its actual allowable historical operating cost per diem increased by six percent; and

b. for the rate year beginning July 1, 1984 and ending June 30, 1985, its actual allowable historical operating cost per diem, increased at an annual rate of six percent.

E. Efficiency incentive.

1. If the actual historical operating cost per diem incurred by a nursing home is less than the nursing home's operating cost payment rate established for the rate year, the nursing home may keep the difference as an efficiency incentive except as provided in 12 MCAR § 2.05013 C. [Temporary].

2. If a nursing home's actual historical operating cost per diem is greater than the operating cost payment rate established for that rate year, there shall be no retroactive cost settlement.

3. If a desk or field audit indicates that a reduction in expenditures for direct resident care might cause a detrimental effect on quality of care, the nursing home must be referred for investigation to the commissioner of health, the interagency board for quality assurance, and the Surveillance and Utilization Review section of the department.

12 MCAR § 2.05011 [Temporary] Rate determination for property-related costs.

A. Capacity days. The number of capacity days shall be determined by multiplying the number of the nursing home's licensed beds by the number of days in the nursing home's reporting period. Capacity days may be adjusted under one or more of the conditions given in 1.-4.

1. Nursing homes qualifying for the lesser care rate under the provisions of 12 MCAR § 2.05014 B. [Temporary] must adjust the capacity days by the formula and limitations provided for in 12 MCAR § 2.05010 A. [Temporary].

2. For nursing homes applying for a certificate of need after August 15, 1972 and choosing to assign a greater proportion of costs to single bed rooms, the number of capacity days shall be increased by multiplying the number of licensed single bed rooms by 1.5.

3. Usable or operable bed capacity shall be used for purposes of the calculations required by 1. and 2. if the nursing home justifies in writing, to the satisfaction of the commissioner, that licensed beds is an inappropriate measure of capacity. The usable or operable bed capacity adjustment must not be in effect for more than one reporting year and must not be recognized after July 1, 1985.

4. Notwithstanding the provisions of 1.-3., the total of capacity days must not be reduced below:

a. ninety-three percent for nursing homes with more than 60 beds;

b. ninety-one percent for nursing homes with 60 or fewer beds; and

c. ninety percent for newly constructed nursing homes or nursing homes with a nursing home capacity increase of 50 percent or more.

B. Nursing homes constructed prior to July 1, 1983. The property-related cost base for a nursing home constructed prior to July 1, 1983 shall be determined by 1.-4.

1. For the rate years beginning on July 1, 1983 and July 1, 1984, the property-related costs include the allowable depreciation, interest, investment allowance, and lease or rental payment expenses at the dollar level recognized in the most recent cost report received by the commissioner by December 31, 1982 and audited by March 1, 1983. These costs must be subsequently adjusted to reflect the costs recognized in the final rate for that cost report, adjusted for rate limitations in effect May 1, 1983.

2. Property-related costs as determined in 1. shall be reduced to the extent that costs included in property-related costs in the most recent cost report received by the commissioner by December 31, 1982 and audited by March 1, 1983 are included in a different cost category under 12 MCAR §§ 2.05001-2.05016 [Temporary]. Along with the cost report filed with the commissioner, the nursing home shall clearly identify those costs which have been reclassified.

3. Adjustments to property-related costs for the cost of repairs, replacements, renewals, betterments, or improvements to existing buildings and attached fixtures are subject to the provisions of E. and shall be allowed if:

a. the cost incurred is reasonable, necessary, and ordinary;

b. the net cost is greater than $5,000;

c. the nursing home's property-related costs per diem are equal to or less than the average property-related costs per diem within its group; and

d. the adjustment is shown in the depreciation and interest schedules submitted to and approved by the commissioner.

These adjustments shall be calculated pursuant to the rules and statutes in effect on May 1, 1983. Interest allowed must be limited to the indebtedness incurred in the acquisition for which depreciation is adjusted.

4. No adjustments shall be made as a result of sales or reorganizations of nursing homes.

C. Newly constructed nursing homes; nursing homes with a capacity increase of 50 percent or more. The property-related cost base for a newly constructed nursing home or a nursing home that increases its capacity 50 percent or more and that meets the conditions of Minnesota Statutes, section 144A.071 shall be determined by estimating the depreciation, interest, and investment allowance on the newly constructed nursing home or portion of a nursing home pursuant to the statutes and rules in effect on May 1, 1983. The property-related cost base shall be fixed at the level recognized at the time of settle-up. For the following rate years, the payment rate shall be calculated according to provisions of A. and B.

D. Nursing homes with a capacity increase of less than 50 percent. The property-related cost base for a nursing home that increases its capacity by less than 50 percent shall be increased to recognize costs incurred during the reporting year, provided that the nursing home meets the requirements of Minnesota Statutes, section 144A.071. The increased base shall be included in the calculation of a payment rate for the rate year following the reporting year in which the cost was incurred. The increase in the property-related cost base is subject to the provisions of E. and must include depreciation, interest, and investment allowance calculated pursuant to the statutes and rules in effect on May 1, 1983.

E. Basis of depreciable assets. The total basis of depreciable nursing home assets, whether constructed or purchased, must not exceed the following maximum limits per bed for licensed beds in rooms with two or more beds per room, and per bed for licensed single bed rooms; except that for licensed single bed rooms built prior to August 15, 1972, the basis must not exceed $16,500 per bed for a maximum of five percent of licensed beds:

Year beginning	Two or more bed rooms	Single bed rooms
Prior to January 1, 1974	$11,000	$16,500
January 1, 1974	13,000	19,500
January 1, 1975	14,820	22,230
January 1, 1976	15,413	23,119
January 1, 1977	16,406	24,608
January 1, 1978	18,109	27,162
January 1, 1979	20,010	30,014
January 1, 1980	22,971	34,457
January 1, 1981	25,544	38,316
January 1, 1982	26,591	39,887
January 1, 1983	27,309	40,964

On January 1, 1984 and January 1, 1985, the limit shall be adjusted as determined by the commissioner according to the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce. This limit does not apply to changes required by a governmental agency.

F. Computation of property-related cost payment rates. The property-related cost payment rate shall be computed by dividing total property-related costs by 96 percent of capacity days for nursing homes with more than 60 beds or 94 percent of capacity days for nursing homes with 60 or fewer beds. For the nursing home whose residents' average length of stay is 180 days or less, the nursing home may choose to divide the nursing home's property-related costs by the actual resident days to compute the nursing home's annual property-related cost payment rate. For a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more the interim property-related costs shall be determined pursuant to statutes and rules in effect on May 1, 1983.

G. Recapture of depreciation.

1. If 20 percent or more of the nursing home facility or any portion of the nursing home's depreciable equipment or land improvements is sold at a price in excess of its cost as reduced by the total of the depreciation used in the determination of property-related costs under 12 MCAR § 2.05011 [Temporary] and 12 MCAR § 2.049, depreciation recapture to be paid to the commissioner shall be determined as follows:

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. The gross amount to be recaptured shall be the lesser of the total actual gain on the sale or the allowable depreciation after November 1, 1972.

b. The gross recapture amount as determined in a. must be allocated to fiscal periods from November 1, 1972, through the date of sale. The gross recapture amount must be allocated to each fiscal period in the same ratio as depreciation amounts allowed under 12 MCAR § 2.05011 [Temporary] and 12 MCAR § 2.049. The amount allocated to each period must be divided by the total actual resident days in that period to determine a per diem cost for the period. The net recapture must then be determined by multiplying the welfare days by the per diem cost for each fiscal period.

c. The portion of the net recapure amount determined above and allocated to fiscal periods prior to July 1, 1983 shall be reduced by one percent for each month of ownership for the period beginning with the date of acquisition of the nursing home facility through June 30, 1983.

d. The portion of the net recapture allocated to rate years on or after July 1, 1983 shall be subject to full recapture.

e. The total net recapture shall be the total of c. and d.

2. The new owner shall pay to the commissioner the total net recapture amount in e. within 120 days of receiving formal notification of the amount due. Interest charges shall be assessed on balances outstanding after the 120-day deadline. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes in effect on the 121st after the formal notification.

3. A nursing home which terminates participation in the medical assistance or Minnesota supplemental aid program and which is subject to the recapture provisions shall submit an appraisal of the assets of the nursing home. If the commissioner determines that the appraisal submitted by the nursing home may not accurately show the value of the nursing home assets, the commissioner may obtain an appraisal of the assets and may determine the amount to be recaptured according to the appraisal.

12 MCAR § 2.05012 [Temporary] Rate determination for real estate taxes and special assessments.

The total real estate taxes and actual special assessments must be divided by actual resident days to compute the payment rate for real estate taxes and special assessments.

12 MCAR § 2.05013 [Temporary] Total payment rate determination.

A. Total payment rate. The total payment rate must be the sum of the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate.

B. Private payment rate. The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period.

C. Adjustment of payment rate; individual nursing homes. If the commissioner finds unallowable expenditures, errors, or omissions in the nursing home's historical operating costs, the nursing home's actual allowable historical operating cost per diem and subsequently affected payment rates must be adjusted. If the adjustment results in an underpayment to the nursing home, the commissioner shall pay to the nursing home the underpayment amount within 120 days of formal notification to the nursing home. If the adjustment results in an overpayment to the nursing home, the nursing home shall pay to the commissioner the entire overpayment within 120 days of receiving the formal notification from the commissioner. Interest charges shall be assessed on underpayment or overpayment balances outstanding after the deadlines. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect on the 121st day after the formal notification.

D. Adjustment or payment rate; group. When resolution of appeals or on-site field audits of the records of nursing homes within a group result in adjustments to the 60th percentile of the payment rates within the group in any reporting year, the 60th percentile established for that group must be increased or decreased by the adjustment amount for the rate year following the reporting year during which the adjustment was made or the appeal was resolved. No redetermination of the existing 60th percentile may be made as a result of adjustments to cost reports.

12 MCAR § 2.05014 [Temporary] Special rate setting procedures.

A. Newly constructed nursing homes. Interim payment rates and settle-up payment rates for a newly constructed nursing home or one with a capacity increase of 50 percent or more shall be established in accordance with 1.-9.

1. A newly constructed nursing home or one with a capacity increase of 50 percent or more may, upon written application to the commissioner, receive an interim payment rate. The nursing home shall submit cost reports and other supporting information as required in 12 MCAR §§ 2.05001-2.05016 [Temporary] to the extent applicable for the reporting year in which the nursing home plans to begin operation. The nursing home must state the reason for noncompliance with any provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary]. The effective date of the interim payment rate shall be the first day a medical assistance recipient resides in the newly constructed beds.

2. An interim payment rate for a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall be established as in a.-d.

a. The interim operating cost payment rate shall be computed by dividing the projected operating costs by the anticipated actual resident days. The interim operating cost payment rate must not exceed 110 percent of the 60th percentile in effect for the nursing home's group, except that for a nursing home meeting the provisions of 12 MCAR § 2.05010 C.6.a. [Temporary] the interim operating cost payment rate must not exceed 110 percent of the highest operating cost payment rate for that type of nursing home in effect during that rate year.

b. The interim property-related cost payment rate shall be computed by dividing the projected property-related cost for any newly constructed nursing home or portion of a nursing home by 93 percent of capacity days for the nursing home. A nursing home included in 1. may elect to use anticipated actual resident days in place of 93 percent of capacity days.

c. The interim real estate tax and special assessments payment rate shall be computed by dividing the projected real estate tax and special assessments by the anticipated actual resident days.

d. The total interim payment rate shall be the sum of the interim payment rates computed in a.-c.

3. A newly constructed nursing home's interim payment rate must not be in effect more than 17 months. A nursing home that has a starting date between May 1 and September 30 must file a cost report for the reporting year ending on September 30 of the following year. A nursing home that has a starting date between October 1 and April 30 must file a cost report for the reporting year ending on the first September following the starting date.

The interim payment rate period for a nursing home with a capacity increase of 50 percent or more shall coincide with the reporting year and may not be in effect for more than 12 months.

4. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rates were in effect for periods before and after July 1, 1983, shall submit the two cost reports given in a. and b.

a. The first cost report must include all costs and statistical information for the entire interim rate period in accordance with 12 MCAR § 2.049.

b. The second cost report must include all costs and statistical information of the entire interim rate period in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the property-related cost payment rate.

c. Each cost report shall be used to determine a settle-up payment rate. The settle-up payment rate determined in a. shall be applied to the period ending June 30, 1983. The settle-up payment rate determined in b. shall be applied to the period beginning July 1, 1983, for the duration of the interim period.

5. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rate was in effect on or after July 1, 1983, must file a cost report in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the settle-up property-related cost payment rate.

6. For periods which begin after June 30, 1983, the settle-up operating cost payment rate must not exceed 110 percent of the 60th percentile in effect for the nursing home's group, or for a nursing home meeting the requirements of 12 MCAR § 2.05010 C.6.a. [Temporary], 110 percent of the highest operating cost payment rate for that type of nursing home during the same period or periods.

7. The provisions of 12 MCAR § 2.05010 B.1. and D.2. [Temporary] relating to the updating of operating costs and per diems must not be applied for the settle-up operating cost payment rate.

8. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall continue to receive the interim payment rate after submission of the cost report for the period October 1 through June 30 until the payment rate for the following year is determined in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that the property-related cost payment rate shall be computed by dividing property-related costs by the percentage of capacity days specified in 12 MCAR § 2.05011 F. [Temporary].

9. The interim payment rate is subject to retroactive adjustment against the settle-up payment rates and the payment rate

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.

developed for the remaining nine months of the current rate year. Interest charges must be assessed as provided in 12 MCAR § 2.05013 C. [Temporary].

B. Lesser care levels in nursing homes without certification classification. Nursing homes providing care to welfare recipients requiring less care than the care level for which the nursing home is certified shall receive a payment rate calculated as follows:

1. The ICF I payment rates in a SNF nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate shall be the lesser of 85 percent of the established SNF operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF I group.

b. The nursing home's property-related cost payment rate shall be 85 percent of the established SNF property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate shall be 85 percent of the established SNF real estate cost payment rate and special assessments cost payment rate.

d. The maximum lesser care total payment rate may not exceed 85 percent of the SNF total payment rate.

2. The ICF II payment rates in the SNF nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate must be the lesser of 50 percent of the established SNF operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF II group.

b. The nursing home's property-related cost payment rate must be 50 percent of the established SNF property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate must be 50 percent of the established SNF real estate tax and special assessments cost payment rate.

d. The maximum lesser care total payment rate must not exceed 50 percent of the SNF total payment rate.

3. The ICF II payment rates in an ICF I nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate must be the lesser of 60 percent of the established ICF I operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF II group.

b. The nursing home's property-related cost payment rate must be 60 percent of the established ICF I property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate must be 60 percent of the established ICF I real estate tax and special assessments cost payment rate.

d. The maximum lesser care total payment rate must not exceed 60 percent of the established ICF I total payment rate.

C. Care classification additions. Nursing homes adding certified levels of care classifications shall receive the lesser care rates defined in B. until the regularly scheduled cost report is submitted. For nursing homes adding higher certified levels of care, the same percentage shall be used to determine the higher care payment rates, subject to the limitations of the 60th percentile increased by six percent in the appropriate higher care level group.

D. Private room rate. A private room rate of 115 percent of the established payment rate for the applicable care level in an individual nursing home shall be allowed for a medical assistance recipient when the private room is deemed a medical necessity for the individual resident or others who are affected by the resident's condition. Conditions requiring a private room must be determined by the attending physician and approved by the county welfare or human services board. These provisions apply only to a nursing home applying for a certificate of need for construction of new nursing home beds after August 15, 1972.

12 MCAR § 2.05015 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. No later than December 31 of each year, the nursing home must submit an annual cost report for the reporting year ending September 30 which conforms to the uniform accounting system defined in forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. In addition, the nursing home shall obtain an annual audit of its financial records from an independent certified public accountant or licensed public accountant. The examination shall be conducted in accordance with generally accepted auditing standards as promulgated and adopted by the American Institute of Certified Public Accountants. A governmentally owned nursing home

C. Method of accounting. The accrual method of accounting in accordance with generally accepted accounting principles is the only method acceptable for purposes of satisfying reporting requirements. If a government-owned nursing home demonstrates that the use of the accrual method of accounting is not applicable to the nursing home and that a cash or modified accrual method of accounting more accurately reports the nursing home's financial operations, the commissioner shall permit the nursing home to use a cash or modified accrual method of accounting.

D. Records. The nursing home shall maintain statistical and accounting records to support information contained in the nursing home's required reports and audited statement in sufficient detail for at least four years following submission of a cost report. Upon request of the commissioner, the nursing home shall provide federal and state income tax returns for the nursing home, any related organization, and any individual having an ownership interest in the nursing home.

E. Exceptions. If differences arise between these rules and generally accepted accounting principles, 12 MCAR §§ 2.05001-2.05016 [Temporary] shall prevail.

F. Report certification. Reports required in this section must be accompanied by a certification of the person having over 50 percent effective ownership or the chief financial officer if there is no majority owner, and the administrator or chief operating executive. If reports have been prepared by a person other than these individuals, a separate statement signed by the preparer shall also be included stating the terms of the preparer's employment and charges for preparation of the report.

G. Reporting deadlines and extensions.

1. Required annual reports must be submitted to the commissioner by December 31. The reports must cover the reporting year ending on September 30 of that year.

2. The commissioner may reject any report filed by a nursing home that is incomplete or inaccurate or may require other relevant information to support the payment rate request. The corrected report or the additional information requested must be returned to the commissioner within 15 days or the report must be rejected.

If the report is rejected, the commissioner shall reduce the payment rate to the nursing home to 80 percent of its most recently established payment rate. The reduced payment rate shall be in effect until the first day of the month following the month in which the information is completely and accurately filed. Reinstatement of the full payment rate may not be retroactive.

3. In unusual circumstances, the commissioner may grant one 15-day extension of the reporting deadline. To receive such an extension, a nursing home must submit a written request by December 1. The commissioner must notify the nursing home of his decision to grant or deny an extension by December 15.

H. Effective date and noncompliance.

1. The commissioner shall provide to all nursing homes notice of the payment rate by May 1 of each year. The payment rate is effective from July 1 of that year to June 30 of the following year. For the rate year beginning on July 1, 1983, the commissioner shall issue the payment rate notice no later than June 15, 1983.

2. Failure to provide required reports, documentation, and worksheets required in A.1.-14. shall result in the reduction of the payment rate to 80 percent of the payment rate in effect on the first day of the fourth calendar month after the close of the nursing home's reporting year. The reduced payment rate shall be in effect until the first day of the month following the month in which the information is completely and accurately filed. Reinstatement of the full payment rate may not be retroactive.

I. Audits, amended reports, false reports, exceptions.

1. The department shall subject all reports and supporting documentation to desk audit and field examinations to determine compliance with 12 MCAR §§2.05001-2.05016 [Temporary].

a. If these audits reveal inadequacies in nursing home recordkeeping and accounting practices, the commissioner shall require that the nursing home engage competent professional assistance to properly prepare required reports. Failure to remedy these inadequacies within 90 days shall result in the application of the penalties in H.2. Retroactive adjustments may be made as a result of desk and field audit findings.

b. If any field examination shows lack of adequate documentation, the commissioner shall require the nursing home to produce the additional documentation within 15 days. If the documentation is not provided, the costs shall be disallowed.

2. Nursing homes may file amendments to previously filed reports when mathematical errors or omissions in the report are discovered, if the amendment would result in at least a five cent per resident day or $2,000 adjustment, whichever is less for each reporting year. The commissioner shall make retroactive adjustments to the payment rate of an individual nursing home if the amendment is filed within one year of the filing of the original cost report to be amended. No redetermination of the 60th percentile shall be made as a result of amendments to cost reports.

may comply with these auditing requirements by submitting the audit report prepared by the state auditor. Reports, supporting documentation, and worksheets shall include:

1. general nursing home information and statistical data;

2. reports of historical costs with supporting calculations and worksheets;

3. a complete statement of fees and charges, including the rate or rates charged to private paying residents, as audited by a certified public accountant licensed in Minnesota or by a public accountant as defined by Minnesota Statutes, section 412.222;

4. a copy of its audited financial statements that correspond to the nursing home's fiscal year ending during the cost reporting year. The audited financial statements must include a balance sheet, income statement, statement of retained earnings, statement of changes in financial position (cash and working capital methods), appropriate notes to the financial statements, any applicable supplemental information, and the certified public accountant's or licensed public accountant's opinion. If the financial statements are not sufficiently detailed or the nursing home's fiscal year is different from the cost reporting year, the audited financial statement's supplemental information must provide and explain all adjustment amounts necessary to compare costs on the financial statements with costs on the cost report;

5. certified public accountant's and licensed public accountant's audit workpapers which support the audited financial statements and cost reports, upon request of the commissioner;

6. a statement of ownership for the nursing home, including the name, address, and proportion of ownership of all owners of privately-held or closely-held corporations and partnerships which have an interest of five percent or more in the nursing home and publicly-held corporations which have an interest of 15 percent or more;

7. separate audited financial statements that correspond to the fiscal year ending during the cost reporting year for any other nursing home owned in whole or part by the same owners;

8. separate audited financial statements which correspond to the fiscal year ending during the cost reporting year for any related organization doing business with the nursing home;

9. copies of leases, purchase agreements, and other documents related to the lease or purchase of the nursing home;

10. copies of leases, purchase agreements, or other documents related to the purchase or acquisition of equipment, goods, and services which are claimed as allowable costs, if requested by the commissioner;

11. a listing of nursing home debt outstanding during the reporting year, and the name of the lender, the term of debt, interest rate of debt, interest and principal payments for the current year and all remaining years, and the original amount of debt;

12. complete depreciation schedules calculated in accordance with 12 MCAR § 2.049;

13. an explanation in the cost report, of all adjustments to the cost report and the applicable rule citations; and

14. other relevant information required by the commissioner to support a payment rate request.

B. Additional information required from hospital attached nursing homes. In addition to the reports required in A., hospital attached nursing homes shall provide:

1. Copies of medicare cost report Worksheets as required by the commissioner. In addition to the stepdowns required by medicare, the nursing home shall provide individual stepdowns for the areas listed below, which are equal to or reconcilable with the medicare cost report:

a. general and administrative cost categories;

b. depreciation, interest, and property-related costs;

c. real estate taxes and special assessments, if applicable;

d. fringe benefits and payroll taxes; and

e. all other cost categories, including nursing services, other care-related services, dietary, housekeeping, laundry and linen, and plant operation and maintenance.

2. Reconciliation with the medicare stepdown for all stepdowns listed in 1.a.-e.

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.

3. If a nursing home knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall:

a. immediately adjust the nursing home's payment rate to recover the entire overpayment within the rate year; or

b. terminate the commissioner's agreement with the nursing home; or

c. prosecute under applicable state or federal law; or

d. use any combination of a., b., and c.

12 MCAR § 2.05016 [Temporary] Appeal procedures.

A. Scope of appeals. A decision by the commissioner may be appealed by the nursing home or a county welfare or human services board where all of the following conditions are met:

1. the appeal, if successful, would result in a change in the nursing home's payment rate;

2. the appeal arises from application of the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary]; and

3. the dispute over the decision cannot be resolved informally between the commissioner and the appealing party.

B. Filing of appeals. To be effective, an appeal must meet the following criteria:

1. The appeal must be filed, in writing, within 60 days after the commissioner issued the payment rate notification which is being appealed.

2. The appeal shall specify:

a. each disputed item and the reason for the dispute;

b. the computation and the amount that the appealing party believes to be correct;

c. an estimate of the dollar amount involved in each disputed item;

d. the authority in statute or rule upon which the appealing party is relying in each dispute; and

e. the name and address of the person or firm with whom contacts may be made regarding the appeal.

C. Resolution of appeal. The appeal shall be heard in accordance with the contested case provisions set forth in Minnesota Statutes, chapter 14 and rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

D. Payment rate during appeal period. Notwithstanding any appeal filed pursuant to 12 MCAR §§ 2.05001-2.05016 [Temporary], the payment rate established by the commissioner shall be the rate paid to the nursing home while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal, any overpayments or underpayments shall be paid in accordance with 12 MCAR § 2.05013 C. [Temporary].

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.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PER DIEM RATES FOR NURSING HOMES UNDER THE TITLE XIX PROGRAM (12 MCAR §§2.05001 - 2.05016)

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS

The Commissioner sent the findings of fact, conclusions and orders concerning the proposed temporary rules on the above-entitled matter to the Attorney General on August 10, 1983 and, furthermore on August 15, 1983, sent supplemental findings of fact, conclusions and orders concerning the proposed temporary rules. On August 15, 1983, the Attorney General notified the agency of an objection to the rule in 12 MCAR §2.05003 F.1. (Temporary). The Commissioner has considered the objection of the Attorney General and now makes the following finding:

In 12 MCAR §2.05003 F.1. (Temporary) of the proposed rule (page 10, lines 30-33), the department required that the purchase of equipment during a reporting year must be capitalized and depreciated if the aggregate cost of the equipment is in excess of $2500 even though the unit cost is less than $500. The Attorney General objects to this provision as vague and requests clarification of "equipment". The commissioner agrees that the provision does not adequately specify the kind of equipment to which the provision applies. Therefore the commissioner has clarified the provision by excluding minor equipment from the equipment whose purchase must be capitalized and depreciated if it has a unit cost of less than $500 but an aggregate cost in excess of $2500.

CONCLUSIONS

I hereby conclude that:

1. The modification made to the proposed temporary rule is supported by data and views submitted to the Department, and is not a substantial change.
2. The temporary rule, as modified, is necessary and reasonable.
3. If the finding or any part of the finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

ORDER

Based on the above finding and conclusions, Rule 12 MCAR §2.05003 F.1. (Temporary) as adopted by me on August 8, 1983, and transmitted to the Attorney General, is amended as described above and as specifically set forth on Exhibit A as attached hereto.

Dated: August 15, 1983

STATE OF MINNESOTA

Leonard W. Levine

Commissioner of Public Welfare

State of Minnesota
Department of Public Welfare

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PER DIEM RATES FOR NURSING HOMES UNDER THE TITLE XIX PROGRAM (12 MCAR §§ 2.05001-2.05016)

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS

The Commissioner sent the findings of fact, conclusions and orders concerning the proposed temporary rules on the above-entitled matter to the Attorney General on August 10, 1983. On August 12, 1983, the Attorney General notified the agency of objections to the rule in 12 MCAR § 2.05010 A. (Temporary) and in 12 MCAR § 2.05011 A.3. (Temporary). The Commissioner has considered the objections of the Attorney General and now makes the following finding:

1. In 12 MCAR § 2.05010 A. (Temporary) of the proposed rule (page 26, lines 4-7), the department provided that the limitation of the number of lesser care resident days which may be adjusted may be waived to accommodate a transition period during which the nursing home obtains proper care level certificaiton. The Attorney General objects to this provision as failing to set a standard for the waiver of the limitation by the commissioner and thereby giving the commissioner unfettered discretion to waive. The commissioner agrees that the provision does not adequately set a standard for granting a waiver of the limitation and therefore accepts the request to provide such a standard by requiring the nursing home to demonstrate in writing that it has taken appropriate action to change the care level certification.

2. In 12 MCAR § 2.05011 A.3. (Temporary) of the proposed rule (page 29, lines 31-35), the department provided that the calculation of the lesser care rate shall use the usable or operating bed capacity "if the nursing home justifies in writing to the satisfaction of the commissioner, that licensed beds is an inappropriate measure of capacity." The Attorney General objects to this provision as vague and requests clarification. The commissioner agrees that the provision does not adequately specify the standard which must be met to utilize the adjustment. Therefore, the commissioner has clarified the provision by including the conditions which the nursing home must demonstrate in writing in order to use the number of beds in operation rather than licensed beds.

CONCLUSIONS

I hereby conclude that:

1. All modifications made to the proposed temporary rule are supported by the data and views submitted to the Department, and are not substantial changes.

2. The temporary rules, as modified, are necessary and reasonable.

3. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

ORDER

Based on the above findings and conclusions, Rules 12 MCAR §§ 2.05010 A. and 2.05011 A.3., as adopted by me on August 8, 1983, and transmitted to the Attorney General, are amended as described above and as specifically set forth on Exhibits A and B attached hereto.

Dated: August 15, 1983

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Public Welfare

D8-97

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF TEMPORARY RULES
GOVERNING THE DETERMINATION OF
WELFARE PER DIEM RATES FOR NURSING
HOMES UNDER THE TITLE XIX PROGRAM
(12 MCAR §§ 23.05001 - 2.05016)

FINDINGS OF FACT
AND CONCLUSIONS

The Commissioner published notice of proposed Temporary rules on the above-entitled matter in the State Register on July 4, 1983. Notice was also sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, on June 30, 1983. After affording all interested and affected persons an opportunity to submit comments for 20 days after the notice and reviewing and considering the comments, I find the following:

1. In 12 MCAR § 2.05001 B. (Temporary) of the proposed rule (page 1, lines 29-30), the Department included licensed boarding care facilities participating in the Minnesota Supplemental Aid Program within the type of provider covered by the rule. One commentator, the Minnesota Association of Health Care Facilities (MAHCF), suggested that the Department has no authority to adopt temporary rules establishing a rate setting mechanism for such providers. The Commissioner agrees that reimbursement of such providers is beyond the purview of these rules and, therefore, accepts this suggestion. The language referring to such providers is deleted from lines 22 and 23. It is also necessary to delete references to such providers on: page 2, lines 26 and 27, 12 MCAR 2.05002 G.4. (Temporary); page 7, line 26, 12 MCAR 2.05002 WW (Temporary); and page 11, lines 21-23, 12 MCAR 2.05004 C. (Temporary).

2. In 12 MCAR § 2.05002 B. (Temporary) of the proposed rule (page 1, lines 34-35, and page 2, lines 1-2), the Department defined "actual allowable historical operating cost per diem" to mean the per diem payment for actual operating costs allowed by the Commissioner for the most recent reporting year." One commentator, MAHCF, requested clarification of the definition and suggested rewording the definition as "the per diem payment for operating costs allowed by the Commissioner for the most recent reporting years." The Commissioner agrees the change clarifies the definition and the statutory definition in Chapter 199, section 11, subdivision 2, and accepts the suggestion.

3. In 12 MCAR § 2.05002 E. (Temporary) of the proposed rule (page 2, lines 10-15), the Department included several types of receipts and expense reductions within the definition of "applicable credit." Several commentators, including William Hargis of Good Neighbor Care Center, William Ward of Dassel Lakeside Community Home, MAHFC, and Thomas W. Paul of Crestview Lutheran Home, have requested clarification of the definition and suggested that the definition is too broad and can, therefore, be interpreted too liberally. The Commissioner agrees that it is necessary to clarify that property cost reimbursement will continue to be done under old Rule 49 and , therefore, accepts the suggestion of Mr. Hargis that "interest income" be deleted from line 5. For the same reason, the phrase "sale of equipment or salvage is deleted from line 6. Further, the Commissioner agrees with Mr. Hargis that the meaning of the term "income from incidental services" is

unclear and has clarified the meaning by substituting the phrase "income from the sale of goods or services not covered by the per diem rate." The Commissioner agrees that "erroneous" (line 6) needs definition and clarifies it as "over charges." The Commissioner agrees that the phrase "any other adjustment reducing cost" (line 8) is very broad and could be interpreted quite liberally. Therefore, the Commissioner limits the phrase to apply to "cost of the nursing home."

4. In 12 MCAR § 2.05002 CC. (Temporary) of the proposed rule (page 5, lines 4-6), the Department defined the term "major betterment." One commentator, Robert Gibbens, questioned the meaning of "major", whether "major" is necessary to the definition, and requested clarification. The Commissioner finds that the statute uses the term "betterment" and that "major" is not a necessary part of the definition. Further, the Commissioner agrees that clarification is needed. Therefore, the Commissioner has revised the definition which is placed in alphabetical order as 12 MCAR § 2.05002 F. (Temporary), (page 2.)

5. In 12 MCAR § 2.05002 G. (Temporary) of the proposed rule (page 2, lines 16-20), the Department used the phrase "attached fixtures" in defining the statutory term "building service equipment" for purposes of this rule. One commentator, MAHFC, suggested that the phrase "attached fixtures" "pertains to property-related costs" and must be deleted as it broadens the authority of the Commissioner in this temporary rule. The Commissioner agrees that the phrase "attached fixtures" is

inappropriate for use in this temporary rule and accepts the suggestion to delete it. However, the Commissioner finds it necessary to define the statutory term "building service equipment" and has modified the definition accordingly. This amendment also required a modification of language in 12 MCAR § 2.05002 R. (page 3, line 27, and in 12 MCAR §2.05002 PP. (page 6, line 25).

6. In 12 MCAR § 2.05002 Q. (Temporary) of the proposed rule (page 3, lines 22-25), the Department defined the term "extraordinary repair." One commentator, Robert Gibbens of Ramsey County Community Human Services Department, asked if all repairs were included, what conditions are required, and that the definition be clarified. The Commissioner finds that the term "major repair" (line 16) is vague. The Commissioner finds that the phrase "is costly in relation to the value of the asset" is vague. The Commissioner finds that to be an "extraordinary repair" a repair must either increase the use value of the asset or prolong its useful life. The aspect of costliness is adequately dealt with by the dollar limitations in 12 MCAR § 2.05003 F.1. Therefore, the Commissioner accepts the request to clarify the definition.

7. In 12 MCAR § 2.05002 FF. (Temporary) of the proposed rule (page 5, lines 14-17), the Department defined the term "necessary service" to mean a function that, if not performed by the individual, would have required employment of another person to perform it. One commentator, Hospital and Nursing Home Employees Union, Local 113, questioned why

the service is defined in terms of additional personnel and whether the definition would hold if the facility chose to increase a part-time employee's hours in order to perform the service. The Commissioner agrees that a nursing home should have the choice of making an increase in the hours of employment of a part-time person in order to perform the service or of employing an additional person. Therefore, the Commissioner accepts the request to clarify the definition. p.5

8. In 12 MCAR § 2.05002 LL. (Temporary) of the proposed rule (page 6, lines 6-9), the Department includes "state and federal unemployment compensation taxes" in the definition of "payroll taxes." One commentator, Minnesota Association of Homes for the Aging (MAHA), suggested that the definition should be modified to reflect the fact that non-profit nursing homes do not pay unemployment compensation taxes, but rather pay the costs of unemployment compensation. The Commissioner agrees that non-profit nursing homes pay unemployment compensation costs and, therefore, accepts the suggestion to modify the definition. p.6

9. In 12 MCAR § 2.05002 NN. (Temporary) of the proposed rule (page 6, lines 15-20) defining "property-related costs", the Department included the term "interest." In connection with a subsequent rule, 12 MCAR § 2.05009 Y. (Temporary) Page 24, line 35), one commentator, William Hargis, requested the Department to allow interest for financing working capital needs as an allowable cost. Because the Commissioner accepted the suggestion in regard to 12 MCAR § 2.05009 Y. (Temporary),

the Commissioner finds it necessary to modify and clarify the term "interest" within 12 MCAR § 2.05002 NN. (Temporary). ✓p.6

10. In 12 MCAR § 2.05002 QQ. (temporary) of the proposed rule (page 6, lines 27-33), the Department limited special assessments to those paid and real estate tax liability to the calendar year during which the reporting year ends. Several commentators, including Mr. Paul, MAHCF, and Mr. Hargis, suggest that real estate taxes and special assessments are properly a pass-through and that, if the limitation of real estate tax liability to the calendar year during which the reporting year ends is continued, reimbursement for real estate taxes will be at least one year behind. The commentators further suggest that a delay in reimbursement of special assessments is inconsistent with the fact that only actual assessments, but not interest on such assessments, will be reimbursed. Some commentators also suggested that interest on special assessments be reimbursed.

    Mr. Hargis further suggests that taxes for the forthcoming rate year can be easily verified on a timely basis with the county. The Commissioner agrees with the above comments and has modified the rule. ✓p.6

11. In 12 MCAR § 2.05002 RR. (Temporary) of the proposed rule (page 6, lines 34-36 and page 7, lines 1-11), the Department lists three possible ways in which an organization may be defined as a related organization. Several commentators, including MAHCF, M. Jack Brose of Larson, Allen Weishair, and Larry Peterson of Cokato Manor, Inc.,

suggest that definition needs clarification. The Commissioner agrees that the definition needs clarification and has modified the definition. The terms, "affiliate," "person," and "control" are taken directly from The Federal Securities Laws, Rules and Regulations so that the cases construing those terms can be relied upon for interpretation.

12. In 12 MCAR § 2.05002 VV. (Temporary) of the proposed rule (page 7, lines 28-30), the Department defines the term useful life. One commentator, Mr. Larry Peterson, asks what standards will be used to determine the length of time an asset is expected to provide economic service before needing replacement and suggests the standards of Rule 49 and other regulations in effect before property-related costs were frozen. The Commissioner agrees that the standards need to be stated and accepts the suggestion that the standards be pursuant to 12 MCAR § 2.049 in effect before May 1, 1983.

13. In 12 MCAR § 2.05003 A. (Temporary) of the proposed rule (page 8, lines 2-4), the Department states the principle that general and administrative costs must not be allocated as a cost to any other cost category. One commentator, Mr. Brose, suggests that some types of management fees, such as those for dietary, nursing, and housekeeping consultants should be allocated to these operating cost categories, rather the general and administrative. The Commissioner agrees that allocation is appropriate where certain required consultants are engaged, but that

other allocations are prohibited by the underlying statute. Therefore, the Commissioner clarifies the provision by including a reference to the appropriate rule, 12 MCAR § 2.05007 A.3. (Temporary). p.8

14. In 12 MCAR § 2.05003 B. (Temporary) of the proposed rule (page 8, lines 5-6), the Department defines how applicable credits must be used. One commentator suggested that the rule limit credits that must be offset to the extent of corresponding claimed costs. The Commissioner agrees and accepts the suggestion. p.8

15. In 12 MCAR § 2.05003 C.1.d. (Temporary) of the proposed rule (page 8, lines 18-20), the Department included "all other relevant documents" in a list of items included in adequate documentation. One commentator, MAHA, suggested that this provision is vague and would permit the Department to make arbitrary determinations as to adequate or inadequate documentatin. MAHA requested the Department to state clearly in the rule the standard of adequate documentation. The Commissioner agrees that the standard of adequate documentation should be clearly stated and has modified the rule. p.8

16. In 12 MCAR § 2.05003 C.3. (Temporary) of the proposed rule (page 8, lines 32-35), the Department set out a requirement that a nursing home maintain a motor vehicle log that shows personal, nursing home, and resident usage. Several commentators including Barry Robinson of Fairview Meadow Nursing Home and Jan Kronholm/Ken Borle of Bethesda Lutheran Medical Center suggest that such a record is unnecessary and burdensome

in the case of utility vehicles used exclusively for nursing home business. The Commissioner agrees that it is not necessary to keep a motor vehicle mileage log for a nursing home utility vehicle which is used exclusively for nursing home business. Therefore, the Commissioner accepts the suggestion to modify the provision. ✓p.8

17. In 12 MCAR § 2.05003 D.4. (Temporary) of the proposed rule (page 9, lines 12-15), the Department established for rate setting purposes the cost criterion that "the cost effects of transacting that are conceived for the purpose of circumventing these rules are not allowable." One commentator, MAHA, stated that the "proposed regulatory language appears to be overly broad". The Commissioner agrees that the provision needs to be clarified. Therefore, the Commissioner has revised the provision. ✓p.9

18. In 12 MCAR § 2.05003 D.5. (Temporary) of the proposed rule (page 9, lines 16-19), the Department stated several costs that are not allowable for rate setting purposes. One commentator, MAHCF, requests clarification of this provision. The Commissioner agrees that clarification is necessary and accepts the request. ✓p.9

19. In 12 MCAR § 2.05003 E.1.a. (Temporary) of the proposed rule (page 9, lines 26 and 27), the Department lists the benefits of salaries, wages and fringe benefits as included in compensation for services to the nursing home. Several commentators suggested that bonuses be allowed as an allowable cost under 12 MCAR § 2.05008 F. (Temporary) (page 23,

line 18) and because the Commissioner agreed and accepted the suggestion, the Commissioner finds it necessary to include bonuses in the list of items included as compensation for services. ✓p.9

20. In 12 MCAR § 2.05003 E.2.c. (Temporary) of the proposed rule (page 10, lines 4-13), the Department stated that the nursing home's written policy for payment of compensation for personal services must relate the compensation the nursing home pays to that paid by comparable homes for comparable services. One commentator, MAHA, requested deletion of this requirmeent on the grounds that it is vague and unspecific. The Commissioner agrees that the requirement may be vague and is not necessary to the operation of the rule and accepts the suggestion. deleted p.10

21. In 12 MCAR § 2.05003 E.4. (Temporary) of the proposed rule (page 10, lines 16-21), the Department stated the compensation not paid within 75 days after the close of the requesting period shall be a disallowed cost in that and future reporting years. Several commentators, including Mr. Brose, Mr. Hargis and Mr. Ward, suggested that the requirement to pay compensation within 75 days of the end of the reporting year year in order to be an allowable cost would preclude the accrual of vacation and sick leave benefits by employees. The commentators suggested that accrued vacation and sick leave benefits be exempted from the 75 day limitation. The Commissioner agrees that employee's accrued vacation and sick leave benefits should be exempt from this limitation, and accepts the suggestion. Based on this ✓p.10

change, the definition of "compensation" in 12 MCAR § 2.05003 E.1.a. is also revised. p.9

22. In 12 MCAR § 2.05003 F.1. (Temporary) of the proposed rule (page 10, lines 25-33), the Department states which expenditures must be capitalized. Several different comments have been received about this section. Mr. Peterson requested clarification of the time of incurrence of the expenditures referred to by the provision F.1. Mr. Peterson, Ms. Kronholm, Mr. Borle, Mr. Hargis, Mr. Gruys, and Mr. Robertson among others, suggested that the limitation base of $150 for the unit value of items required to be capitalized is unrealistic and far too low and that $500 is a more reasonable base. The Commissioner agrees that the date of application must be specifically set out in provision F.1. p.10 The Commissioner further agrees that $150 is too low as the base and accepts the suggestion of $500. p.10 Accepting this change, the Commissioner adjusted upward the aggregate cost which must be capitalized and depreciated. p.10

In addition, because the Commissioner agreed to the request to clarify 12 MCAR § 2.05002 F. (Temporary) "major betterment" and did so in part by deleting "major," the Commissioner amends line 26 in the same manner. p.10

In addition MAHA suggested clarification of the term "same equipment" (line 23). The Commissioner agrees that the term may be vague and deletes the word "same." With the aggregate limit increase, the requirement that the equipment by the same or similar is unnecessary. p.10

23. In 12 MCAR § 2.05004 B. (Temporary) of the proposed rule (page 11, lines 13-17), the Department provided an exception to the limitation on the related organization's cost of services, facilities or supplies sold to the nursing home. The exception is effective when sales to outsiders constitute at least 75% of total sales. One commentator, Ms. Henry for Local 113, requested clarification of the provision. The Commissioner agrees and, therefore, accepts the suggestion.

Furthermore, several commentators, including Mr. Brose and MAHA, suggested that a more liberal limitation be placed on the percentage of sales to a nonrelated organization necessary to trigger the exception to the sales at cost limitation. The Commissioner accepts the suggestion to make the provision more liberal and has further clarified it by revising the term "sales" to "total annual sales." In addition, in a relation provision 12 MCAR § 2.05004 A. (Temporary) (page 11, lines 7-12) the Commissioner has made a comparable clarifying revision.

24. In 12 MCAR § 2.05005 D.1. (Temporary) of the proposed rule (page 13, lines 21-24), the Department listed various items which are included in the direct costs for maintenance and operation of the building and grounds. Several commentators, including MAHA, suggested the inclusion of sewer as a specific cost. The Commissioner agrees that sewer costs are included in the costs of maintenance and operation of the building and grounds and, therefore, the Commissioner accepts the suggestion.

25. In 12 MCAR § 2.05006 A.2., B.2., C.2., D.2., and F.2. (Temporary) of the proposed temporary rule (page 12, line 33; page 13, lines 10, 16, and

25) the Department included within the cost category "the salaries of" persons appropriate to the cost category. In 12 MCAR § 2.05006 E.22. (Temporary) of the proposed rule (page 15, line 21), the Department included within the cost category "the personnel costs of" persons performing nursing services. One commentator, Mr. Borle/Ms. Kronholm, requested clarification of what cost category sick leave and vacation pay accruals are to be placed in. The Commissioner has included these items in compensation. See 12 MCAR § 2.05003 E.1.a. (Temporary). Therefore, the Commissioner modifies A.2., B.2., C.2., D.2., and F.2. to conform to the wording of E.22.

26. In 12 MCAR § 2.05006 E.11. (Temporary) of the proposed rule (page 14, lines 18-21), the Department included the costs of restorative measures to help the resident reach or maintain the resident's best level of functioning within the nursing services cost category. Two commentators, MAHA and Mr. Ward, suggested that these costs would be more appropriately placed in the other care related services cost category (12 MCAR § 2.05006 F. (Temporary)). The Commissioner agrees that these services or measures may be appropriately placed in the other care related cost category and accepts the suggestion.

27. In 12 MCAR § 2.05006 E.16. (Temporary) of the proposed rule (page 14, lines 28-29), the Department included arrangements for obtaining medical, dental, and hospital care in the nursing services cost category. One commentator, MAHA, suggested that the provision is too vague to allow the facility to meet its responsibility in this area and

requested clarification. The Commissioner agrees that the term "arrangements for obtaining medical, dental, and hospital care" is vague and that such arrangements may be made by persons included in other cost categories. Therefore, the Commissioner deletes the provision. p.14

28. In 12 MCAR § 2.05006 E.20.b. (Temporary) of the proposed rule (page 15, lines 13-15), the Department included insulin as a drug whose cost is to be included in the nursing services cost category. One commentator, MAHA, suggested the deletion of insulin because insulin is not a stock nursing station item, but rather insulin has many types and must be provided under the supervision of a pharmacist according to the needs of the patient. The Commissioner accepts the suggestion to delete insulin from items included in the nursing services cost category. If the resident requires insulin and has a prescription, the cost of the insulin is reimburseable under 12 MCAR § 2.047. p.14

29. In 12 MCAR § 2.05006 E.21. (Temporary) of the proposed rule (page 15, lines 16-20), the Department lists the costs of training which may be included within the nursing services cost category. One commentator, Mr. Paul, suggested that the provision be clarified to allow the inclusion of the costs of continuing education necessary to keep employees abreast of current health care changes. The Commissioner agrees that the rule should be clarified to permit the inclusion of the costs of continuing education necessary to update skills needed in performing p.15

present duties. Therefore, the Commissioner accepts the suggestion. Similar changes are made in 12 MCAR § 2.05006 A.3., F.3, and G.14 (Temporary).

30. In 12 MCAR § 2.05006 F.1. (Temporary) of the proposed rule (page 15, line 31), the Department requires that "direct costs of other direct services" be included in the other care related services cost category. One commentator, MAHA, requested clarification of the term "other direct services." The Commissioner agrees that the term needs to be clarified and, therefore, accepts the suggestion.

31. In 12 MCAR § 2.05006 F.2. (Temporary) of the proposed rule (page 15, lines 35-36 and page 16, lines 1-4), the Department lists the types of employees whose salaries are included in the other care-related services cost category. One commentator, Mr. Peterson, suggests that the salaries of persons giving rehabilitative or active physical therapy services should be included in the other care-related cost category. The Commissioner agrees with the inclusion of the salaries of persons providing rehabilitative services in the other care-related cost category and, therefore, accepts the suggestion.

32. In 12 MCAR § 2.05006 G. (Temporary) of the proposed rule (page 16, lines 9-36 and page 17, lines 1-11), the Department established the direct costs of the nursing home which are to be included in the general and administrative cost category. One commentator, Gerald Lundberg, of Virginia Regional Medical Center asked consideration of

the inclusion of the costs of the survey conducted by the Joint Committee on accreditation of Hospitals (JACH) as an allowable cost because this center is surveyed by JCAH. The Commissioner agrees that JCAH survey cost should be an allowable cost and therefore accepts the suggestion. (See 12 MCAR § 2.05006 G. 19. (Temporary) (page 17). p.17

33. In 12 MCAR § 2.05006 G.3. (Temporary) of the proposed rule (page 16, lines 15-16), the Department defined motor vehicle operating expenses for vehicles such as vans or utility vehicles as a direct cost in the general and administrative cost category. One commentator, MAHCF, requested clarification of this provision, suggesting that certain travel expenses might be allocated to other cost categories. The Commissioner does not agree that such allocations to other categories are allowed by the law, but finds that clarification is needed to be in compliance with statute that transportation cost be included in the general and administrative category. Therefore, the Commissioner ✓ p.16 modified the provision.

34. In 12 MCAR § 2.05006 G.16. (Temporary) of the proposed rule (page 17, lines 4-5), the Department included the cost of subscriptions to periodicals which are directly related to resident case in the general and administrative cost category. One commentator, Mr. Peterson, asked what kind of periodicals are included and suggested that the periodicals be related only to patient care and other management functions. The Commissioner agrees that the phrase should be clarified, but that

the provision should include all subscriptons, whether for staff or patient use. The provisions is clarified accordingly. p. 17

35. In 12 MCAR § 2.05006 H.2. (Temporary) of the proposed rule (page 17, line 17) the Department included state and federal unemployment compensation taxes in the payroll taxes and fringe benefits cost category. Previously, in 12 MCAR § 2.05002 LL., the Commissioner accepted the suggestion to modify the definition of "payroll taxes" to include "unemployment compensation taxes and costs." The Commissioner finds the same modification is appropriate in this section. p. 17

36. In 12 MCAR § 2.05006 I. (temporary) of the proposed rule (page 17, lines 27-30), the Department defines the costs to be included in the real estate taxes and special assessments cost category. As the Commissioner accepted suggestions to modify 12 MCAR § 2.05002 QQ. (Temporary), it is necessary to change I. to conform with 12 MCAR § 2.05002 QQ. as revised.

37. In 12 MCAR § 2.05006 J. (Temporary) of the proposed rule (page 17, lines 31-33), the Department specifies the items, including interest, to be included in the property-related cost category. Because the Commissioner accepted the suggestion to allow interest for financing working capital needs as an allowable cost in regard to 12 MCAR § 2.05009 Y. (Temporary) (page 25, lines 7 and 8), the Commissioner finds it appropriate to clarify 12 MCAR § 2.05006 J. (Temporary). p. 17

38. In 12 MCAR § 2.05007 A.3. (Temporary) of the proposed rule (page 18, lines 15-18), the Department states that the central, affiliated, or corporate office costs representing services of required consultants in certain areas may be allocated to the appropriate area if the costs are directly identified. One commentator, Mr. Hargis, raised questions concerning the meaning of "required consultants." The Commissioner agrees it is necessary to clarify who is a required consultant and, therefore, modifies the provision accordingly. ✓p.18

39. In 12 MCAR § 2.05007 B.3. (Temporary) of the proposed rule (page 19, lines 20-23), the Department sets out the basis for allocating the cost of housekeeping services. One commentator, Michael Salm of the Hillhaven Corporation, suggests that a facility which keeps statistics about the time spent by housekeeping staff in each area serviced by that staff be permitted to use these statistics as the basis for allocating the cost of housekeeping services. The Commissioner agrees that time or cost studies would be a basis for allocating the cost of allocating housekeeping services and, therefore, accepts the suggestion. ✓p.19

40. In 12 MCAR § 2.05007 B.8. (Temporary) of the proposed rule (page 20, lines 10-11), the Department states that fringe benefits and payroll tax costs must be allocated on the same basis as general and administrative costs. One commentator, Mr. Salm, suggested that such an allocation basis would not properly spread these costs to the "user cost center" and that the Medicare statistic of actual salaries paid

would be a more accurate method of spreading these costs. The Commissioner agrees that it would be appropriate to allocate fringe benefits and payroll tax costs based on actual salaries paid. Therefore, the Commissioner accepts the suggestion for the rate years beginning July 1, 1984 and thereafter. Because the July 1, 1983 rate is derived from earlier filed cost reports, it is not practical to use this method for that rate year. p.20

41. In 12 MCAR § 2.05007 B.10.d. (Temporary) of the proposed rule (page 20, lines 33-36), the Department states an exception to the allocation provisions for property-related costs if the actual resident days in any care level exceed the certified capacity at that care level. One commentator, Mr. Gruys, asked whether an overage in one year would require the nursing home to use actual resident days in all future years. The Commissioner agrees it is necessary to clarify when the exception applies. Therefore, the Commissioner accepts the suggestion to clarify the provision. p.20

42. In 12 MCAR § 2.05008 C.1. (Temporary) of the proposed rule (page 21, lines 22-36 and page 22, lines 1-2), the Commissioner establishes the maximum number of hours of nursing care for each level of nursing care for each level of nursing care. One commentator, Mr. Paul, suggested that requiring a nursing home to exclude items such as coffee breaks from the computation of nursing hours would "add a tremendous bookkeeping burden to already small bookkeeping staffs." The Commissioner agrees that such a requirement might be burdensome for the

nursing home and accepts the suggestion for a revision by letting the nursing home choose whether to exclude these items from the computation of nursing hours.

43. In 12 MCAR 2.05008 D.2. (Temporary) of the proposed rule (page 22, lines 24-27), the Department required the exclusion of fringe benefits from the top management compensation limitation if the same benefits are available to all or substantially all employees. Because, in previous sections, the Commissioner has found it appropriate to modify the definition of compensation to include vacation and sick leave benefits, the Commissioner modifies the section in the same manner. (See 12 MCAR § 2.05003 E.1.a. (Temporary) (page 9, lines 26-27).)

44. In 12 MCAR § 2.05008 D.4. (Temporary) of the proposed rule (page 22, lines 31-32), the Department sets the maximum annual top management personnel compensation per nursing home at $35,000. Several commentators, including Mr. Hargis, Mr. Brose, Mr. Robertson, and Mr. Paul, suggested that the limit is too low and outdated as it has been in effect since 1972. The Commissioner agrees that there is a need to modify the limit and accepts the suggestion to increase it. The increased figure is supported by the statistical data submitted by the commentators. Because the top management compensation figure used in the rate year beginning July 1, 1983, is derived from earlier cost reports trended to the beginning of the rate year, this change is not made for that year.

45. In 12 MCAR § 2.05008 D. (Temporary) of the proposed rule (page 22, lines 11-32), the Department sets the limitation on top management personnel compensation. One commentator, Mr. Robertson, suggested that the salary of an assistant administrator should not be subject to top management personnel compensation limitation. The Commissioner agrees with the suggestion to exclude the compensation of an assistant administrator from the top management personnel compensation limitation as was done under 12 MCAR § 2.049. The Commissioner accepts the modification of D. p. 22

46. In 12 MCAR § 2.05009 C. (Temporary) of the proposed rule (page 23, line 8), the Department included as a non-allowable cost an assessment made by or the portion of dues charged by associations or professional organizations for litigation. One commentator, MAHA, suggested that only the costs of unsuccessful litigation be disallowed, to be consistent with 12 MCAR § 2.05009 (Temporary). The Commissioner agrees that organizational costs of successful litigation against state agencies should be allowable, and modifies the provision accordingly. p 23

47. In 12 MCAR § 2.05009 F. (Temporary) of the proposed rule (page 23, line 18), the Department included flowers, gifts and bonuses in the list of items whose cost is not allowable. Several commentators, including MAHA and Mr. Robertson, suggested that bonuses result in better resident care through directly improving employee morale and indirectly improving employee performance. They suggested that bonuses for employees be

allowable costs. Other commentators including Mr. Robertson and Mr. Gruys suggested that flower and gifts to residents have a therapeutic value to the residents. The Commissioner agrees that bonuses may improve employee performance and that flowers and gifts to residents may have a therapeutic value to the resident. Therefore, the Commissioner accepts the suggestion that these items be allowable costs. ✓p.23

48. In 12 MCAR § 2.05009 J. (Temporary) of the proposed rule (page 23, lines 24-25), the Department disallowed the cost of premiums on an owner's or board member's life insurance policy. One commentator, Mr. Brose, requested clarification about group insurance premiums where the coverage applies to other employees of the facility, as well as owners and board members. The Commissioner agrees that clarification is necessary and accepts the suggestion. ✓p.23

49. In 12 MCAR § 2.05009 N. (Temporary) of the proposed rule (page 23, lines 33-36), the Department included in the disallowed costs, the cost of training programs which are undertaken for certain purposes. One commentator, Mr. Peterson, suggested that, because professionals such as nursing home administrators are subject to continuing education requirements imposed by state rules and regulations, the cost of such required education should be an allowable cost. The Commissioner agrees that the cost of training or courses required by laws and regulations to continue to hold a position in a nursing home should be an allowable cost. Therefore, the Commissioner accepts this suggestion. ✓p.23

50. In 12 MCAR § 2.05009 Q. (Temporary) of the proposed rule (page 24, lines 3-7), the Department disallows the costs of functions normally reimbursed by charges to residents. One commentator, Mr. Gruys, requested clarification of the term "normally." The Commissioner finds that the term "normally" is confusing and unnecessary. Therefore, the Commissioner deletes the word. √p. 24

51. In 12 MCAR § 2.05009 R. (Temporary) of the proposed rule (page 24, lines 8-10), the Department included (in the list of non-allowable costs) operating costs for activities to the extent such activities are financed by gifts or grants from private funds. One commentator, MAHA, requested clarification concerning the impact of this section on private philanthropy. The Commissioner agrees clarification is necessary and finds that the words "or private" are unnecessary to the provision. They are deleted. √p. 24

52. In 12 MCAR § 2.05009 W. (Temporary) of the proposed rule (page 25, lines 2-4), the Department included as non-allowable costs, costs incurred by owners or employees while conducting business for a professional organization. Several commentators, including Sister Mary Latona and MAHA, requested clarification of the prohibition and argued that the owner or employee who participate in a professional organization receives benefits such as new ideas which contribute to resident care. The Commissioner agrees that owners or employees conducting the business of professional organizations receive benefits which contri-

bute to resident care. Therefore, the Commissioner accepts the suggestion and deletes W. p.25

53. In 12 MCAR § 2.05009 Y. (Temporary) of the proposed rule (page 25, lines 7-8), the Department specified interest for financing working capital needs as a non-allowable item beginning with the rate year starting July 1, 1984. Several commentators, including Mr. Paul, Ms. Kronholm, Mr. Ward and Mr. Peterson, suggested that interest on a working capital loan which is made to cover the cost of items or salaries related to patient care should be an allowable item. Further they suggested that disallowing such interest as an expense may result in cash flow problems for the facility and adversely affect resident care. The Commissioner agrees that working capital interest should be included as a property-related cost as under 12 MCAR § 2.049. That change is made elsewhere in the rule and, consequently, provision Y is deleted. p.25

54. In 12 MCAR § 2.050010 B.1. (Temporary) of the proposed rule (page 26, lines 10-16), the Department provides for the determination of actual allowable historical operating costs. One commentator, Mr. Peterson, requested that the Department reclassify the reported costs according to these rules. The Commissioner finds that, under the governing statute, reclassification is appropriate only for amendment of the prior cost report. Therefore, the Commissioner clarifies the provision by the addition of language parallel to the language contained in the statute. p.26

55. In 12 MCAR § 2.050010 C.4. (Temporary) of the proposed rule (page 27, lines 10-12), the Department set out the method for determination of the 60th percentile. One commentator, Mr. Brose, requested clarification of the determination. The Commissioner agrees that the determination needs to be clarified, but does not agre with the method suggested by the commentator. The Commissioner has modified the provision based on the advice of a statistician consultant. p.27

56. In 12 MCAR § 2.050011 A.3. (Temporary) of the proposed rule (page 29, lines 31-36 and page 30, line 1), the Department specifies that the usable or operable bed capacity adjustment must not be in effect for more than one reporting year and must not be recognized after July 1, 1985. One commentator, MAHCF, suggested that the provision lies outside the purview of the rule as it affects property-related costs which are to be calculated as specified in Rule 49. Since these rules provide that property-related costs are frozen or are determined under the laws and rules in effect on May 1, 1983, the Commissioner finds that the provision is unnecessary in 12 MCAR § 2.05011 and accepts the request to delete it. p.29

57. In 12 MCAR § 2.050011 B.3. (Temporary) of the proposed rule (page 30, line 33), the Department lists types of costs of property-related items including attached fixtures. Previously in 12 MCAR § 2.05002 F. (Temporary) the Commissioner deleted the term "attached fixture." Therefore, the Commissioner finds it necessary to delete the term

"attached fixture" from B.3., and to substitute the term "building service equipment" from the underlying statute. p.30

58. In 12 MCAR § 2.050011 B. (Temporary) of the proposed rule (page 31, lines 7-10), the Department limited the allowable interest to indebtedness incurred in the acquisition of property-related items for which depreciation is adjusted. One commentator, Mr. Gronbeck, requested clarification and suggested that the provision read, "additional interest allowed by 3. must be limited to interest on indebtedness incurred for repairs, replacements, renewals, betterments or improvements permitted under 3." The Commissioner agrees clarification is needed and that the suggested language clarifies without changing the substance. Therefore, the Commissioner accepts the suggested change. p.31

59. In 12 MCAR § 2.05011 D. (Temporary) of the proposed rule (page 31, lines 25-36), the Department stated that the increased property-related cost base which is calculated for a nursing home that increases its capacity by less than 50% shall be included in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred. One commentator, Mr. Hargis, suggested that the proposed requirement would result in an unnecessary one-year delay because there will be sufficient documentation to include costs associated with the increase in capacity in the calculation of a payment rate for the rate year. The Commissioner agrees and accepts the suggestion. Furthermore, the Commissioner deletes the phrase "during the reporting year" (line 28) in accordance with the previous suggestion. p.31

60. In 12 MCAR § 2.05011 G. (Temporary) of the proposed rule (page 33, lines 5-11), the Department stated that depreciation recapture be paid by the nursing home if 20% or more of the facility or any portion of the nursing home's depreciable equipment or land improvement is sold at a price in excess of its cost reduced by the total of the depreciation. One commentator, MAHCF, requested clarification of the provision. The Commissioner agrees clarification is necessary and accepts the request. ✓p.33

61. In 12 MCAR § 2.05011 G.1.c. (Temporary) of the proposed rule (page 33, lines 25-29), the Department defined the sale of depreciable assets which would be subject to recapture of depreciation. One commentator, MAHCF, requested that the term "excess depreciation" be clarified. The Commissioner finds that clarification is appropriate, and the provision is modified accordingly. In addition, language of the provision is modified as a result of the modified defintion of "facility" in 12 MCAR § 2.05002 Q. ✓p.33

62. In 12 MCAR § 2.05011 G.1.d. and e. (Temporary) of the proposed rule (page 33, lines 30-34), the Department provided that the portion of net recapture allocated to rate years on or after July 1, 1983 would be subject to full recapture. One commentator, MAHCF, suggested that full recapture after July 1, 1983 penalizes the long-term owner, and that the provision should be made consistent with the former law. The Commissioner finds that it is appropriate to modify the provisions to be consistent with 12 MCAR § 2.049. Therefore, the Commissioner deleted G.1.d. and G.1.e. and modified G.1.c. ✓p.33

63. In 12 MCAR § 2.05011 G.2. (Temporary) of the proposed rule (page 33, line 36 and page 34, lines 1-5), the Department requires the new owner to pay the net recapture amount within 120 days of notice of the amount day or to be subject to interest on balances outstanding after the deadline. One commentator, MAHCF, suggests that two years be allowed for payment as in the prior Rule 49. The Commissioner finds that the assessment of interest after 120 days is necessary, but that clarification of the provision is appropriate. Therefore, the Commissioner modifies the provision.

64. In 12 MCAR § 2.05011 G.3. (Temporary) of the proposed rule (page 34, lines 6-14), the Department requires a nursing home which terminates participation in the medical assistance program to submit an appraisal of the assets of the home and the states that such assets are subject to recapture amount. One commentator, Mr. Brose, suggested that termination of participation in the Medical Assistance Program is different from sale of the facility and that the provision is inappropriate to this rule. The Commissioner agrees and, consequently, deletes 3.

65. In 12 MCAR § 2.05013 B. (Temporary) of the proposed rule (page 34, lines 25-27), the Department provides that the total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. Several commentators, including Mr. Brose, Jason Dunn and MAHA, suggested modification of the limitation to allow

for an adjustment of the private pay rate subsequent to an increase in the payment rate following an appeal. The Commissioner agrees that the limitation should not apply to a private pay rate subsequent to an increase in the Medical Assistance payment rate. The Commissioner accepts the suggestion to remove the limitation in the case of the retroactive adjustment. ✓p.34

66. In 12 MCAR § 2.05014 A.2.a. (Temporary) of the proposed rule (page 36, lines 6-7), the Department stated that the interim operating cost payment rate must not exceed 110 percent of the 60th percentile. One commentator, Mr. Brose, requested clarification of whether the 6 percent increase also applies after the calculation of 110 percent of the 60th percentile amount. The Commissioner agrees the provision needs clarification and accepts the suggestion. ✓p.36

67. In 12 MCAR § 2.05014 A.3. (Temporary) of the proposed rule (page 36, lines 25-35), the Department states the limitation on the time in which an interim payment rate is in effect, the required time to file a settle-up cost report, and the period to be reported in the required cost report. One commentator, Mr. Brose, requested clarification of these requirements. The Commissioner agrees that clarification of the requirements is necessary and accepts the suggestion to revise the provision in order to clarify it. ✓p.36

68. In 12 MCAR § 2.05014 A.6. (Temporary) of the proposed rule (page 37, lines 25-31), the Department states that the settle-up operating cost

payment rate must not exceed 110 percent of the 60th percentile in effect for the nursing home's group. One commentator, Mr. Brose, requested clarification of whether the 6 percent increase applies to the amount so calculated, for the periods beginning July 1, 1983 and July 1, 1984. The Commissioner agrees that the clarification is necessary and accepts the suggestion. p.37

69. In 12 MCAR § 2.05014 A.8 and 9 (Temporary) of the proposed rule (page 37, line 36 and page 38, lines 1-13), the Department defines the period in which a newly constructed nursing home or one with a capacity increase of 50 percent or more shall receive the interim payment rate or a rate based on the interim rate. One commentator, Mr. Brose, requested clarification of when the payment rate change will occur and that an additional explanation is necessary to further clarify the intent of A.8. The Commissioner agrees that the intent of these paragraphs is unclear and, therefore, clarifies the provisions. p.38

70. In 12 MCAR § 2.05014 B. (Temporary) of the proposed rule (page 38, line 15), the Department speaks of nursing homes providing care to welfare recipients. The reference to welfare recipients is inappropriate in view of earlier changes deleting references to the Minnesota Supplemental Aid Program. The Commissioner finds it necessary to change the term to Medical Assistance recipients.

71. In 12 MCAR § 2.05014 B.1.a. (Temporary) of the proposed rule (page 38, lines 19-25), the Department states that the ICF-I operating cost

payment rate in an SNF nursing home shall be the lesser of 85% of the established SNF operating cost payment rate or the 60th percentile of the prior reporting year increased by 6 percent. Two commentators, Mr. Paul and Mr. Brose, request the deletion of the alternative of the 60th percentile of the prior reporting year on the grounds that it would severely reduce reimbursement to nursing homes which offer lesser care. The Commissioner finds that the 60th percentile limitation is unnecessary and may be unduly restrictive and, therefore, accepts the suggestion. Similar comments were made concerning B.2.a. and B.3.a., and these provisions are modified for the same reasons. Furthermore, the Commissioner's acceptance of the suggestion removes the need for B.1.b., B.1.c., B.1.d., B.2.b., B.2.c., B.2.d., B.3.b., B.3.c., and B.3.d. Therefore, the Commissioner deletes these provisions. p. 38, 39

72. In 12 MCAR § 2.05014 C. (Temporary) of the proposed rule (page 39, lines 31-36 and page 40, lines 1-2), the Department provides that for nursing homes adding higher certified levels of care, the same percentage shall be used to determine the higher care payment rates, subject to the limitations of the 60th percentile increased by 6 percent. One commentator, Mr. Brose, suggested that the provision needs clarification of the limitations. The Commissioner agrees that clarification of the limitations of the lesser care determination is necessary. Therefore, the Commissioner modifies the provision in a manner consistent with the change to B.1.a. p. 39, 40

73. In 12 MCAR § 2.05015 A. (Temporary) of the proposed rule (page 40, lines 15-36) the Department states the reports, supporting documentation, and worksheets which a nursing home must annually submit to the Commissioner. Several commentators suggested that the reporting requirements are burdensome. The Commissioner finds that clarification of the reporting requirements might be helpful and therefore changes the requirement concerning the cost report to make clear that the cost report does not impose any requirements beyond those contained in these rules. ✓p. 40

74. In 12 MCAR § 2.05015 A. (Temporary) of the proposed rule (page 40, lines 15-29), the Department specifies the annual cost report to be submitted to the Commissioner, the period of time covered by the report, and the requirement of an annual audit of the nursing home's financial records by an independent certified public accountant or licensed public accountant. One commentator, Mr. Gruys, suggested that reasonable provision for the first year of implementation of 12 MCAR §§ 2.05001-2.05016 (Temporary) pursuant to statute should be allowed in order to avoid the hardship imposed by the cost of two certified audits within the same period and for overlapping periods of time. The Commissioner agrees that a transition period is needed to allow nursing homes to coordinate their auditing programs. Therefore, the Commissioner accepts the suggestion that certain exceptions to the reporting requirements be allowed in the reporting year ending September 30, 1983. ✓p. 40

75. In 12 MCAR § 2.05015 A.4. (Temporary) of the proposed rule (page 41, lines 2-15), the Department lists documents including audited financial statements, the components of such statements, and supplemental information, that a nursing home must provide. One commentator, Mr. Gruys, requested clarification of the meaning of the supplemental information being requested. The Commissioner agrees that clarification is necessary and, therefore, accepts the suggestion.

76. In 12 MCAR § 2.05015 A.8. (Temporary) of the proposed rule (page 41, lines 29-31), the Department specifies that the nursing home must provide certain separate audited financial statements for a related organization doing business with the nursing home. One commentator, Mr. Peterson, requested clarification as the provision seems to require all nursing homes to provide these audited financial statements, but the statute says that such statements need only be provided upon request. Mr. Peterson suggested that "in many cases such information is not available." The Commissioner agrees that the provision needs clarification and that where the information is not available, it is necessary to state the requirements for compliance. Therefore, the Commissioner modifies the provision.

77. In 12 MCAR § 2.05015 (Temporary) of the proposed rule (pages 39-45), the Department sets out the general reporting requirements and submittal procedures which nursing homes must follow in order to obtain reimbursement for cost of resident care under the Medical Assistance Program. In response to commentators on a previous section 12 MCAR

§ 2.05002 QQ, (Temporary) of the proposed rule (page 6, lines 27-33), the Commissioner accepted the suggestion to modify the rule definition "real estate taxes and special assessments." Therefore, the change in which real estate taxes and special assessments are included in the payment rate determination, from the taxes and assessments for the reporting year to taxes and assessments for the calendar year in which the rate year begins, requires the Commissioner to specify the procedure necessary to obtain the required information. Therefore, the Commissioner finds it necessary to add a new provision 12 MCAR § 2.05015 C. (Temporary) of the proposed rule on page 42. Furthermore, the commissioner finds it reasonable to add documentation requirements to implement this provision, in 12 MCAR § 2.05015 H.4. (Temporary).

78. In 12 MCAR § 2.05015 D.E (Temporary) of the proposed rule (page 43, lines 5-15), the Department lists records including federal and state income tax returns for the nursing home, any related organization, and any individual having an ownership interest in the nursing home, which the nursing home must provide upon the Commissioner's request. Several commentators, including Mr. Gruys and MAHCF, suggest that it is necessary to protect the privacy of the income tax returns of the nursing home, any related organization and any individual having an ownership interest in the nursing home. The Commissioner agrees that it is necessary to protect the privacy of the persons and organizations about whom income tax information is sought for verification of reported costs related to reimbursement claims. Therefore, the Commissioner clarifies the provision by requiring the nursing home to provide only access to such returns and specifying the degree of ownership necessary to invoke the provisions of the rule.

79. In 12 MCAR § 2.05015 H.2. (Temporary) of the proposed rule (page 43, lines 28-36 and page 44, lines 1-4), the Department states the basis on which the Commissioner may reject any annual report that does not meet the requirements of the rules. Section H.2. also requires the nursing home to return the corrected report or additional information requested within 15 days or the report must be rejected. One commentator, MAHA, requested clarification of term "other relevant information." The Commissioner agrees that clarification is needed and, therefore, accepts the request. Several commentators, including Mr. Ward, MAHA, MAHCF, and Mr. Peterson, suggested that 15 days is insufficient time to allow for the nursing home to return the corrected report or additional information. The Commissioner has balanced the provider's need for additional time against the Department's need for prompt information to carry out its rate-setting function. The Commissioner finds it reasonable to lengthen the time by five days. Furthermore, the Commissioner finds it reasonable to permit a further extension of this time for extreme good cause, subject to certain limitations.

Furthermore, one commentator, MAHA, suggested that the term "may" in line 3 of H.2. is arbitrary and vague and requested clarification. The Commissioner agrees clarification is necessary and accepts the suggestion.

Finally, one commentator, Mr. Ward, suggested that, when deficiencies in a rejected report are remedied, the regular rate should be

reinstated effective immediately, rather than on the first of the next month. The Commissioner agrees that such a change is appropriate, so that providers are treated equitably without regard to the timing of the rejection of the report. The rule is changed accordingly. The Commissioner further agrees that the same change be made in 12 MCAR § 2.05015 I.2. (Temporary) (page 44, lines 17-25).

80. In 12 MCAR § 2.05015 H. (Temporary) of the proposed rule (page 43, lines 24-36, and page 44, lines 1-5), the Department lists reporting deadlines and extensions in regard to required reports and information necessary to support the payment rate request. In previous sections, 12 MCAR § 2.05015 (Temporary) (page 42) and 12 MCAR § 2.05002 QQ, (Temporary) (page 6, lines 37-33), the Commissioner accepted changes suggested by several commentators concerning real estate taxes and special assessments. The Commissioner finds it necessary to include in H. a new section H.4. which specifies the procedure the Department must follow if a nursing home fails to document information about real estate taxes and special assessments.

81. In 12 MCAR § 2.05015 I.2. (Temporary) of the proposed rule (page 45, lines 5-14), the Department specifies the conditions which permit a nursing home to file amendments to a previously filed cost report. One commentator, Mr. Hargis, requested that a nursing home which increased its capacity by less than 50% be permitted to file an amended cost report. The Commissioner agrees with the request and, therefore, accepts the modification.

82. In 12 MCAR § 2.05016 B. (Temporary) of the proposed rule (page 45, line 36 and page 46, lines 1-2), the Department required that an appeal must be filed, in writing, within 60 days after the Commissioner issued the payment rate notification which is being appealed. One commentator, MAHCF, suggested that this provision differed from Chapter 199 in regard to the filing of appeals. Chapter 199 requires a Notice of Intent to appeal to be filed within 30 days of the rate notice and the actual appeal to be filed within 60 days of the rate notice. The Commissioner agrees that the proposed rule language differed from Chapter 199. Therefore, the Commissioner accepted the request to revise the provision. Furthermore, the Commissioner agrees and, therefore, accepts the modification of lines 1-2 on page 46 to be consistent with statute. p. 45, 46

83. In 12 MCAR § 2.05016 D. (Temporary) of the proposed rule (page 46, lines 20-23), the Department required that the payment rate established by the Commissioner shall be the rate paid to the nursing home while the appeal is pending. One commentator, Mr. Dunn, suggested when reviewing 12 MCAR § 2.05013 (Temporary) that the rule address how much a nursing home may charge a private pay resident while it appeals the Medical Assistance Program payment rate. The Commissioner agrees and, therefore, accepts this suggestion. p. 46

84. As a result of the Department's review of the comments received and the proposed rules, the Department has made numerous minor changes to correct problems of grammar, spelling or lack of clarity at the pro-

posed rules. Such changes did not change the substance of the rules. These changes are as follows:

12 MCAR § 2.05003 E.1.e. (page 9, lines 34-36)

12 MCAR § 2.05006 B.2. (page 13, line 10)

12 MCAR § 2.05006 A.3., F.3., and G.14. (page 13, line 4; page 16, lines 7 and 36)

12 MCAR § 2.05006 G.17. (page 17, line 7)

12 MCAR § 2.05015 A.7., 8. (page 41, lines 27 and 28)

85. All comments concerning the proposed temporary rules received within the period allowed by law were considered by the Department.

86. The changes made to the proposed temporary rule are not substantial changes.

LJ-1.1

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these rules.

2. Proper notice of the Department's intent to adopt the proposed above-captioned temporary rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed temporary rules.

3. All modifications made to the proposed temporary rule are supported by the data and views submitted to the Department, and are not substantial changes.

4. The temporary rules, as modified, are necessary and reasonable.

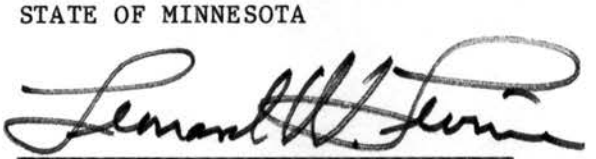
5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

Dated: August 8, 1983

STATE OF MINNESOTA



LEONARD W. LEVINE
Commissioner of Public Welfare

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes Under the Title XIX Program (12 MCAR §§2.05001 - 2.05016)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, John Kirwin, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure 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 F. Kirwin
Special Assistant Attorney General

Dated: August 9, 1983.