

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 444 TEMPORARY

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12/23/83
DATE FOR REVIEW _____
DATE DUE 1/3/84

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 SAME SR

✓ Order Adopting 12.20.83 Date

✓ Notice of Intent to Solicit Outside Opinion 6.20.83

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
11.14.83 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

Statement of Need and Reasonableness

Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

Affidavit of Mailing Notice of Submission to Attorney General

Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine, Commissioner of Welfare DATE: 1/1/84

Attn: GAIL OLSON, Special Assistant
Attorney General

FROM : MARTHA J. CASSERLY MJC PHONE: 296-4692
Special Assistant
Attorney General

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing the Determination of Welfare Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program (12 MCAR §§ 2.05301-2.05315 Temporary)

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.

Encs.

MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

c. specify the nature and cost to the facility or provider group of any in-kind benefits included in the compensation.

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 against which current funds are available, 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. Compensation paid to an individual for any work, including management services, performed on less than a full-time basis shall be in proportion to a full-time basis.

C. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to:

1. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.50, subdivision 8 and rules promulgated thereunder;

2. gifts and donations from nongovernmental sources;

3. rental income from the rental or lease of space within the facility to nonrelated individuals or organizations that render therapeutic or other services to residents on a fee-for-service basis.

D. Capitalization. Capital assets except for land shall be treated according to 1.-8. subject to the ~~limitations in~~ provisions of 12 MCAR S 2.05304 [Temporary] A.~~:~~

1. Expenditures for capital assets ~~except land~~, additions, and betterments ~~directly related to resident care~~ must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit cost of ~~$150~~ $200 or more.

AG copy

Department of Public Welfare

Support Services Bureau

Adopted Temporary Rules Governing the Determination of Welfare Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program

Temporary Rules as Adopted

12 MCAR S 2.05301 [Temporary] Applicability.

Rules 12 MCAR SS 2.05301-2.05315 [Temporary] establish procedures for determining the welfare payment rates for all residential facilities for the mentally retarded participating in the medical assistance program~~x~~ except state-owned facilities. Rules 12 MCAR §§ 2.05301-2.05315 [Temporary] are effective on January 1, 1984, for payment rates for periods starting ~~on~~ or after January 1, 1984. FF1 FF

12 MCAR S 2.05302 [Temporary] Definitions.

A. Scope. For the purposes of 12 MCAR SS 2.05301-2.05315 [Temporary], the following terms have the meanings given them.

B. Addition. "Addition" means an extension, enlargement, or expansion of the physical plant provided that the extension, enlargement, or expansion is for the purpose of increasing the number of licensed beds~~x~~ or improving resident care. FF3

C. Applicable credit. "Applicable credit" means a reduction as a result of government grants, purchase discounts, rebates, refunds, income from the sale of goods and services not covered by the per diem rate, ~~incidental services~~, adjustments for overcharges, insurance claims settlements, or any other adjustments reducing the facility's ~~operating~~ cost. FF

D. Betterment. "Betterment" means the renovation, ~~repair~~, or replacement of part of an existing capital asset to improve its function or extend its useful life. FF4

E. Capital asset. "Capital asset" means land and any asset that is capitalized under 12 MCAR S 2.05311 [Temporary] D. and depreciated under 12 MCAR S 2.05304 [Temporary] A.

F. Capital loan. "Capital loan" means a loan for the purpose of purchasing a capital asset, but only to the extent that the proceeds of the loan were actually applied to purchase the capital asset~~x~~, or a loan for the purpose of refinancing a capital loan. FF5

G. Capital loan interest expense. "Capital loan interest expense" means interest payable under the terms of a capital loan, amortization of bond premium or discount, and amortization of any related financing cost~~s~~ paid by the provider. FF6

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

I. Cost report. "Cost report" means the document specified by the commissioner on which the provider furnishes the statistical and financial information required by the commissioner for rate determination for the facility.

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

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

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

M. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the facility's employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

N. Equity. "Equity" means the historical capital cost ~~paid by the current owner for~~ of the facility's capital assets ~~within~~ subject to the limitations in 12 MCAR S 2.05309 [Temporary] B. and C., decreased by the outstanding principal amount of the capital loans, and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed of. Increases in the principal amount of existing capital loans due to refinancing or new capital loans due to a change of ownership for which the increase in interest expense is disallowed according to B.7. b. shall not be included in the outstanding amount of the principal loans for the purpose of calculating equity.

12 MCAR §2. 05309 TEMPOR

O. Facility. "Facility" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified as an intermediate care facility for the mentally

FF7

retarded.

P. Field audit. "Field audit" means the on-site examination, verification, and review of the cost report, financial records, statistical records, and related supporting documentation of the provider or provider group relating to the operation of the facility.

Q. Final rate. "Final rate" means the rate established after any adjustment by the commissioner, including adjustments resulting from cost report reviews, field audits, and resolutions of appeals.

R. Funded depreciation. "Funded depreciation" means the sum deposited in a separate ~~escrow~~ account which shall be applied only to reduce or liquidate capital asset loans or replace capital assets ~~as required by~~ in accordance with the provisions of 12 MCAR S 2.05304 [Temporary] C. FF8

S. Historical capital costs. "Historical capital costs" means:

1. for a capital asset first placed in use on or after ~~October~~ January 1, ~~1983~~ 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use in the Medical Assistance program. ~~The historical capital cost shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in 12 MCAR S 2.05304 [Temporary] A.1.c.~~ FF9

2. for a capital asset first placed in use ~~by a facility~~ in the Medical Assistance program prior to ~~October~~ January 1, ~~1983~~ 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before ~~September 30, 1983~~ December 31, 1983, except as provided in 12 MCAR S 2.05304 [Temporary] A.1.c.

T. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the application of the limitations specified in 12 MCAR SS 2.05301-2.05315 [Temporary].

U. Indirect cost. "Indirect cost" means a cost that is

incurred for a common or joint purpose of benefiting more than one cost category and not readily assignable to the cost categories benefited.

V. Land. "Land" means the land owned or leased by the facility and which is used for resident care.

W. Land improvement. "Land improvement" means any improvement to the land on which the facility is located provided that the improvement is the legal responsibility of the provider. Land improvement includes paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and sidewalks.

X. Leasehold improvement. "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility, which reverts to the owner of the property upon termination of the lease.

~~X.~~ Top "Management personnel" means owners, corporate officers, board members, administrators, ~~and or~~ ~~any~~ other person acting on behalf of the provider whether employed full time, part time, or as a consultant by the provider to ~~direct~~ direct, plan or coordinate the business affairs of the facility ~~including~~ The administrator is the person in charge of the overall day-to-day activities ~~managing, planning, directing, or coordinating the operations of~~ of the facility. ~~the facility, or supervising the program personnel.~~

FF10 moved to page 67 as "QQ"

*(insert)

Z. ~~X.~~ Necessary service. "Necessary service" means a function pertinent to the facility operation that if not performed by the individual would have required the provider to employ or assign another person to perform it.

*insert

Y. Minor equipment. "Minor equipment" means ~~equipment~~ that has a useful life of more than one year and costs less than $200. Examples of minor equipment are kitchen utensils, cleaning utensils, toasters, calculators, or waste-baskets.

FF11

AA ~~AA.~~ Operating cost category. "Operating cost category" means any one of the groupings of operating costs set forth in 12 MCAR S 2.05313 [Temporary] A.-C. The operating cost categories are program, maintenance, and administrative costs.

FF12

BB ~~BB.~~ Payment rate. "Payment rate" means the amount established by the commissioner to reimburse the provider for ~~care~~ service provided to the residents. The payment rate is calculated by adding together the operating cost payment rate, the property-related cost payment rate, and incentives or allowances determined in accordance with the provisions in 12 MCAR SS

FF13

2.05301-2.05315 [Temporary].

CC. ~~CC.~~ Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance, and state and federal unemployment compensation taxes or costs.

DD. ~~DD.~~ Physical plant. "Physical plant" means the building or buildings in which a program licensed to serve mentally retarded residents under Minnesota Statutes, Section 252.28 is located ~~facility is located~~ and all equipment affixed to the building and not easily subject to transfer. Physical plant does not include the land, land improvements, or any supplies or equipment not affixed to the building.

EE. ~~EE.~~ Private paying resident. "Private paying resident" means a facility resident whose care is not paid for by ~~who is not a recipient of~~ the medical assistance program, cost of care program, or the Community Social Services Block Grant ~~Title XX~~ ~~program~~ for the date of service.

FF. ~~FF.~~ Program. "Program" means those functions and activities ~~of the staff~~ of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under 12 MCAR S 2.034 and Code of Federal Regulations, title 42, section 442.400 et seq ~~190, subpart C (1978)~~.

GG. ~~GG.~~ Program director. "Program director" means the person who supervises ~~directs~~ individual program planning and program activities related to carrying out the individual program plans.

HH. ~~HH.~~ Property-related cost category. "Property-related cost category" means the grouping of property-related costs set forth in 12 MCAR S 2.05313 [Temporary].

II. ~~II.~~ Provider. "Provider" means the corporation, governmental unit, partnership, individual, or individuals licensed to operate the facility, that controls the facility's operation, incurs the costs reported, and claims reimbursement under 12 MCAR SS 2.05301-2.05315 [Temporary] for the care provided in the facility.

JJ. ~~JJ.~~ Provider group. "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurs the costs shown on the cost report which are claimed for reimbursement under 12

MCAR SS 2.05301-2.05315 [Temporary].

KK ~~KK~~. Rate year. "Rate year" means the facility's fiscal ~~year~~ period as approved by the commissioner on or before December 31, 1983, except as provided in 12 MCAR § 2.05314 (Temporary) for which a payment rate is effective. A rate year is normally a ~~twelve month~~ fiscal year.

LL ~~LL~~. Related organization. "Related organization" means a person that furnishes goods or services to a facility and that is an affiliate of a facility, a close relative of an affiliate of a facility, or an affiliate of a close relative of an affiliate of a facility. For the purposes of 12 MCAR S 2.05301 [Temporary] LL. the following terms have the meanings given them.

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, an unincorporated organization, or a government or political subdivision.

3. A "close relative of an affiliate of a facility" is an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a facility 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 securities, by contract or otherwise.

* INSERT MM.

NN ~~MM~~. Reporting year. "Reporting year" means the facility's fiscal year for which the provider submits a cost report and which is the basis for the determination of the payment rate for the following rate year.

OO ~~NN~~. Resident day. "Resident day" means a day for which resident services are rendered and billed or a day on which a bed is held and billed.

PP ~~OO~~. Respite care. "Respite care" means activities which offer the primary caregiver needed relief from the daily demands of caring for a person with a physical or mental disability.

~~Respite care includes planned or emergency relief for the~~ FF19

* INSERT - MM. Repair. "Repair" means the cost of actions and materials needed to restore an existing capital asset to sound condition after damage or malfunction. Repair does not include routine or preventive maintenance, such as caulking, interior painting, oiling, or greasing. FF19

~~caregiver through the utilization of a variety of in-home or residential resources.~~ FF19

~~PP. Title XX program. "Title XX program" means United States Code, title 42, sections 301 et seq. as amended through December 31, 1982.~~ FF20

(insert QQ. Top management personnel) See p. 4

~~RR. QQ.~~ Useful life. "Useful life" means the length of time an asset is expected to provide economic service according to 12 MCAR S 2.05304 [Temporary] A.7. and 8.

~~RR. Vendor. "Vendor" means an individual or organization that sells the provider goods or services for facility operation.~~ FF20

SS. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance ~~program~~ STET or Community Social Services Block Grant. FF20 cost of care ~~program~~ STET, or ~~Title XX program~~ is paid under the.

TT. Working capital loan. "Working capital loan" means a loan which is not used to acquire or refinance capital assets. FF21

UU. Working capital interest expense. "Working capital interest expense" means the interest expense for working capital loans. The form of indebtedness includes notes, advances, and finance charges various types of ~~receivable~~ short term financing. FF22

12 MCAR S 2.05303 [Temporary] Rate determination for operating costs.

A. Establishment of historical operating cost per diem. For rate years beginning on or after ~~December 31, 1983~~ January 1, 1984, the commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's historical operating costs. The review and adjustment must comply with the provisions of 12 MCAR SS 2.05301-2.05315 [Temporary]. FF23

~~1. For facilities with ten beds or fewer~~ The commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days in the reporting year in order to compute the facility's historical operating cost per diem.

Begins new paragraph

~~2. For a facility with more than ten beds the commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days.~~

B. Establishment of the operating cost payment rate. For

rate years beginning during the 1984 calendar year, each facility shall receive as an operating cost payment rate the historical operating cost per diem increased ~~by~~ at an annual rate of six percent. For rate years beginning during calendar year 1985 and thereafter, each facility shall receive as an operating cost payment rate, the historical operating cost per diem ~~increased by one percent for each full percentage increase in~~ adjusted by the increase in the all urban consumer price index ~~in~~ (CPI-U) for Minneapolis-St. Paul as published by the Bureau of Labor Statistics ~~for~~ between the previous two Octobers, new series index (1967=100). FF24

C. Operating cost adjustment allowance. In addition to the operating cost payment rate, each facility shall receive as an operating cost adjustment allowance ~~25~~ 27 cents per resident day. FF25

D. Efficiency incentive. For rate years beginning on or after ~~December 31, 1984,~~ January 1, 1984 the facility shall receive an efficiency incentive if the facility's historical operating cost per diem for that rate year is less than the facility's operating cost payment rate established for that rate year. The provider may keep the difference as an efficiency incentive unless the efficiency is due to a penalty or field audit adjustment as provided in 12 MCAR S 2.05314 [Temporary]. For rate years beginning January 1, 1985 and thereafter, one-half of the efficiency incentive earned in the previous rate year shall be added to the facility's operating cost payment rate. However, if the actual increase in the facility's 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. FF26 FF21

12 MCAR S 2.05304 [Temporary] Determination of property-related cost payment rate.

A. Depreciation. Allowable depreciation expense shall be determined as in 1.-11.

1. Basis for calculating depreciation. The basis for calculating depreciation shall be the historical capital cost of the capital assets determined under a.-c.

a. For a capital asset first placed in use on or after ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset FF27

on the date it was first placed in use in the Medical Assistance program. c. The historical capital cost of the capital assets shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in d.

b. For a capital asset first placed in use in the Medical Assistance program prior to ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before ~~September 30~~ December 31, 1983, except as provided in ~~d.~~ d.

d. The historical capital cost of the capital assets shall be adjusted for a change in ownership which occurs as a result of ~~the death of the principal owner who has a 50% or more ownership interest in the facility. This provision does not apply where the property is transferred to a close relative or a related organization as defined in 12 MCAR § 2.05301 LL. Disability means the situation in which a principal owner is mentally or physically incapacitated to such a degree that he or she is unable to carry out responsibility as an owner. The adjustment shall be made pursuant to regulations in effect on December 31, 1983.~~ the death or disability of a principal owner if a principal owner with 50 percent or more ownership interest in the facility, or a forced buyout pursuant to regulations in effect on December 30, 1983.

2. Depreciation method. The straight line method of depreciation shall be used.

3. Accumulated depreciation. The accumulated depreciation ~~of facilities~~ on capital assets for providers entering the medical assistance program shall be ~~re~~calculated using the useful life schedule in 7. and 8. starting from ~~the~~ the later of the date of completion of construction or the time of purchase by the current owner. In no case shall the accumulated depreciation on the capital assets exceed 50 percent of the historical capital cost of the capital assets.

4. Donated assets. Except for donations between a provider and a related organization, the value of the asset used to determine the depreciable basis shall be ~~the lesser of~~ the price that an able buyer would pay a willing seller in an arm's length transaction ~~or the appraised value of the asset~~. A donated asset is one acquired for the facility without making any payment in the form of cash, property, or services. For donations between a provider and a related organization, the net book value to the donor shall be the basis for the donee.

5. Additions or betterments. The historical capital cost of the capital assets in 1. subject to the limitations in 12 MCAR S 2.05309 [Temporary] B. and C. shall be increased for the actual cost of additions or betterments to assets capitalized according to 12 MCAR S 2.05311 [Temporary] D.1. ~~and~~ and 2. shall be depreciated according to A. The increased historical depreciation expense

shall be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred, without regard to when during that reporting year the capital asset was purchased. STET FF31

6. Gains and losses on ~~disposal~~ of equipment. Gains and losses on the disposal of equipment shall be included in computing allowable costs. A gain shall be an offset against the property-related cost category to the extent that the gain resulted from depreciation reimbursed under these regulations, or their predecessor. Gains or losses on trade-ins shall be reflected in the asset basis of the acquired asset. Claims for losses shall be limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

7. Depreciation rates for new capital assets. Depreciation shall be calculated on the basis of A., and the following useful life schedule:

a. physical plant and other buildings, 35 years;

b. physical plant betterments and additions (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years);

c. land improvements, 20 years;

d. depreciable equipment except vehicles, five years;

e. vehicles, four years.

8. Other useful lives.

a. Used capital assets. The useful life of used capital assets shall be assigned by the provider ~~facility~~, considering the individual circumstances; however, the useful life assigned shall not be shorter than one-half of the useful life shown in the useful life schedule in 7. for the relevant capital asset.

b. Leasehold improvement. The useful life of a leasehold improvement shall be the lesser of the useful life shown in 7. or 8.a. for the relevant capital asset, or the remaining term of the lease plus renewal periods. FF 32

9. Publicly-financed facility. Depreciation shall not be allowed on a facility or portion of a facility financed by federal, state, or local appropriations or grants unless the appropriation or grant is required ~~intended~~ to be repaid through the FF33

operating revenues of the facility.

10. No depreciation shall be recaptured following a sale of an asset or termination from the medical assistance program except for transfers of ownership allowed under A.l.c. Recapture of depreciation for transfers of ownership allowed under A.l.c. shall be calculated according to ~~12 MCAR SS 2.05301 2.05315 [Temporary] in effect~~ rules and regulations in effect on December ~~30~~ 31, 1983.

11. The total depreciation allowance paid to the facility for any depreciable capital assets, ~~except land~~, shall not exceed the historical capital cost of ~~the~~ that asset.

B. Interest. Allowable capital loan interest expense shall be determined ~~as given in 1. 7.~~ in accordance with 1. – 7.

1. Interest income. Interest income shall be deducted first from the unallowable capital loan interest expense. The remainder of interest income, if any, shall be deducted from the allowable capital loan interest expense. Interest income on gifts and donations from nongovernmental sources or funded depreciation shall not be deducted from capital loan interest expense or working capital interest expense.

2. Interest charges between nonprofit funds. When a nonprofit provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund ~~must not exceed~~ in excess of the interest rate the restricted fund is currently earning. ~~Interest expense~~ shall not be allowable on loans between operating and building funds shall not be an allowable cost.

3. Construction period interest ~~expense~~. Construction period interest expense ~~Interest expense related to construction costs~~ must be capitalized as a part of the cost of the facility. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients.

4. Interest rate. The ~~allowable~~ total allowable interest rate for any capital loans, including any points or financing charges, shall ~~be~~ calculated according to a. and b.

a. The ~~interest~~ total allowable interest rate for capital loans entered into on or after ~~December 31,~~ January 1, 1984, shall be the lesser of the ~~actual~~ effective interest rate on the capital loan or a rate ~~one~~ 2.5 percentage points

FF 34

above the published posted yield for standard conventional fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect on January 1 of the year in which the loan is incurred for capital loans contracted on or after January 1 and before July 1 of that year, and on July 1 of the year in which the debt is incurred for capital loans contracted on or after July 1 and before January 1 of the following year.

b. The interest rate for capital loans entered into on or before ~~prior to~~ December 31, 1983, shall be as recognized under ~~statutes and rules~~ regulations in effect on December ~~30~~ 31, 1983.

5. Capital loan retirement. For the purpose of establishing the facility's property-related cost payment rate, except as provided in 12 MCAR § 2.05309 D. (Temporary), the portion of the debt reduction allowance in D. which must be applied to the reduction of capital loans shall be applied first to reduce the principal on any capital loans on which the provider is only required to pay interest expense. The remaining portion of the debt reduction allowance which must be applied to reduction of capital loans shall be applied to the capital loan which has the highest interest expense due during the reporting year. ** insert

6. Capital loan interest expense. Except as otherwise provided in ~~7~~, the interest expense on capital loans shall be allowed according to a.-e.

a. All interest expense for capital loans entered into prior to ~~December 31, 1983~~ January 1, 1984, shall be an allowable cost.

b. Facilities that have received determination of need approval under 12 MCAR S 2.0185 to implement Minnesota Statutes, section 252.28 and have an approved or effective interim rate under 12 MCAR S 2.052 on December ~~30~~ 31, 1983, shall be allowed the interest expense on the capital loans allowed in the settle-up payment rate. If the capital loans allowed in the settle-up payment rate exceed the limitation in c. no additional capital loan interest expense shall be allowed.

c. Interest expense for capital loans entered into on or after ~~December 31, 1983,~~ January 1, 1984 shall be allowed for the portion of the capital loan which together with all other outstanding capital loans does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations of B.4.a. and 12 MCAR S 2.05309 [Temporary] B. and C. and the ~~facility has~~ no other capital loans

** insert: If prepayment of the capital loan is prohibited by the funding source, the portion of the debt reduction allowance in D. which ~~must be applied to the reduction~~ of capital loans shall be (12) applied first to the reduction of any working capital loans outstanding. The balance shall be placed in the funded depreciation account.

d. Interest expense for capital loans on capital assets acquired or leased on or after ~~December 31, 1983~~ January 1, 1984, shall be allowable ~~on the~~ only with respect to that portion of the capital loan which does not exceed ~~80~~ STET percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR S 2.05309 [Temporary] B. and C.

e. Except for facilities covered in b., interest expense for capital loans on facilities constructed or established on or after ~~December 31, 1983~~ January 1, 1984, shall be allowable ~~on~~ only with respect to ~~the~~ that portion of the capital loan which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR S 2.05309 [Temporary] B. and C.

7. Changes in interest expense.

a. Subject to the limits in 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans or changes in ownership, shall be allowed in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

b. Increases in interest expense due to changes in ownership or the refinancing of a capital loan as required in the original terms of the capital loan, except for renegotiations of a capital loan, shall not be allowable.

c. Fifty percent of the annual savings resulting from decreased interest expense due to refinancing or renegotiation of existing fixed interest rate capital loans shall be a refinancing ~~capital~~ allowance added to the ~~provider's~~ of the provider or its successor in interest property-related cost payment rate. The annual savings shall be calculated by comparing the refinanced or renegotiated fixed interest rate capital loan with the original fixed interest rate capital loan to determine the ~~total~~ savings in interest expense each year. The annual refinancing allowance shall consist of one-half of the ~~total~~ savings realized in the reporting year. ~~equally divided over the term of the refinanced or renegotiated loan~~. The annual refinancing allowance ~~savings~~ shall be divided by resident days to determine the refinancing allowance per diem payment. The refinancing allowance shall not apply to refinancing of capital loans with variable interest rates.

d. In order to qualify for the allowance in c., the outstanding principal amount and the remaining period over which the capital loan is to be repaid must not be increased as a result of refinancing.

Revisor has that crossed out

Except as provided in 12 MCAR § 2.05309 D. (Temporary)

C. Funded depreciation. Providers shall fund depreciation according to the provisions in 1.-5.

1. The annual deposit to the funded depreciation account shall be determined according to the following formula: (allowable depreciation - required annual principal payment specified in the capital loans) X (1 - the percentage of equity determined in D.1.). In addition, providers who have capital loans on which prepayment is disallowed by the funding source shall deposit in the funded depreciation account the portion of the capital debt reduction remaining after reduction of working capital loans as required in B.5.

2. Funded depreciation must be invested in liquid marketable investments such as savings accounts, certificates of deposit, and United States Treasury bills.

3. Funded depreciation must be used for capital loan reduction or replacement of capital assets for the purchase or payment of capitalized repairs for the facility.

4. No more than 50 percent of the ~~annual~~ cumulative total required to be deposited over the life of the funded depreciation account amount of allowable depreciation expense may be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

5. A separate funded depreciation account must be maintained for each facility.

6. Income earned on funds withdrawn for purposes other than 3. or in excess of the percent allowed in 4. shall be offset against the facility's property-related costs. The withdrawals shall be assumed to be on a first in, first out basis.

7. ~~Facilities which~~ Providers who do not deposit the required amount of depreciation in a funded depreciation account shall have their allowable capital loan interest expense for the facility reduced. The reduction shall be calculated by assuming the entire depreciation amount from the previous year was used to reduce capital loans.

D. Capital loan reduction allowance. Except ~~for facilities qualifying for the exception in~~ as provided in 12 MCAR S 2.05309 [Temporary] D., each facility shall receive ~~a 50 cent~~ an allowance ~~per resident day~~ for capital loan reduction.

1. The total amount of the capital loan reduction allowance and the amount which must be applied to reduction of the principal on capital loans shall be determined according to the following table:

Percentage of Equity	~~Percentage~~ Allowance per resident day	~~Payment~~ Amount which must be applied to reduction of Principal
~~From 0% to 10%~~ 0 through 10.00	50¢	~~100%~~ 50¢

~~From 10% to 20%~~ 10.01 through 20.00 ~~50%~~ 25¢ FF42

~~20% or more~~ 20.01 through 30.00 50¢ ~~0%~~ 0

* insert

The facility's total percentage of equity shall be determined by dividing its equity by its historical capital cost of capital assets.

~~2. For facilities which receive allowable property costs in place of lease or rental payments, the capital loan reduction allowance shall be applied to the lessor's assumed capital loan.~~

E. Property-related cost payment rate and incentives or allowances.

1. The commissioner shall compute the allowable property-related costs by reviewing and adjusting the facility's property-related costs incurred during the reporting year immediately preceding the rate year for which the payment rate is effective.

2. The commissioner shall compute the property-related cost payment rate for ~~existing~~ facilities with more than 10 beds by dividing the desk-audited, property-related costs by 96 percent of licensed capacity days. ~~except that~~ For facilities with ten or fewer beds the commissioner shall use the lesser of 96 percent of licensed capacity days or resident days ~~greater of resident days or 85 percent of licensed capacity days.~~ except that in no case shall resident days be less than 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related payment rate shall be calculated according to 12 MCAR S 2.05306 [Temporary] A. and B. FF43

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3. Any incentives or allowances as determined in B.7.C. ~~and~~ D., ~~and~~ F., and 12 MCAR § 2.05309 [Temporary] D. shall be added to the property-related cost payment rate. The facility shall not continue to receive these incentives if the ~~department~~ commissioner changes the reimbursement formula for property-related costs.

~~F. Incentives for provider cost savings.~~

~~1.~~ Vehicle purchase savings. The commissioner ~~shall~~ establish an ~~incentive~~ payment for provider cost savings initiatives undertaken in a.-e. FF44

a. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of utility vehicles and vans to be used by the facility.

b. The guidelines shall reflect the most recent price

* insert

30.01 through 40.00 75¢ 15 0 FF42

over 40 $1.00 0

paid by the Department of Administration for similar vehicles used by the state.

c. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of specialized vehicle equipment such as ramps, lifts, or passenger restraint devices.

d. For rate years, beginning on or after January 1, 1985, if the cost of the vehicle purchase including specialized equipment is below that of the target purchase guideline for comparable equipment increased by four percent, then the provider shall receive one-half of the difference as a per diem allowance.

e. In establishing the payment rate for the savings identified under d., the savings shall first be divided over the useful life of the asset. The annual per diem rate shall be computed by dividing the annual savings figure by resident day.

F. ~~2.~~ Energy savings incentive. The commissioner shall approve requests for exceptions to the provisions of 12 MCAR SS 2.05304 [Temporary] B. 6.d.ande. and 2.05311 [Temporary] D. 2. for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in the state of Minnesota. The cost of the energy audit is an allowable operating cost. Energy conservation measures identified in the energy audit that:

a. have a payback period equal to or less than 36 months and a total cost not exceeding $1 per resident day shall be exempt from the provisions of 12 MCAR SS 2.05304 [Temporary] B. 6.d.ande. and 2.05311 [Temporary] D. 2. or

b. have a payback period greater than 36 months or having a total cost in excess of $1 per resident day shall be exempt from the provisions of 12 MCAR S 2.05304 [Temporary] B. 6.d.ande.

12 MCAR S 2.05305 [Temporary] Payment rates.

A. Temporary payment rate. Unless the cost report is rejected during the initial review conducted under 12 MCAR S 2.05314 [Temporary] H.3., a temporary payment rate or the payment rate, shall be established within 20 days of receipt of the cost report and

FF 44

FF45

FF46

supporting documentation ~~shall be~~ filed according to 12 MCAR SS 2.05301-2.05315 [Temporary]. The temporary payment rate shall be the prior year's payment rate then in effect increased by ~~the maximum rate increase authorized by statute, five percent~~. The temporary payment rate shall be effective the first day of the facility's new year if the cost report is received within the deadlines in 12 MCAR S 2.05314 [Temporary] H. If the cost report is not received within the deadlines the temporary payment rate shall be effective the first day of the month following the month in which the cost report is received. The commissioner shall notify the facility and the respective county or human service boards in writing of the temporary payment rate determination and the effective date of the temporary payment rate. The temporary payment rate shall remain in effect until the desk audit is completed.

B. Payment rate. The payment rate shall be established following desk audit and shall replace the temporary rate. The payment rate may be adjusted under 12 MCAR S 2.05314 [Temporary] I. and J.

C. Limitations to payment rate. The payment rate shall be limited under 1.-3.

1. The payment rate must not exceed the rate paid by private paying residents for similar services for the same period.

2. The payment rate must not exceed the final rate allowed the facility for the previous rate year by more than ~~the maximum rate increase authorized by statute, five percent~~.

3. The limits in 1. and 2. shall not apply to payments made by the commissioner for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, ~~section~~ article 9, section 7, subdivision 8.

D. Respite care rate.

1. Rates charged for respite care must be identified separately. The respite care rate may be different than the payment rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same

Insert page 18 (All new material)

12 MCAR § 2.05306 (Temporary). Rate-setting procedures for newly constructed or newly established facilities.

A. Interim payment rate. Providers may request an interim payment rate for newly constructed or newly established facilities. To receive an interim payment rate, the provider must submit a projected cost report in compliance with 12 MCAR §§ 2.05301 - 2.05315 (Temporary) to the extent applicable for the rate year in which the facility plans to begin operation. Provisions 12 MCAR § 2.05304 [Temporary] B.7.c. and F. shall not apply to interim payment rates. The interim property-related cost payment rate shall be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate shall be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. Prior to the effective date of the interim payment rate the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the payment rate until settle-up.

7F49

B. Interim payment rate settle-up. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months. The settle-up payment rate shall be calculated according to 1. and 2.

1. The settle-up payment rate for facilities with interim payment rates established on or before December 31, 1983 shall be calculated according to rules in effect when the interim rate was

established.

2. The interim payment rates established on or after January 1, 1984 shall be subject to retroactive upward or downward adjustment in accordance with ~~the provisions of~~ 12 MCAR §§ 2.05301 - 2.05315 (Temporary) except that:

not in Revisor's copy

[Temporary]

a. 12 MCAR § 2.05304 B.7.c. and F. shall not apply.

b. the settle-up property-related cost payment rate shall be calculated using the lesser of resident days or 96 percent of licensed capacity days but no less than 80 percent of licensed capacity days.

c. the settle-up operating cost payment rate must be based on the greater of resident days or 80 percent of licensed capacity days.

FF49

d. the settle-up payment rate shall not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment ~~rate~~ period and the end of the first fiscal period.

C. First payment rate after the interim rate period. The first payment rate after the interim rate period shall be calculated according to 12 MCAR §§ 2.05301 - 2.05315 [Temporary] except that the calculation of resident days shall be based on an annualization of the resident days in the last three months of the interim reporting period.

period.

2. The provider may choose either to report the costs associated with providing respite care as an allowable cost in the cost report and count respite care days as resident days or offset the revenue generated by providing respite care against the appropriate cost category.

E. Effective date. The payment rate determined by the commissioner shall be effective the first day of the month following the end of the facility's reporting year except in instances in which the penalty provisions of 12 MCAR S 2.05314 [Temporary] J. are applicable.

12 MCAR S 2.05306 [Temporary] Rate-setting procedures for newly constructed or newly established facilities. (see insert)

A. Interim payment rate. Newly constructed or newly established facilities may request an interim payment rate. The provider must submit a projected cost report in compliance with 12 MCAR SS 2.05301-2.05315 [Temporary] to the extent applicable for the rate year in which the facility plans to begin operation. The interim property-related cost payment rate shall be determined using projected resident days. The effective date of the interim payment rate shall be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification.

B. Interim payment rate settle-up. The interim payment rate shall be subject to retroactive upward or downward adjustment in accordance with the provisions of 12 MCAR SS 2.05301-2.05315 [Temporary] except that no incentives or allowances shall apply. The adjustments shall be made according to 12 MCAR S 2.05314 [Temporary] I.2. based on actual resident days and actual costs in the facility's first reporting year. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months.

FF49

The settle-up payment rate must be based on the greater of resident days or 80 percent of licensed capacity days. Occupancy used for the rate year immediately following the reporting year must be based on an annualization of the resident days of the last three months of the interim reporting year but must not be less than 85 percent of licensed capacity days. The settle-up payment rate shall be the lesser of the payment rate calculated according to 12 MCAR SS 2.05301-2.05315 [Temporary] or the interim payment rate increased by .4166 percent for each full month between the date the first medical assistance resident enters the facility and the end of the first fiscal period.

C. Changes in occupancy levels. For the first two reporting years following the period covered by the settle-up payment rate, newly constructed or newly established facilities shall compute occupancy levels based on the greater of annualized resident days for the last three months of the reporting year or resident days in the facility's reporting year. The payment rate in subsequent rate years shall be based on the occupancy from the most recently completed reporting year.

12 MCAR S 2.05307 [Temporary] Allowable operating costs.

A. Licensure and certification costs. The costs of meeting the applicable licensure and certification standards listed in 1.-6. are allowable operating costs for the purpose of setting facility payment rates unless otherwise provided in 12 MCAR SS 2.05301-2.05315 [Temporary]. The standards are:

1. federal regulations for intermediate care facilities for mentally retarded services provided by the Code of Federal Regulations, title ~~42~~ 42, section ~~442.400 et seq.~~ 442.400 et seq., ~~subpart G (1978)~~;

2. requirements established by the commissioner for meeting program standards under 12 MCAR S 2.034 and standards for aversive and deprivation procedures pursuant to Minnesota Statutes, section 245.825;

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

4. requirements to comply with changes in federal or state laws and regulations;

5. written correction orders issued by the department, the Department of Health, or the fire marshal; and

6. other requirements for licensing under federal or state law, rules, or local standards that must be met to provide intermediate care facilities for mentally retarded services.

B. Routine service costs. The costs of routine services including program ~~operating~~, maintenance ~~operating~~, and administrative ~~operating~~ costs as defined in 12 MCAR S 2.05313 [Temporary] are allowable operating costs for the purpose of setting facility rates unless otherwise provided in 12 MCAR SS 2.05301-2.05315 [Temporary].

12 MCAR S 2.05308 [Temporary] Nonallowable costs. ~~For the purpose of establishing the payment rate for rate years beginning during calendar year 1984, nonallowable costs in A-BB. shall be determined according to regulations in effect on December 31, 1983, for the purpose of establishing the payment rate for subsequent years,~~ the costs of items A.-~~EE~~ BB. as well as costs determined by the commissioner to be incurred due to management inefficiency, unnecessary capital assets, or unnecessary services are not allowable for purposes of setting payment rates. ~~The~~ If any of the costs of items ~~A.-EE.~~ A-BB are included in any account of the provider or the provider group, they must be identified on the facility's cost report, unless the basis for the disallowance is inadequate or unavailable supporting documentation.

A. 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 lobbying, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions by agencies of the state of Minnesota. When the breakdown of dues charged to a facility by an association or professional organization is requested by the commissioner and is not provided, the entire cost shall be disallowed;

D. advertising designed to encourage potential residents to select a particular facility;

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

F. activities not related to resident care such as flowers or gifts for employees or providers, employee parties, and

business meals;

G. penalties and interest charges resulting from late payments or fines from government agencies, and bank overdraft or late payment charges;

H. costs related to the purchase of pets and veterinary services for pets;

I. costs of sponsoring nonresident activities such as athletic teams and beauty contests;

J. premiums on a life insurance policy for an owner, provider, board member, or employee of a related organization; except that the premiums shall be allowed if the coverage is included in the policy provided for all employees, the coverage and premium is comparable to that provided for all employees, and the insured person is an employee of the facility or related organization;

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

L. employee's or owner's membership or other fees for social, fraternal, sports, health, or similar organizations;

M. training programs for anyone except facility employees, volunteers in the facility, or a resident's family or legal guardians;

N. training programs to meet the minimum educational requirements of a position, education that leads to a degree, or education that qualifies the employee for a new trade or profession;

O. bad debts and related bad debt collection fees;

P. costs of fund-raising activities;

Q. costs of personal need items such as personal clothing normally paid for by residents;

R. costs incurred in providing other than intermediate care facilities for the mentally retarded services such as the costs of apartments and semi-independent living skills services (SILS) except respite care;

S. costs financed by gifts or grants from government funds;

T. telephones, televisions, and radios provided in a resident's room;

U. costs of agreements not to compete;

V. costs of services provided ~~by~~ to a resident 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 facility or the compensation of the practitioner who is an employee of the facility;

2. allocated compensation and related costs of any facility 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 provider these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated for the facility, including any charges by the provider to the vendor.

W. uniform allowances unless required by governmental rules or regulations;

X. costs of therapeutic overnight trips, camping, or vacations for residents in excess of $300 per resident per reporting year;

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

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

AA. costs incurred in providing approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8;

BB. payments made in lieu of real estate taxes ~~made by nonprofit providers~~ unless such payments are made pursuant to a legally enforceable, noncancelable, written contract entered into prior to January 1, 1984.

~~CC. facility or related organization costs for which adequate documentation is not maintained or provided as required by 12 MCAR SS 2.05301-2.05315 [Temporary];~~

~~DD. other costs determined to be nonallowable in accordance with 12 MCAR SS 2.05301-2.05315 [Temporary]; and~~

~~EE. related organization costs for which a breakdown in accordance with 12 MCAR S 2.05313 [Temporary] is not provided.~~

12 MCAR S 2.05309 [Temporary] Cost limitations.

A. Top management compensation. Annual compensation for top management personnel shall be paid according to the limits in 1.-~~10~~ 8.

1. To receive top management compensation, at least one or any combination of the top management personnel must:

a. for a ~~facility~~ provider or ~~group of facilities~~ provider group with a total bed complement of 48 or fewer beds, document at least five hours of top management services per six licensed beds per week; or

b. for a facility ~~or group of facilities~~ with a total bed complement of more than 48 beds, document at least 40 hours of top management services per week.

c. for a provider group with a total bed complement of more than 48 beds, document at least five hours of top management services per six licensed beds per week, except that if a facility within the provider group exceeds 48 beds the requirement in b. shall apply to that facility.

~~2. At least one-half of the total hours required in 1. must be spent by the management personnel at the facility or facilities from which compensation is claimed. The required hours at the facility may be spent by an on-site manager or by management personnel who spend time at the facility.~~

* d. insert below

~~2.~~ 3. The sum of compensation ~~paid to~~ reimbursed for all top management personnel for performing top management functions for an individual or ~~organization~~ provider group that owns or operates:

a. a single facility, shall not exceed the lesser of $814 times the number of licensed beds or $39,072;

b. more than one facility with a total bed complement of 48 or fewer beds, shall not exceed the lesser of $814 times the total number of licensed beds or $39,072;

c. more than one facility with a total bed complement of 48 or more beds, shall not exceed $39,072 plus an additional $335 for each licensed bed over 48. The top management compensation for a single facility within the group shall not exceed the

* insert (line 25) d. if less than the required hours of top management services are provided, compensation shall be pro rated based on the maximum amount allowed for that facility.

lesser of $814 times the number of licensed beds or $39,072.

In no case shall the total compensation reimbursed according to 12 MCAR §§ 2.05301-2.05315 ~~3.K. In no case shall management compensation paid to an individual, any portion of whose compensation is reimbursed as~~ ~~individual exceed $39,072.~~ top management compensation exceed $51,750 ~~A top management individual who performs services for the facility or provider group on less than a full time basis, may receive as allowable compensation no more~~ than a pro rata portion of $51,750 based on time worked.

~~4.~~ If ~~K.~~ person compensated for top management functions in a facility or ~~group of facilities shall not be~~ is compensated for providing consultant services to that facility or ~~group of facilities.~~ provider group, the compensation for consultant services, however designated, ~~shall be subject to the top management compensation~~ limitation.

~~5.~~ Top Management compensation shall not include, within the limits of 4. and 5., the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, or paid vacations, holidays, or sick leaves, if the same benefit and the same benefit level is provided to all or substantially all of the facility's employees.

~~6.~~ An individual compensated for top management services on a less than full-time basis for a facility or ~~group of facilities~~ provider group may be compensated for other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service. Documentation of the necessary service performed must be maintained according to 12 MCAR S 2.05311 [Temporary] E.3. and ~~shall~~ may be subject to licensing review by the commissioner.

~~7.~~ Compensation ~~paid to~~ STET the program director for performing program director functions or to top management personnel for performing other than top management functions shall not be included in the top management compensation limitation.

~~8.~~ For each full percentage difference between the previous two Octobers the all urban consumer prices index (CPI-U) ~~for the months of October, 1983, and October, 1984, in~~ for Minneapolis-St. Paul as published by the Bureau of Labor Statistics, new series index (1967=100), the top management compensation per bed limitation and the dollar limitation shall be adjusted by one percent. The adjustment required by this formula shall be effective on January 1, 1985 and each January 1 thereafter ~~The calculation shall be made annually.~~

B. Limitation on land costs. For purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the cost of land shall be limited purchased prior to January 1, 1984.

according to rules and regulations ~~in effect~~ effective on December 31, 1983. ~~to $1,000 per bed for land purchased prior to December 31, 1983, and to $3,000 per bed for land purchased on or after December 31, 1983.~~ The cost of land purchased on or after January 1, 1984, shall be limited to $3,000 per bed.

C. Investment per bed limitation. For the purposes of 12 MCAR SS 2.05301-2.05315 [Temporary], the facility's historical capital costs shall be limited by 1.-4.

1. The limitation on the facility's depreciable assets shall be established when the facility enters the medical assistance program.

a. For facilities entering the medical assistance program on or before December 31, 1982, the historical capital cost of the facility's depreciable assets shall be subject to the limits in effect at the time the facility entered the program.

b. For facilities entering the medical assistance program during 1983, the historical capital cost of the facility's assets shall not exceed an average of $29,952 per bed for Class A beds as defined in 7 MCAR S 1.392 C.1. and $35,015 per bed for Class B beds as defined in 7 MCAR S 1.392 C.2.

c. The limitation in b. shall be adjusted annually beginning January 1, 1984, by ~~one~~ the percentage ~~point for each full percentage point~~ increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the previous two Octobers. Facilities entering the medical assistance program after 1983 shall be subject to the adjusted limitation in effect at the time the facility entered the program.

2. In no instance can accumulated depreciation exceed the basis defined in 12 MCAR S 2.05304 [Temporary] A.

3. One exception to the limitations stated in 1., is that depreciation on investments in capital assets shall be allowed if the investments were required to comply with the Life Safety Code, in United States Code, title 42, sections 442.507-442.509 as amended through December 31, 1982, or with fire safety orders of the local agency.

4. After the facility's first ~~five~~ three full reporting years and

All new material

Insert
26 D

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D. Reimbursement of lease or rental expenses. The facility's lease or rental costs shall be determined according to 1-10.

1. Lease and rental costs: short term. The costs of a rental or lease for a period of less than 60 days in a fiscal year shall be an allowable cost.

2. Rentals of office equipment. Rentals of office equipment other than furnishings shall be allowable costs.

3. Arms-length leases or rental agreements. Leases or rental agreements shall be considered bona fide, arms-length leases unless the lease or rental charges:

a. result from sale and lease back arrangements; or

b. result from a lease with option to buy at less than anticipated value; or

c. are paid to a related organization.

4. Lease or rental costs: long term. The costs of a lease or rental for a period equal to or greater than 60 days shall be an allowable cost subject to the following limitations:

a. Lease or rental costs which are not bona fide, arms-length leases as defined in 3. shall be disallowed.

b. Bona fide, arms-length lease or rental costs incurred under agreements entered into after December 31, 1983 shall be disallowed.

c. Bona fide, arms-length leases or rental costs incurred under agreements entered into on or before December 31, 1983 are allowable under rules and regulations in effect on December 31, 1983, subject to the limitations in 6.

d. Renewals, renegotiations or extensions of leases or rental agreements in c. are allowable to the extent that the new lease or rental cost does not exceed the previous lease or rental cost for that capital asset.

5. Payments in lieu of leases or rental costs. For lease or rental costs disallowed under 4.a. or b., the facility shall receive, in lieu of the lease or rental costs, depreciation, interest, and other reasonable costs of the lessor, such as real estate taxes. Depreciation and interest shall be calculated under 12 MCAR §§ 2.05304 A. and B.(Temporary), subject to the limitations in B. and C., and shall be based on the lessor's historical cost of the capital assets and historical capital debt. Any other costs of the lessor included in the lease shall be allowable subject to 12 MCAR §§ 2.05301 - 2.05315 (Temporary).

every ~~five~~ three full reporting years thereafter, the facility's investment per bed limitation established according to 1.-3. shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous ~~four~~ three full reporting years. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment costs shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

D. Lease and rental costs. ~~The facility's rental and lease costs shall be limited by 1.-4.~~ See insert 26 D.

~~1. Lease and rental costs: short term. The costs of a rental or lease for a period of less than 60 days in a fiscal year shall be an allowable cost.~~

~~2. Lease and rental costs: long term. The cost of a rental or lease for a period of more than 60 days in a facility's fiscal year shall be the lesser of the lease or rental cost or property-related costs as calculated under 12 MCAR SS 2.05301-2.05315 [Temporary].~~

~~3. Rentals of office items. Rentals of office equipment other than furnishings shall be allowable costs.~~

~~4. Exception. Lease and rental costs for arm's length transactions signed or incurred before October 1, 1983, shall be allowed under 12 MCAR S 2.052. This exception does not apply to lease renewals, renegotiations, or extensions occurring on or after October 1, 1983, or to lease or rental costs which were disallowed under 12 MCAR S 2.052.~~

E. Working capital interest expense

1. Working capital interest expense on loans incurred prior to ~~December 31, 1983~~ January 1, 1984, shall be allowed under ~~12 MCAR S 2.052.~~ the rules and regulations in effect on December 31, 1983

2. Reimbursement for working capital interest expense for existing facilities shall be limited under a. and b.

a. For ~~the~~ rate years beginning ~~on or after December 31, 1983,~~ during calendar year 1984, the total amount of working capital interest expense

Insert 26 D cont.

6. Limitation on allowable lease or rental costs. Except for 1. and 2., allowable lease and rental costs recognized under 4.c. and d. shall be subject to the limitations in B. and C., determined by calculating the present value of the lease or rental costs exclusive of real estate taxes and other costs assumed by the lessee. The interest rate used in capitalizing the lease or rental costs shall be the lessor's interest rate or, if that interest rate is not available, 2.5 percentage points above the published posted yield for standard, conventional, fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect the first day of the month in which the lease or rental agreement was effective.

7. Incentives and allowances. The following incentives and allowances shall be paid to leased facilities, subject to a. and b.:

   a. Providers with physical plant rental or physical plant lease agreements recognized under 4.c. and d. shall receive a lease reduction allowance of $.50 per resident day.

   b. Providers with physical plant lease or rental costs disallowed under the provisions of 4.a., if such a disallowance was the result of a less than arms-length agreement under 3.c. or disallowed under the provisions of 4.b., shall receive the capital loan reduction allowance subject to the provisions of 12 MCAR § 2.05304 (Temporary) D. Except that providers who have lease or rental costs disallowed under 4. b. shall not be required to apply any portion of the allowance toward the reduction of the principal on capital loans.

8. Funded depreciation. For leased facilities depreciation shall be funded in accordance with a. and b.

   a. Any facility or related organization that receives payment in lieu of lease or rental costs for a physical plant under the provisions of 4. a., if such a disallowance was the result of an agreement which was not a bona fide, arms-length lease or rental agreement under 3. c., must fund depreciation in accordance with the provisions of 12 MCAR § 2.05304 C. (Temporary).

   b. Any facility that receives depreciation expenses for capital assets used in and owned by the facility must fund depreciation in accordance with 12 MCAR § 2.05304 (Temporary) C.

9. Lease expense reduction allowance. A lease expense reduction allowance shall be allowed subject to the limits of a. and b.

   a. Fifty percent of the annual savings resulting from a decrease in the facility's lease or rental costs recognized under 4. c. due to renegotiation of existing rental or lease agreements shall be a lease expense reduction allowance. The savings shall be calculated by comparing the annual renegotiated lease payment with the annual lease payment in the previous

Insert 36 D cont.

reporting year. The annual refinancing allowance shall consist of one-half of the savings. The annual lease expense reduction allowance shall be divided by resident days to determine the lease expense reduction allowance per diem payment rate. The renegotiated allowance is applicable only to the renegotiation of lease or rental agreements that have equal lease or rental payments over the term of the lease.

b. Lease or rental agreements having unequal payments over the term of the agreement may receive a lease expense reduction allowance calculated in accordance with a. if:

1. fixed percentage increases are specified, or

2. a schedule containing future lease payments is contained in the lease agreement being renegotiated.

10. Purchase of previously leased capital assets. The provisions of 12 MCAR §§ 2.05301 - 2.05315 (Temporary) shall be used to determine the allowable property-related cost for facilities which have lease or rental agreements and subsequently purchase the same capital asset. However, in no case shall the allowed property-related costs on the purchased capital asset exceed the amount formerly allowed for the lease or rental agreement under either 12 MCAR §2.052 or 12 MCAR §§ 2.05301 - 2.05315 [Temporary].

allowed for purposes of determining the payment rate shall not exceed the ~~incurred by a facility during a reporting year shall not exceed~~ total amount of working capital interest expense incurred by the facility ~~the amount included in the payment rate in effect on December~~ during the reporting year immediately preceding the rate year. ~~30, 1983.~~

b. For the rate years beginning ~~on or after~~ during calendar year 1985 ~~December 31, 1984,~~ the total amount of working capital interest expense ~~incurred by a facility during a reporting year~~ allowed for purposes of determining the payment rate shall not exceed 80 percent of the allowable working capital interest expense as determined in a.

3. Working capital interest expense for ~~newly~~ constructed or ~~newly~~ established ~~facilities~~ after January 1, 1984 shall be limited under a. and b.

a. For the interim and settle-up rates the total amount of working capital interest expense ~~incurred~~ allowed shall not exceed 2.5 percent of the facility's allowable operating costs during the reporting year.

b. For the rate year following the settle-up the total amount of working capital interest expense ~~incurred~~ allowed shall not exceed 80 percent of the allowable working capital interest expense as determined in a.

F. Retirement contributions.

~~1.~~ Retirement contributions for each employee shall be limited to the cost of either a United States Internal Revenue Service approved pension or profit sharing plan but not both.

~~2. Retirement contributions made for a nonvested past employee shall be offset against the total cost of retirement contributions for the reporting year.~~

G. Therapeutic overnight trips, camping, and vacations for residents. The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to $300 per year per resident may be ~~reserved in the facility budget~~ allowed for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

12 MCAR S 2.05310 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to

capital assets, services, or supplies directly or indirectly furnished to the provider by any related organization are includable in the allowable cost of the facility at the cost to the related organization if such costs do not exceed the prices of comparable services, capital assets, or supplies that could be purchased elsewhere.

B. Exception to limitation on related organization charges. Except for the rental or leasing of facilities, if the related organization in the normal course of business sells services, capital assets, or supplies to nonrelated organizations, the cost to the provider shall be no more than the price charged to the nonrelated organization provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales.

C. Rental charges paid to or by a related organization. Lease or rental costs paid to or by a related organization shall be allowed according to 12 MCAR S 2.05309 [Temporary] D.

D. Assets of related organizations. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation ~~was~~ on the asset has been claimed as a facility cost, any gain realized from the sale by the related organization must be transferred to the facility as an offset against the facility's property-related cost category.

E. Goods or services provided by a facility to related organizations. A provider which sells, leases, or provides goods or services to a related organization shall allocate the cost of the goods or services to the related organization and identify the allocations in the facility's cost report.

1. Costs of services shall be allocated based on the documentation of time spent performing the service by each individual providing services for the related organization. All direct costs shall be allocated based on the product of the hours spent by each individual providing services to the related organization times all direct costs including the individual's

salary and fringe benefits, divided by the total hours spent by the individual working for the facility and the related organization.

2. Indirect costs associated with providing services to a related organization shall be allocated on the basis in 1.

3. The cost of goods sold to or used by a related organization shall be directly allocated to the related organization. The cost of goods sold to or used by more than one related organization shall be allocated proportionally to each related organization based on a reasonable estimate of actual use.

4. The cost of goods or services allocated to a related organization shall not be an allowable cost for the facility.

12 MCAR S 2.05311 [Temporary] Cost principles.

The provider must use the cost principles in A.-~~E~~ I. to report costs. The commissioner shall use these cost principles to determine allowable costs.

A. Cost criteria. For rate setting purposes, a cost must satisfy the following criteria:

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

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

3. The cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within ~~75~~ 180 days after the close of the reporting period.

4. The cost effects of transactions that have the effect of circumventing 12 MCAR SS 2.05301-2.05315 [Temporary] are not allowable under the principle that the substance of the transaction shall prevail over form.

B. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

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

b. amounts paid by the provider for the personal benefit of the provider or employees;

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

d. the costs of assets, supplies, equipment, vehicles, services, or any other in-kind benefits the provider or employees receive ~~of~~ for personal use from the facility or related organization, except the cost of assets, services or other in-kind benefits incurred as a necessary cost for an employee who is required to reside in the facility as a condition of employment; and

e. payments to organizations of nonpaid workers.

2. The facility 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 facility and other facilities owned by the same provider; and

c. specify the nature and cost to the facility or provider of any fringe benefit included in the compensation.

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 against which current funds are available, 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. Compensation paid to an individual for any work, including management services, performed on less than a full-time basis shall be in proportion to a full-time basis.

C. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility

cost. This cost principle does not apply to:

1. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.50, subdivision 8 and rules promulgated thereunder;

2. gifts and donations from nongovernmental sources;

3. rental income from the rental or lease of space within the facility to nonrelated individuals or organizations that render therapeutic or other services to residents on a fee-for-service basis.

D. Capitalization. Capital assets except for land shall be treated according to 1.-8. subject to the ~~limitations in~~ provisions of 12 MCAR S 2.05304 [Temporary] A.

1. Expenditures for capital assets ~~except land~~, additions, and betterments ~~directly related to resident care~~ must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit cost of ~~$150~~ $200 or more.

2. ~~The purchase or purchases~~ A provider who purchases for a facility during a reporting year, ~~of~~ minor equipment, additions or betterments that ~~capital assets except land which~~ have a useful life of more than one year ~~and~~, a unit cost of less than ~~$150~~ $200 but more than ~~$50~~ $100 and ~~which have~~ an aggregate cost in excess of ~~$500~~ the greater of $1,000 or five cents per resident day must ~~be~~ capitalized and depreciated, those purchases exceeding the aggregate cost limit for the facility.

~~3. The provider may expense the cost of any repair which costs more than $150. If the provider expenses the cost of a repair, the cost of the repair must be expensed in the reporting year in which the costs are incurred and must be reported on a separate schedule indicating the cost and nature of the repair. The payment rate for the rate year following the current rate year shall be adjusted for the cost of the expensed repairs according to a. c.~~

3. The facility may expense any repair that costs less than $300, if that repair together with all other repairs, does not exceed the greater of $1500 or 30 cents per resident day. All repairs costing $300 or more together with those repairs exceeding the limitation, must be capitalized and depreciated over the remaining useful life of the repaired capital assets.

~~a. The amount claimed for the expensed repairs shall be computed on a per diem basis.~~

~~b. The amount computed in a. shall be subtracted from the prior year's payment rate. If the prior year's payment rate is limited by 12 MCAR S 2.05305 [Temporary] C., the amount~~

~~computed in a. shall be subtracted from the prior year's payment rate before application of the limitation.~~

~~c. The amount computed in b. shall be used as the base to which the limitation in 12 MCAR S 2.05305 [Temporary] C. shall be applied to determine the maximum payment rate for the following rate year.~~

4. Provisions 1. ~~and~~ 2. and 3. shall be applied to expenditures incurred on or after ~~December 31, 1983~~ January 1, 1984. Expenditures incurred on or before December ~~30~~ 31, 1983, shall be capitalized according to ~~12 MCAR S 2.052~~ rules in effect on December 31, 1983 and regulations.

5. Items such as ~~land~~, land improvements, and goodwill, whose maintenance or construction are not the responsibility of the provider shall not be depreciable assets.

6. One time pre-opening costs of new facilities which are incurred more than 30 days prior to admission of residents must be capitalized as deferred charges and amortized over a period of not less than 60 consecutive months beginning with the month in which the first resident is admitted for care. Examples of these costs are utilities, supplies, travel, and wages paid for services rendered.

7. Construction ~~financing~~ period interest expense, feasibility studies, and other costs related to construction must be capitalized and depreciated over the life of the physical plant.

8. Financing costs must be amortized over the term of the loan ~~or the life of the asset, whichever is greater~~.

E. Adequate documentation. Adequate documentation must:

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

~~2. be maintained in a separate file for each facility~~; 2. be maintained in a manner that each transaction can be easily identified for each facility.

3. include sufficient documentation to support the validity of the transaction and its relationship to facility operations. The documentation typically includes a paid invoice or copy of a paid invoice for each transaction 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 facilities; and

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

F. Documentation of consultant, professional, or purchase service contracts. The provider must maintain copies of all contracts and invoices relating to consultant, professional, or purchase services. These documents must include the name and address of the vendor or contractor, the name of the person actually providing the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

G. 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 allocation method used must produce a proportional distribution of time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis.

H. Documentation of mileage; motor vehicle log. Except for vehicles used exclusively for facility business, the provider must maintain a motor vehicle log for each vehicle used by the facility that shows personal and facility ~~and resident~~ usage. Mileage paid for the use of a private vehicle must be documented.

I. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories.

12 MCAR S 2.05312 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost classification to cost categories is the process of charging costs to the appropriate cost category and compiling a total cost for each cost category to be recorded on the cost report. Cost category

allocation principles shall be as provided in 1.-3.

1. The provider shall classify costs using direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the facility. The classification of costs shall be made according to the cost categories defined in 12 MCAR S 2.05313 [Temporary].

2. Costs that cannot be specifically classified to one or more cost category shall be classified to the ~~general~~ administrative cost category in accordance with 12 MCAR S 2.05313 [Temporary] C.

3. Compensation of individuals with duties in more than one cost category or facility shall be allocated to the cost categories in 12 MCAR S 2.05313 [Temporary] on the basis of time distribution records that show time spent in various cost categories and facilities or both.

B. Allocation of personal expenses for owners, ~~providers, or employees~~ whose primary residence is in the facility. Allocation procedures given in 1.-4. must be applied to personal expenses of owners, ~~providers, or employees~~ whose primary residence is in the facility to the extent that the costs were included in the facility's costs.

1. Dietary services cost allocation must be based on the number of meals served.

2. Housekeeping, and plant operations, and maintenance cost allocation must be based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

3. Depreciation, interest, real estate and personal property taxes, and property and liability insurance costs must be allocated based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

4. Laundry and linen costs, and general and administrative costs for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

C. Cost allocations for other services. Costs associated with services other than intermediate care facilities for the mentally retarded services such as apartments, semi-independent living services, and any other revenue generating operations, except respite care, must be allocated using the principles in A. and the procedures in B.

12 MCAR S 2.05313 [Temporary] Reporting of costs by cost category.

The costs for routine services must be reported in cost categories A.-D.

A. Program operating costs. The direct costs of program functions are included in the program operating cost category. These costs include:

1. salaries for program staff, including the program director ~~and~~ unit coordinators, and nursing staff;

2. supplies;

3. consultant services;

4. staff training to meet the requirements of federal and state 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;

5. therapeutic overnight trips, camping, or vacations for residents within the limitations in 12 MCAR S 2.05309 [Temporary] G.; and

6. membership or other fees for resident participation in social, sports, health, or similar organizations.

B. Maintenance operating costs. The costs listed in 1.-4. are included in the maintenance operating cost category.

1. direct costs of dietary services including:

a. salaries of dietary staff;

b. food;

c. supplies;

d. consultant services; and

e. staff training to meet the requirements of federal and state laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain skills needed in

For reporting purposes, costs in 2.-4. may be grouped together.

performing the employee's present duties.

2. direct costs of laundry and linen services including:

a. salaries of laundry staff;

b. supplies;

c. linen and bedding; and

d. purchased services.

3. direct costs of housekeeping services including:

a. salaries of housekeeping staff; and

b. supplies.

4. plant operations and maintenance services including:

a. salaries of maintenance staff;

b. supplies;

c. utilities and fuel;

d. nondepreciable repairs and minor equipment not subject to capitalization under 12 MCAR S 2.05304 [Temporary]; and

e. purchased services.

C. Administrative operating costs. The costs listed in 1. and 2. are included in the administrative operating cost category.

1. The costs in a.-w. are incurred by the provider for administering the overall activities of the facility including:

a. business office functions;

b. travel expenses except as provided in 12 MCAR S 2.05309 [Temporary] G.;

c. motor vehicle operating expenses;

d. telephone and telegraph charges;

e. office supplies;

f. licensing and permit fees;

g. insurance;

h. personnel costs including help wanted ads and the salaries or fees of management personnel, accounting and clerical personnel, data processing personnel, and receptionists;

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

j. business meetings and seminars;

k. postage;

1. training for other than direct resident care related personnel to meet the requirements of federal and state laws or regulations for keeping an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;

m. membership fees for associations and professional organizations which are directly related to the operation of the facility;

n. subscriptions to periodicals which are directly related to the operation of the facility;

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

p. security services or security personnel;

q. employee benefits;

r. payroll related costs;

s. management fee of a nonrelated organization;

t. purchased services;

~~u. amortization of pre-opening costs;~~ deleted.

v. working capital interest expense; and

w. indirect costs allocated as provided in 12 MCAR S 2.05312 [Temporary] A.2.

2. The operating costs incurred by the facility for management fees which are charged to the facility by related organizations, and the related organizations' operating costs which are allocated to the facility, shall be included in the administrative operating cost category if the provider submits a breakdown of the cost according to 12 MCAR S 2.05314 [Temporary] A.15. Property-related costs of the related organization which are allocated to the facility shall be reported in the property-related cost category. All related organizations' costs charged to the facility shall be subject to the provisions of 12 MCAR SS 2.05301-2.05315 [Temporary].

D. Property-related costs. The costs listed in 1.-7. are included in the property-related cost category:

1. allowance for depreciation of capital assets except

land;

2. capital loan interest expenses;

3. special assessments paid and accrued real estate taxes;

4. rental and lease payments;

5. amortization of pre-opening expenses; and

6. related organization's property-related costs.

12 MCAR S 2.05314 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. The provider must submit an annual cost report covering the facility's reporting year on forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. If a certified audit has been prepared it must be submitted with the cost report. Other reports, supporting documentation, and worksheets which must be submitted with the cost report include:

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

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

3. the facility's balance sheet and income statement prepared in accordance with generally accepted accounting principles unless audited financial statements are submitted according to A.;

4. a list of the facility's capital and working capital loans outstanding during the reporting year, 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 loans; or a signed statement that no changes have been made in the documents on file with the department;

5. a schedule of the facility's funded depreciation ~~escrow~~ account;

6. a statement of ownership of the facility including the name, address, and proportion of ownership of sole proprietorships and of all owners of privately held or closely held corporations and partnerships which have an interest of three percent or more in the facility, and owners who ~~of publicly held corporations which~~ have an interest of 15

publicly held
percent or more in a corporation which has an interest of three percent or more in the facility or a signed statement that no changes have been made in the documents which are on file with the department.

7. a list of all entities in the provider group which included costs in the cost report in excess of $1,000 annually or a signed statement that no changes have been made in the documents on file with the department;

8. copies of purchase agreements and other documents related to purchase of the physical plant and land, or a signed statement that no changes have been made in the documents which are on file with the department;

9. copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the ~~department~~ commissioner. Lease documents shall include information on the ~~original~~ historical capital cost of the physical plant and land and ~~the interest rate~~ the information listed in 4. as paid by the lessor;

10. complete lapsing depreciation schedules calculated in accordance with 12 MCAR S 2.05304 [Temporary];

11. charts showing staff assignments classified according to the cost categories in 12 MCAR S 2.05313 [Temporary];

12. documentation of costs included in the payment for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, section 7, subdivision 8. These costs must be reported on an individual resident basis;

13. a schedule of all repairs ~~that cost more than $150 and~~ when the total cost of the repairs exceeds the greater of $1500, or 30¢ per resident day. that were expensed during the reporting year. This schedule shall indicate the cost and nature of the repair;

14. an explanation in the cost report, of all adjustments made by the provider to the cost report and the applicable rule citations; and

15. a breakdown of all costs included in the related organization's management fees charged to the provider and the related organization's costs directly allocable to the facility. The breakdown shall include all costs of items as listed in 12 MCAR S 2.05313 [Temporary] C, except that related organizations that have a federally approved cost allocation plan which has been documented by the provider may breakdown the management fee or central office costs according to the approved plan. The supporting schedules shall include the related organization's income statement, the cost allocated to each facility, related organization, and non-related organization, and explanation of

40 A Financial statements must include a balance sheet, income statement, statement of retained earnings, and any applicable notes to the financial statements.

40 X C. Short period cost reports.

1. Providers with newly constructed or newly established facilities may file short period cost reports during the first two years of operation. No more than two short period cost reports may be filed.
2. Providers with facilities that have a change of ownership of more than 50 percent may file short period cost reports during the first two years following the change in ownership. No more than two short period cost reports may be filed.
3. Providers terminating participation in the Medical Assistance program must file a short period cost report if the termination does not occur at the end of the facility's rate year.
4. Except for cost reports filed due to termination of participation in the Medical Assistance program, each cost report must cover a period of at least six months.

the method of allocation used.

B. Supplemental reports. In order to substantiate the payment rate, the commissioner may require the provider to submit 1.-5.:

1. certified public accountant's or licensed public accountant's audit workpapers which support the audited financial statements and cost reports, if an audit has been prepared;

2. separate audited ~~or unaudited~~ financial statements, if they have been prepared for ~~from~~ each entity in the provider group. If a certified audited financial statement is not available for any entity in the provider group, then unaudited financial statements may be submitted for that entity. (insert 40A)

3. copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of ~~depreciable assets~~ equipment, goods, and services;

4. copies of leases and other documents related to the lease of the equipment, furnishings, and goods. Lease documents shall include information on the historical capital cost of the equipment, furnishings, and goods, and the ~~interest rate~~ information listed in A.4. as paid by the lessor; and

5. other relevant information required to support a payment rate request.

~~C. Short period costs reports. Only newly constructed or newly established facilities, or facilities that have an ownership change of more than 50 percent may file two short period costs reports. Not more than two short period cost reports may be filed. Each short period report must cover a period of at least six months.~~ see insert 40X

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

E. Records. The provider shall maintain statistical and accounting records in sufficient detail to support information contained in the facility's required reports and financial statements for at least four years following submission of a cost report.

F. Priority. 12 MCAR SS 2.05301-2.05315 [Temporary] will take priority over generally accepted accounting principles if a conflict arises.

G. Report certification. Required reports must be accompanied by a signed statement attesting to the accuracy of the information submitted on the required reports. The statement must be signed either by the provider or, for a partnership, one of the partners, or, for a corporation, the officer authorized to bind the firm. If reports have been prepared by a person other than the above individual, a separate statement signed by the preparer shall also be included.

H. Reporting deadlines and extensions.

1. Deadlines. Required reports must be submitted to the commissioner within three months after the close of the facility's normal reporting year. Supplemental reports and information must be submitted within 30 days of the request by the commissioner. Facilities that terminate participation in the medical assistance program must submit required reports to the commissioner within three months after termination.

2. Report deadline extension. The commissioner shall grant one 30-day extension to the reporting deadline if an extension is requested in writing by the provider prior to the deadline in 1. The commissioner shall grant an additional extension to the reporting deadlines if the provider makes a written showing of good cause. The number of extensions granted in the past reporting years shall be taken into consideration by the commissioner when granting additional extensions.

3. Rejection of reports. Within 20 days after receipt of the cost report, the commissioner shall conduct an initial review of the cost report. If the commissioner finds that the cost report is inaccurate or does not contain the items required

b. The commissioner shall cause the field audit to be completed within 90 days after commencement for a provider with a single facility or within 180 days for a provider group. The commissioner ~~may~~ suspend by written notice to the provider ~~suspend~~ the conduct of a field audit if the provider's books and records are unavailable or unauditable. The conduct of the field audit shall remain suspended until the provider certifies in writing that all deficiencies that caused the suspension have been remedied. The deadline for completion of the field audit shall be extended by the length of the suspension.

c. If the ~~commissioner shall cause the~~ commissioner fails to commence or complete the field audit to be commenced or completed within ~~90 days in~~ the provisions of a. or b. the provider may seek an order compelling the commissioner to commence or complete the field audit. No other remedy shall be available under this rule.

in A., the commissioner may reject the cost report including documents and worksheets or may require additional information to support the payment rate request. The corrected report or the additional information requested must be submitted to the commissioner within 30 days of the request or the report shall be rejected. The commissioner shall extend this time if the provider makes a written showing of 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~~.

I. Audits and adjustments.

1. Audits. The commissioner shall subject all reports and supporting documentation to audits to determine compliance with 12 MCAR SS 2.05301-2.05315 [Temporary]. a. The provider may request in writing a field audit. If a field audit is requested, the commissioner shall commence the field audit within 180 days of receipt of the written request.

See insert 42 A.

2. Adjustments. An adjustment to a payment rate determined according to 12 MCAR SS 2.05301-2.05315 [Temporary] shall be made according to a.-h. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions.

a. Field audit adjustments shall only be made if the adjustment would result in at least a five cent per resident day or $2,000 cost change, whichever is less.

b. Retroactive adjustments to the facility's temporary payment rate or payment rate shall be made as a result of desk and field audit findings, except that field audit findings shall be limited by the restrictions in a. Adjustments to the payment rate shall be limited to the four complete reporting years preceding the date on which an audit commences.

c. Providers may file no more than two amendments to a previously filed cost report in which errors or omissions are uncovered by the provider, if each amendment would result in the lesser of a five cent per resident day or $2,000 adjustment for each reporting year. The commissioner shall make retroactive

adjustments to the payment rate of a facility if the amendment is filed within one year of the filing of the original cost report to the amended.

d. Providers may file an amended cost report if providers have a program change approved by the commissioner according to 12 MCAR S 2.185 which results in an increase or decrease in costs within an individual facility of at least $2,000 for the remainder of the facility's reporting year. Amended cost reports must be filed not later than 30 days after the program change which leads to the increase or decrease. No more than one amended cost report may be submitted for program changes each quarter of the facility's reporting year.

e. Amended cost reports shall consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes shall be calculated according to 12 MCAR SS 2.05301-2.05315 [Temporary].

f. If the adjustment results in a payment from the provider, payment shall be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider shall be made within 120 days after the date of the written notice.

g. Interest charges shall be assessed on over and under payment balances after the deadlines in f. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect 121 days after formal notification.

h. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in 12 MCAR S 2.05305 [Temporary] C.

J. Penalties. The commissioner shall impose any one or a combination of the following penalties for noncompliance with the provisions of 12 MCAR SS 2.05301-2.05315 [Temporary].

1. If the provider fails to submit the information required in A. by the deadlines given in H., the facility's temporary payment rate or payment rate may be reduced 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 shall not be retroactive.

2. If the information or documentation described in B. is requested on a field audit and is not provided within 30 days of the request, the facility's temporary payment rate or payment rate may be reduced to 80 percent of the most recently established rate in effect. The penalty shall be removed beginning the first day of the month following the month in which the required information or documentation is received. Reinstatement of the full payment rate shall not be retroactive.

3. If, after the initial review in H.3., either a desk or field audit shows lack of adequate documentation for specific costs, the commissioner may require the facility to provide the additional documentation within 15 days of the request. If the documentation is not provided, the costs which are not adequately documented shall be disallowed.

4. If a field audit reveals inadequacies in the facility's bookkeeping and accounting practices, the commissioner may require that the provider engage competent professional assistance to properly prepare the required reports. Failure to remedy the inadequacies in the facility's bookkeeping and accounting practices within 90 days of the ~~day~~ date of written notice may result in the application of the penalty in 1.

5. If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

a. immediately adjust the facility's payment rate to recover the entire overpayment;

b. terminate the commissioner's agreement with the provider; or

c. prosecute under applicable state or federal law.

12 MCAR S 2.05315 [Temporary] Appeal procedures.

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

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

2. the appeal arises from application of the provisions of 12 MCAR SS 2.05301-2.05315 [Temporary]; and

3. the dispute over the decision has not been ~~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 provider or county welfare or human services board 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 with the commissioner, in writing, within 60 days after receiving the payment rate 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 provider 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 provider 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 under 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 any informal dispute resolution method including settlement, ~~or through~~ mediation, or modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

D. Payment rate during appeal period. Notwithstanding any appeal filed under 12 MCAR SS 2.05301-2.05315 [Temporary], the

payment rate established by the commissioner shall be the payment rate paid to the provider while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal any overpayments or underpayments shall be paid under 12 MCAR S 2.05314 [Temporary] I. and J.

F. Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider the extent that:

1. the appeal or the individual item was resolved on behalf of the provider; and

2. this amount is not in excess of the maximum payment rate as determined under 12 MCAR S 2.05305 [Temporary].

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 18 1984
Joan Anderson
Secretary of State

2:09 PM

APPROVED AS TO FORM AND LEGALITY
January 1 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PAYMENT RATES FOR ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM (12 MCAR §§ 2.05301 - 2.05315 TEMPORARY)

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on November 14, 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 Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program (12 MCAR §§ 2.05301 - 2.05315, Temporary) are adopted this 20th of December, 1983 pursuant to authority vested in me by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 2 and 3; and Minnesota Statutes, section 256B.04.

STATE OF MINNESOTA



COMMISSIONER OF PUBLIC WELFARE

The family size is the number of persons in the group composed of the client, a spouse, and legal dependents of the client as defined for federal income tax purposes.

Exhibit 2
Sliding Fee Schedule: Liquid Assets

Liquid Assets	Family Size 1	2
Under 3,000	MA	MA
3,000 - 5,999	0	MA
6,000 - 8,999	42	0
9,000 - 11,999	83	42
12,000 - 14,999	125	83
15,000 - 17,999	166	125
18,000 - 20,999	NE	166
21,000 and over	NE	NE

RECEIVED
DEC 28 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MA—Meets resource criteria for medical assistance.

NE—Not eligible for alternative care grants under 12 MCAR § 2.065 H.1.

The county shall report to the department the income received from fees. The department shall use this income to reduce the state and local liability for alternative care expenditures for the persons not eligible for medical assistance.

Department of Public Welfare
Bureau of Support Services
Long-term Care Division

Notice of Intent to Solicit Outside Opinions on Proposed Temporary Rules to Replace DPW Rule 52 (12 MCAR § 2.052)

Notice is hereby given that the Minnesota Department of Public Welfare plans to promulgate temporary rules effective October 1, 1983 pursuant to Minnesota Statutes 1983, Chapter 256B. This temporary rule will govern reimbursement to intermediate care facilities for the mentally retarded (ICF/MR) by the Medical Assistance program and will replace DPW Rule 52 (12 MCAR § 2.052).

All interested or affected persons or groups are requested to participate by providing information or comments on the issues surrounding the current setting method.

Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Maria Gomez
Long-Term Care Rates Division
Department of Public Welfare
4th Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/297-3583.

All statements of information and comment must be received by July 18, 1983.

Minnesota Sentencing Guidelines Commission

Notice of Public Hearing to Consider Modifications to Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, July 21, 1983, at 5:00 p.m., in Room 22 of the State Office Building, St. Paul, Minnesota. The public hearing is to consider proposed modifications to the sentencing guidelines primarily as they relate to:

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Proposed Temporary Rules Governing
the Determination of Welfare Payment
Rates for all Residential Facilities
for the Mentally Retarded Partici-
pating in the Medical Assistance Program
(12 MCAR §§ 2.05301 - 2.05315 Temporary)

ORDER FOR PUBLICATION
OF A TEMPORARY RULE

IT IS ORDERED this 28th day of October, 1983, that the proposed temporary rule in the above-entitled matter be publised in the State Register.

LEONARD W. LEVINE
Commissioner of Public Welfare

ETH-17

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PAYMENT RATES FOR ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM
(12 MCAR §§2.05301 - 2.05315 Temporary)

AFFIDAVIT OF MAILING

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

That on the 9th day of November, 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 associations 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 10 day of November, 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 THE PROPOSED TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PAYMENT RATES FOR ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM (12 MCAR §§2.05301 - 2.05315 Temporary)

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 9th day of November, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Temporary Rules to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

Total of 370:
Persons who sent comments on Rule 53
Persons who requested copies of Rule 53 and were not on the DPW agency list

Wendy Johnson

Subscribed and sworn to before me

this 10 day of November, 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 THE PROPOSED TEMPORARY RULES GOVERNING THE DETERMINATION OF WELFARE PAYMENT RATES FOR ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM (12 MCAR §§2.05301 - 2.05315 Temporary)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §14.14, subd. 1, 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 3:00, P.M., this 9th day of November, 1983.



b. Periodic cleaning or replacing of filters in forced air systems. Savings will be estimated at 5% to 10%.

c. Fan setting on forced air furnaces reduced to ~~80°~~ 90° F if possible. Savings will be estimated at up to 5%.

d. Increase fan speed. Savings will be estimated at up to 5%.

e. Reduce aquastat setting to 140° F between December 1 and March 1 and 120° F between March 2 and November 30 or other reduction as appropriate to individual boiler. Savings will be estimated at 5% to 10%.

2.-10. [Unchanged.]

C. [Unchanged.]

Department of Public Welfare
Support Services Bureau

Proposed Temporary Rules Governing the Determination of Welfare Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program (12 MCAR §§ 2.05301-2.05315 Temporary)

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 312, article 9, section 7, subdivisions 2 and 3.

Persons interested in these rules have until December 5, 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:

Jane Delage
Support Services Bureau
Department of Public Welfare
Fourth Floor Centennial Building
St. Paul, MN 55155
612/297-4302

Upon adoption of these 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 Statutes' certification of the rules' form.

According to the Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 10, these temporary rules shall be effective for up to 720 days.

The temporary rules shall not be in effect on a date 721 days after their original effective date without following the procedures in Minnesota Statutes, sections 14.01 to 14.38.

12 MCAR §§ 2.05301-2.05315 (Temporary) establish procedures for determining welfare payment rates for the care of residents of intermediate care facilities for mentally retarded persons. The rules contain provisions on what facility costs are allowable and what costs are non-allowable; how costs must be reported; how welfare payment rates are set; how adjustments to payment rates will be made; how audits will be made of cost reports; and how facilities may appeal the welfare payment rates.

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 312.

Copies of this notice and the proposed temporary rule may be obtained by contacting Wendy Johnson (612/296-2854).

Leonard W. Levine, Commissioner
Department of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.05301 [Temporary] Applicability.

Rules 12 MCAR §§ 2.05301-2.05315 [Temporary] establish procedures for determining the welfare payment rates for all residential facilities for the mentally retarded participating in the medical assistance program.

12 MCAR § 2.05302 [Temporary] Definitions.

A. Scope. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the following terms have the meanings given them.

B. Addition. "Addition" means an extension, enlargement, or expansion of the physical plant provided that the extension, enlargement, or expansion is for the purpose of increasing the number of licensed beds.

C. Applicable credit. "Applicable credit" means a reduction as a result of government grants, purchase discounts, rebates, refunds, income from incidental services, adjustments for overcharges, insurance claims settlements, or any other adjustment reducing the facility's operating cost.

D. Betterment. "Betterment" means the renovation, repair, or replacement of part of an existing capital asset to improve its function or extend its useful life.

E. Capital asset. "Capital asset" means land and any asset that is capitalized under 12 MCAR § 2.05311 [Temporary] D. and depreciated under 12 MCAR § 2.05304 [Temporary] A.

F. Capital loan. "Capital loan" means a loan for the purpose of purchasing a capital asset, but only to the extent that the proceeds of the loan were actually applied to purchase the capital asset.

G. Capital loan interest expense. "Capital loan interest expense" means interest payable under the terms of a capital loan, amortization of bond premium or discount, and amortization of any related financing cost.

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

I. Cost report. "Cost report" means the document specified by the commissioner on which the provider furnishes the statistical and financial information required by the commissioner for rate determination for the facility.

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

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

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

M. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the facility's employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

N. Equity. "Equity" means the historical capital cost paid by the current owner for the facility's capital assets within the limitations in 12 MCAR § 2.05309 [Temporary] B. and C., decreased by the outstanding capital loans and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed of.

O. Facility. "Facility" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified as an intermediate care facility for the mentally retarded.

P. Field audit. "Field audit" means the on-site examination, verification, and review of the cost report, financial records, statistical records, and related supporting documentation of the provider or provider group relating to the operation of the facility.

Q. Final rate. "Final rate" means the rate established after any adjustment by the commissioner, including adjustments resulting from cost report reviews, field audits, and resolutions of appeals.

R. Funded depreciation. "Funded depreciation" means the sum deposited in a separate escrow account which shall be applied only to reduce or liquidate capital asset loans or replace capital assets as required by 12 MCAR § 2.05304 [Temporary] C.

S. Historical capital costs. "Historical capital costs" means:

1. for a capital asset first placed in use on or after October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. The historical capital cost shall not be

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.

adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in 12 MCAR § 2.05304 [Temporary] A.1.c.

2. for a capital asset first placed in use by a facility prior to October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before September 30, 1983, except as provided in 12 MCAR § 2.05304 [Temporary] A.1.c.

T. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the application of the limitations specified in 12 MCAR §§ 2.05301-2.05315 [Temporary].

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

V. Land. "Land" means the land owned or leased by the facility and which is used for resident care.

W. Land improvement. "Land improvement" means any improvement to the land on which the facility is located provided that the improvement is the legal responsibility of the provider. Land improvement includes paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and sidewalks.

X. Leasehold improvement. "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility, which reverts to the owner of the property upon termination of the lease.

Y. Management personnel. "Management personnel" means owners, corporate officers, board members, administrators, or any other person acting on behalf of the provider whether employed full time, part time, or as a consultant by the provider to direct the affairs of the facility including managing, planning, directing, or coordinating the operations of the facility, or supervising the program personnel.

Z. Necessary service. "Necessary service" means a function pertinent to the facility operation that if not performed by the individual would have required the provider to employ or assign another person to perform it.

AA. Operating cost category. "Operating cost category" means any one of the groupings of operating costs set forth in 2 MCAR § 2.05313 [Temporary] A.-C. The operating cost categories are program maintenance and administrative costs.

BB. Payment rate. "Payment rate" means the amount established by the commissioner to reimburse the provider for care provided to the residents. The payment rate is calculated by adding together the operating cost payment rate, the property-related cost payment rate, and incentives or allowances determined in accordance with the provisions in 12 MCAR §§ 2.05301-2.05315 [Temporary].

CC. Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance, and state and federal unemployment compensation taxes or costs.

DD. Physical plant. "Physical plant" means the building in which a facility is located and all equipment affixed to the building and not easily subject to transfer. Physical plant does not include the land, land improvements, or any supplies or equipment not affixed to the building.

EE. Private paying resident. "Private paying resident" means a facility resident who is not a recipient of the medical assistance program, cost of care program, or the Title XX program for the date of service.

FF. Program. "Program" means those functions of the staff of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under 12 MCAR § 2.034 and Code of Federal Regulations, title 42, section 190, subpart G (1978).

GG. Program director. "Program director" means the person who directs individual program planning and program activities related to carrying out the individual program plans.

HH. Property-related cost category. "Property-related cost category" means the grouping of property-related costs set forth in 12 MCAR § 2.05313 [Temporary].

II. Provider. "Provider" means the corporation, governmental unit, partnership, individual, or individuals licensed to operate the facility, that controls the facility's operation, incurs the costs reported, and claims reimbursement under 12 MCAR §§ 2.05301-2.05315 [Temporary] for the care provided in the facility.

JJ. Provider group. "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurs the costs shown on the cost report which are claimed for reimbursement under 12 MCAR §§ 2.05301-2.05315 [Temporary].

KK. Rate year. "Rate year" means the facility's fiscal year for which a payment rate is effective.

LL. Related organization. "Related organization" means a person that furnishes goods or services to a facility and that is an

affiliate of a facility, a close relative of an affiliate of a facility, or an affiliate of a close relative of an affiliate of a facility. For the purposes of 12 MCAR § 2.05301 [Temporary] LL. the following terms have the meanings given them.

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, an unincorporated organization, or a government or political subdivision.

3. A "close relative of an affiliate of a facility" is an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a facility 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 securities, by contract or otherwise.

MM. Reporting year. "Reporting year" means the facility's fiscal year for which the provider submits a cost report and which is the basis for the determination of the payment rate for the following rate year.

NN. Resident day. "Resident day" means a day for which resident services are rendered and billed or a day on which a bed is held and billed.

OO. Respite care. "Respite care" means activities which offer the primary caregiver needed relief from the daily demands of caring for a person with a physical or mental disability. Respite care includes planned or emergency relief for the caregiver through the utilization of a variety of in-home or residential resources.

PP. Title XX program. "Title XX program" means United States Code, title 42, sections 301 et seq. as amended through December 31, 1982.

QQ. Useful life. "Useful life" means the length of time an asset is expected to provide economic service according to 12 MCAR § 2.05304 [Temporary] A.7. and 8.

RR. Vendor. "Vendor" means an individual or organization that sells the provider goods or services for facility operation.

SS. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program, cost of care program, or Title XX program.

TT. Working capital loan. "Working capital loan" means a loan which is not used to acquire capital assets.

UU. Working capital interest expense. "Working capital interest expense" means the interest expense for working capital loans. The form of indebtedness includes notes, advances, and various types of receivable financing.

12 MCAR § 2.0503 [Temporary] Rate determination for operating costs.

A. Establishment of historical operating cost per diem. For rate years beginning on or after December 31, 1983, the commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's historical operating costs. The review and adjustment must comply with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

1. For facilities with ten beds or fewer the commissioner shall divide the historical operating costs by resident days in the reporting year in order to compute the facility's historical operating cost per diem.

2. For a facility with more than ten beds the commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days.

B. Establishment of the operating cost payment rate. For rate years beginning during the 1984 calendar year, each facility shall receive as an operating cost payment rate the historical operating cost per diem increased by six percent. For rate years beginning during calendar year 1985, each facility shall receive as an operating cost payment rate, the historical operating cost per diem increased by one percent for each full percentage increase in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor Statistics for the previous two Octobers, new series index (1967-100).

C. Operating cost adjustment allowance. In addition to the operating cost payment rate, each facility shall receive as an operating cost adjustment allowance 25 cents per resident day.

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D. Efficiency incentive. For rate years beginning on or after December 31, 1984, the facility shall receive an efficiency incentive if the facility's historical operating cost per diem is less than the facility's operating cost payment rate established for that rate year. The provider may keep the difference as an efficiency incentive unless the efficiency is due to a penalty or field audit adjustment as provided in 12 MCAR § 2.05314 [Temporary]). One-half of the efficiency incentive shall be added to the facility's operating cost payment rate. However, if the actual increase in the facility's 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.

12 MCAR § 2.05304 [Temporary] Determination of property-related cost payment rate.

A. Depreciation. Allowable depreciation expense shall be determined as in 1.-11.

1. Basis for calculating depreciation. The basis for calculating depreciation shall be the historical capital cost of the capital assets determined under a.-c.

a. For a capital asset first placed in use on or after October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. The historical capital cost shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in c.

b. For a capital asset first placed in use prior to October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before September 30, 1983, except as provided in c.

c. The historical capital cost shall be adjusted for a change in ownership which occurs as a result of the death of the principal owner if a principal owner with 50 percent or more ownership interest in the facility, or a forced buyout pursuant to regulations in effect on December 30, 1983.

2. Depreciation method. The straight line method of depreciation shall be used.

3. Accumulated depreciation. The accumulated depreciation of facilities entering the medical assistance program shall be recalculated using the useful life schedule in 7. and 8. starting from the completion of construction or the time of purchase by the current owner.

4. Donated assets. Except for donations between a provider and a related organization, the value of the asset used to determine the depreciable basis shall be the lesser of the price that an able buyer would pay a willing seller in an arm's length transaction or the appraised value of the asset. A donated asset is one acquired for the facility without making any payment in the form of cash, property, or services. For donations between a provider and a related organization, the net book value to the donor shall be the basis for the donee.

5. Additions or betterments. The historical capital cost in 1. subject to the limitations in 12 MCAR § 2.05309 [Temporary] B. and C. shall be increased for the actual cost of additions or betterments to assets capitalized according to 12 MCAR § 2.05311 [Temporary] D.1. and shall be depreciated according to A. The increased historical depreciation expense shall be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

6. Gains and losses on disposal of equipment. Gains and losses on the disposal of equipment shall be included in computing allowable costs. A gain shall be an offset against the property-related cost category to the extent that the gain resulted from depreciation reimbursed under these regulations. Gains or losses on trade-ins shall be reflected in the asset basis of the acquired asset. Claims for losses shall be limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

7. Depreciation rates for new capital assets. Depreciation shall be calculated on the basis of A., and the following useful life schedule:

a. physical plant and other buildings, 35 years;

b. physical plant betterments (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years);

c. land improvements, 20 years;

d. depreciable equipment except vehicles, five years;

e. vehicles, four years.

8. Other useful lives.

a. Used capital assets. The useful life of used capital assets shall be assigned by the facility, considering the individual circumstances; however, the useful life assigned shall not be shorter than one-half of the useful life shown in the useful life schedule in 7. for the relevant capital asset.

b. Leasehold improvement. The useful life of a leasehold improvement shall be the useful life shown in 7. or 8.a. for the relevant capital asset.

9. Publicly-financed facility. Depreciation shall not be allowed on a facility or portion of a facility financed by federal, state, or local appropriations or grants unless the appropriation or grant is intended to be repaid through the operating revenues of the facility.

10. No depreciation shall be recaptured following a sale of an asset or termination from the medical assistance program except for transfers of ownership allowed under A.1.c. Recapture for transfers of ownership allowed under A.1.c. shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] in effect on December 30, 1983.

11. The total depreciation allowance paid to the facility for capital assets, except land, shall not exceed the historical capital cost of the asset.

B. Interest. Allowable interest expense shall be determined as given in 1.-7.

1. Interest income. Interest income shall be deducted first from the unallowable capital loan interest expense. The remainder of interest income, if any, shall be deducted from the allowable capital loan interest expense. Interest income on gifts and donations from nongovernmental sources or funded depreciation shall not be deducted from capital loan interest expense or working capital interest expense.

2. Interest charges between nonprofit funds. When a nonprofit provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund must not exceed the interest rate the restricted fund is currently earning. Interest expense on loans between operating and building funds shall not be an allowable cost.

3. Construction interest. Interest expense related to construction costs must be capitalized as a part of the cost of the facility. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients.

4. Interest rate. The allowable interest rate for capital loans shall be calculated according to a. and b.

a. The interest rate for capital loans entered into on or after December 31, 1983, shall be the lesser of the actual interest rate on the capital loan or a rate one percentage point above the published posted yield for standard conventional fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect on January 1 of the year in which the loan is incurred for capital loans contracted on or after January 1 and before July 1 of that year, and on July 1 of the year in which the debt is incurred for capital loans contracted on or after July 1 and before January 1 of the following year.

b. The interest rate for capital loans entered into prior to December 31, 1983, shall be as recognized under statutes and rules in effect on December 30, 1983.

5. Capital loan retirement. The portion of the debt reduction allowance in D. which must be applied to the reduction of capital loans shall be applied first to reduce the principal on any capital loans on which the provider is only required to pay interest expense. The remaining portion of the debt reduction allowance which must be applied to reduction of capital loans shall be applied to the capital loan which has the highest interest expense due during the reporting year.

6. Capital loan interest expense. The interest expense on capital loans shall be allowed according to a.-e.

a. All interest expense for capital loans entered into prior to December 31, 1983, shall be an allowable cost.

b. Facilities that have received determination of need approval under 12 MCAR § 2.0185 to implement Minnesota Statutes, section 252.28 and have an approved or effective interim rate under 12 MCAR § 2.052 on December 30, 1983, shall be allowed the interest expense on the capital loans allowed in the settle-up payment rate. If the capital loans allowed in the settle-up payment rate exceed the limitation in c. no additional capital loan interest expense shall be allowed.

c. Interest expense for capital loans entered into on or after December 31, 1983, shall be allowed for the portion of the capital loan which together with all other outstanding capital loans does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

d. Interest expense for capital loans on capital assets acquired or leased on or after December 31, 1983, shall be allowable on the portion of the capital loan which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

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e. Except for facilities covered in b., interest expense for capital loans on facilities constructed or established on or after December 31, 1983, shall be allowable on the portion of the capital loan which does not exceed 80 percent of the historical capital cost of the asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

7. Changes in interest expense.

a. Subject to the limits in 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans, or changes in ownership shall be allowed in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

b. Increases in interest expense due to the refinancing of a capital loan shall not be allowable.

c. Fifty percent of the annual savings resulting from decreased interest expense due to refinancing or renegotiation of existing capital loans shall be a refinancing capital allowance added to the provider's property-related cost payment rate. The annual savings shall be calculated by comparing the refinanced or renegotiated capital loan with the original capital loan to determine the total savings in interest expense. The refinancing allowance shall consist of one-half of the total savings equally divided over the term of the refinances or renegotiated loan. The annual savings shall be divided by resident days to determine the refinancing allowance per diem payment.

d. In order to qualify for the allowance in c., the outstanding principal amount and the remaining period over which the capital loan is to be repaid must not be increased as a result of refinancing.

C. Funded depreciation. Providers shall fund depreciation according to the provisions in 1.-4.

1. The annual deposit to the funded depreciation account shall be determined according to the following formula: (allowable depreciation − required annual principal payment specified in the capital loans) × (1 − the percentage of equity determined in D.1.).

2. Funded depreciation must be invested in liquid marketable investments such as savings accounts, certificates of deposit, and United States Treasury bills

3. Funded depreciation must be used for capital loan reduction or replacement of capital assets.

4. No more than 50 percent of the annual amount of allowable depreciation expense may be withdrawn for replacement of capital assets.

5. Income earned on funds withdrawn for purposes other than 3. or in excess of the percent allowed in 4. shall be offset against the facility's property-related costs. The withdrawals shall be assumed to be on a first in, first out basis.

6. Facilities which do not deposit the required amount of depreciation in a funded depreciation account shall have their allowable capital loan interest expense reduced. The reduction shall be calculated by assuming the entire depreciation amount from the previous year was used to reduce capital loans.

D. Capital loan reduction allowance. Except for facilities qualifying for the exception in 12 MCAR § 2.05309 [Temporary] D.4., each facility shall receive a 50 cent allowance per resident day for capital loan reduction.

1. The amount of the capital loan reduction allowance which must be applied to reduction of the principal on capital loans shall be determined according to the following table:

Percentage of Equity	Percentage applied to Payment of Principal
From 0% to 10%	100%
From 10% to 20%	50%
20% or more	0%

The facility's total percentage of equity shall be determined by dividing its equity by its historical capital cost of capital assets.

2. For facilities which receive allowable property costs in place of lease or rental payments, the capital loan reduction allowance shall be applied to the lessor's assumed capital loan.

E. Property-related cost payment rate and incentives or allowances.

1. The commissioner shall compute the allowable property-related costs by reviewing and adjusting the facility's property-related costs incurred during the reporting year immediately preceding the rate year for which the payment rate is effective.

2. The commissioner shall compute the property-related cost payment rate for existing facilities by dividing the desk audited, property-related costs by 96 percent of licensed capacity days, except that facilities with ten or fewer beds shall use the greater of resident days or 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related payment rate shall be calculated according to 12 MCAR § 2.05306 [Temporary] A.

3. Any incentives or allowances as determined in B.7., D., and F. shall be added to the property-related cost payment rate. The facility shall not continue to receive these incentives if the department changes the reimbursement formula for property-related costs.

F. Incentives for provider cost savings.

1. Vehicle purchase savings. The commissioner shall establish an incentive payment for provider cost savings initiatives undertaken in a.-e.

a. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of utility vehicles and vans to be used by the facility.

b. The guidelines shall reflect the most recent price paid by the Department of Administration for similar vehicles used by the state.

c. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of specialized vehicle equipment such as ramps, lifts, or passenger restraint devices.

d. For rate years, beginning on or after January 1, 1985, if the cost of the vehicle purchase including specialized equipment is below that of the target purchase guideline for comparable equipment increased by four percent, then the provider shall receive one-half of the difference as a per diem allowance.

e. In establishing the payment rate for the savings identified under d., the savings shall first be divided over the useful life of the asset. The annual per diem rate shall be computed by dividing the annual savings figure by resident day.

2. Energy savings. The commissioner shall approve requests for exceptions to the provisions of 12 MCAR §§ 2.05304 [Temporary] B. and 2.05311 [Temporary] D. for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in the state of Minnesota. Energy conservation measures identified in the energy audit that:

a. have a payback period equal to or less than 36 months and a total cost not exceeding $1 per resident day shall be exempt from the provisions of 12 MCAR §§ 2.05304 [Temporary] B. and 2.05311 [Temporary] D.; or

b. have a payback period greater than 36 months or having a total cost in excess of $1 per resident day shall be exempt from the provisions of 12 MCAR § 2.05304 [Temporary] B.

12 MCAR § 2.05305 [Temporary] Payment rates.

A. Temporary payment rate. Unless the cost report is rejected during the initial review conducted under 12 MCAR § 2.05314 [Temporary] H.3., a temporary payment rate shall be established within 20 days of receipt of the cost report and supporting documentation shall be filed according to 12 MCAR §§ 2.05301-2.05315 [Temporary]. The temporary payment rate shall be the prior year's payment rate then in effect increased by five percent. The temporary payment rate shall be effective the first day of the facility's new year if the cost report is received within the deadlines in 12 MCAR § 2.05314 [Temporary] H. If the cost report is not received within the deadlines the temporary payment rate shall be effective the first day of the month following the month in which the cost report is received. The commissioner shall notify the facility and the respective county or human service boards in writing of the temporary payment rate determination and the effective date of the temporary payment rate. The temporary payment rate shall remain in effect until the desk audit is completed.

B. Payment rate. The payment rate shall be established following desk audit and shall replace the temporary rate. The payment rate may be adjusted under 12 MCAR § 2.05314 [Temporary] I. and J.

C. Limitations to payment rate. The payment rate shall be limited under 1.-3.

1. The payment rate must not exceed the rate paid by private paying residents for similar services for the same period.

2. The payment rate must not exceed the final rate allowed the facility for the previous rate year by more than five percent.

3. The limits in 1. and 2. shall not apply to payments made by the commissioner for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, section 7, subdivision 8.

D. Respite care rate.

1. Rates charged for respite care must be identified separately. The respite care rate may be different than the payment

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rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same period.

2. The provider may choose either to report the costs associated with providing respite care as an allowable cost in the cost report and count respite care days as resident days or offset the revenue generated by providing respite care against the appropriate cost category.

E. Effective date. The payment rate determined by the commissioner shall be effective the first day of the month following the end of the facility's reporting year except in instances in which the penalty provisions of 12 MCAR § 2.05314 [Temporary] J. are applicable.

12 MCAR § 2.05306 [Temporary] Rate-setting procedures for newly constructed or newly established facilities.

A. Interim payment rate. Newly constructed or newly established facilities may request an interim payment rate. The provider must submit a projected cost report in compliance with 12 MCAR §§ 2.05301-2.05315 [Temporary] to the extent applicable for the rate year in which the facility plans to begin operation. The interim property-related cost payment rate shall be determined using projected resident days. The effective date of the interim payment rate shall be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification.

B. Interim payment rate settle-up. The interim payment rate shall be subject to retroactive upward or downward adjustment in accordance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary] except that no incentives or allowances shall apply. The adjustments shall be made according to 12 MCAR § 2.05314 [Temporary] I.2. based on actual resident days and actual costs in the facility's first reporting year. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months. The settle-up payment rate must be based on the greater of resident days or 80 percent of licensed capacity days. Occupancy used for the rate year immediately following the reporting year must be based on an annualization of the resident days of the last three months of the interim reporting year but must not be less than 85 percent of licensed capacity days. The settle-up payment rate shall be the lesser of the payment rate calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] or the interim payment rate increased by .4166 percent for each full month between the date the first medical assistance resident enters the facility and the end of the first fiscal period.

C. Changes in occupancy levels. For the first two reporting years following the period covered by the settle-up payment rate, newly constructed or newly established facilities shall compute occupancy levels based on the greater of annualized resident days for the last three months of the reporting year or resident days in the facility's reporting year. The payment rate in subsequent rate years shall be based on the occupancy from the most recently completed reporting year.

12 MCAR § 2.05307 [Temporary] Allowable operating costs.

A. Licensure and certification costs. The costs of meeting the applicable licensure and certification standards listed in 1.-6. are allowable operating costs for the purpose of setting facility payment rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary]. The standards are:

1. federal regulations for intermediate care facilities for mentally retarded services provided by the Code of Federal Regulations, title 43, section 190, subpart G (1978);

2. requirements established by the commissioner for meeting program standards under 12 MCAR § 2.034 and standards for aversive and deprivation procedures pursuant to Minnesota Statutes, section 245.825;

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

4. requirements to comply with changes in federal or state laws and regulations;

5. written correction orders issued by the department, the Department of Health, or the fire marshal; and

6. other requirements for licensing under federal or state law, rules, or local standards that must be met to provide intermediate care facilities for mentally retarded services.

B. Routine service costs. The costs of routine services including program operating, maintenance operating, and administrative operating as defined in 12 MCAR § 2.05313 [Temporary] are allowable operating costs for the purpose of setting facility rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary].

12 MCAR § 2.05308 [Temporary] Nonallowable costs.

The costs of items A.-EE. as well as costs determined by the commissioner to be incurred due to management inefficiency, unnecessary capital assets, or unnecessary services are not allowable for purposes of setting payment rates. The costs of items A.-EE. must be identified on the facility's cost report.

A. 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 lobbying, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions by agencies of the state of Minnesota. When the breakdown of dues charged to a facility by an association or professional organization is requested by the commissioner and is not provided, the entire cost shall be disallowed;

D. advertising designed to encourage potential residents to select a particular facility;

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

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

G. penalties and interest charges resulting from late payments or fines from government agencies, and bank overdraft or late payment charges;

H. costs related to the purchase of pets and veterinary services for pets;

I. costs of sponsoring nonresident activities such as athletic teams and beauty contests;

J. premiums on a life insurance policy for an owner, provider, board member, or employee of a related organization; except that the premiums shall be allowed if the coverage is included in the policy provided for all employees, the coverage and premium is comparable to that provided for all employees, and the insured person is an employee of the facility or related organization;

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

L. employee's or owner's membership or other fees for social, fraternal, sports, health, or similar organizations;

M. training programs for anyone except facility employees, volunteers in the facility, or a resident's family or legal guardians;

N. training programs to meet the minimum educational requirements of a position, education that leads to a degree, or education that qualifies the employee for a new trade or profession;

O. bad debts and related bad debt collection fees;

P. costs of fund-raising activities;

Q. costs of personal need items normally paid for by residents;

R. costs incurred in providing other than intermediate care facilities for the mentally retarded services such as the costs of apartments and semi-independent living skills services (SILS) except respite care;

S. costs financed by gifts or grants from government funds;

T. telephones, televisions, and radios provided in a resident's room;

U. costs of agreements not to compete;

V. 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 facility or the compensation of the practitioner who is an employee of the facility;

2. allocated compensation and related costs of any facility 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 provider these expenses must be reported under nonreimbursable

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expenses together with any of the income received or anticipated for the facility, including any charges by the provider to the vendor.

W. uniform allowances unless required by governmental rules or regulations;

X. costs of therapeutic overnight trips, camping, or vacations for residents in excess of $300 per resident per reporting year;

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

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

AA. costs incurred in providing approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8;

BB. payments made in lieu of real estate taxes made by nonprofit providers;

CC. facility or related organization costs for which adequate documentation is not maintained or provided as required by 12 MCAR §§ 2.05301-2.05315 [Temporary];

DD. other costs determined to be nonallowable in accordance with 12 MCAR §§ 2.05301-2.05315 [Temporary]; and

EE. related organization costs for which a breakdown in accordance with 12 MCAR § 2.05313 [Temporary] is not provided.

12 MCAR § 2.05309 [Temporary] Cost limitations.

A. Management compensation. Annual compensation for management personnel shall be paid according to the limits in 1.-10.

1. To receive management compensation, at least one or any combination of the management personnel must:

a. for a facility or group of facilities with a total bed complement of 48 or fewer beds, document at least five hours of management services per six licensed beds per week; or

b for a facility or group of facilities with a total bed complement of more than 48 beds, document at least 40 hours of management services per week.

2. At least one-half of the total hours required in 1. must be spent by the management personnel at the facility or facilities from which compensation is claimed. The required hours at the facility may be spent by an on-site manager or by management personnel who spend time at the facility.

3. The sum of compensation paid to all management personnel for performing management functions for an individual or organization that owns or operates:

a. a single facility, shall not exceed the lesser of $814 times the number of licensed beds or $39,072;

b. more than one facility with a total bed complement of 48 or fewer beds, shall not exceed the lesser of $814 times the total number of licensed beds or $39,072;

c. more than one facility with a total bed complement of 48 or more beds, shall not exceed $39,072 plus an additional $335 for each licensed bed over 48. The management compensation for a single facility within the group shall not exceed the lesser of $814 times the number of licensed beds or $39,072.

4. In no case shall management compensation paid to an individual exceed $39,072.

5. A person compensated for management functions in a facility or group of facilities shall not be compensated for providing consultant services to that facility or group of facilities.

6. Management compensation shall not include, within the limits of 4. and 5., the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, or paid vacations, holidays, or sick leaves, if the same benefit and the same benefit level is provided to all or substantially all of the facility's employees.

7. An individual compensated for management services on a less than full-time basis for a facility or group of facilities may be compensated for other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service. Documentation of the necessary service performed must be maintained according to 12 MCAR § 2.05311 [Temporary] E.3. and shall be subject to licensing review by the commissioner.

8. Compensation paid to the program director for performing program director functions or to management personnel for performing other than management functions shall not be included in the management compensation limitation.

9. For each full percentage difference between the consumer prices indexes for the months of October, 1983, and October, 1984, in Minneapolis-St. Paul as published by the Bureau of Labor Statistics, new series index (1967-100), the

management compensation per bed limitation and the dollar limitation shall be adjusted by one percent. The adjustment required by this formula shall be effective January 1, 1985. The calculation shall be made annually.

B. Limitation on land costs. For purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the cost of land shall be limited to $1,000 per bed for land purchased prior to December 31, 1983, and to $3,000 per bed for land purchased on or after December 31, 1983.

C. Investment per bed limitation. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the facility's historical capital costs shall be limited by 1.-4.

1. The limitation on the facility's depreciable assets shall be established when the facility enters the medical assistance program.

a. For facilities entering the medical assistance program on or before December 31, 1982, the historical capital cost of the facility's depreciable assets shall be subject to the limits in effect at the time the facility entered the program.

b. For facilities entering the medical assistance program during 1983, the historical capital cost of the facility's assets shall not exceed an average of $29,952 per bed for Class A beds as defined in 7 MCAR § 1.392 C.1. and $35,015 per bed for Class B beds as defined in 7 MCAR § 1.392 C.2.

c. The limitation in b. shall be adjusted annually beginning January 1, 1984, by one percentage point for each full percentage point increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics. Facilities entering the medical assistance program after 1983 shall be subject to the adjusted limitation in effect at the time the facility entered the program.

2. In no instance can accumulated depreciation exceed the basis defined in 12 MCAR § 2.05304 [Temporary] A.

3. One exception to the limitations stated in 1., is that depreciation on investments in capital assets shall be allowed if the investments were required to comply with the Life Safety Code, in United States Code, title 42, sections 442.507-442.509 as amended through December 31, 1982, or with fire safety orders of the local agency.

4. After the facility's first five reporting years and every five reporting years thereafter, the facility's investment per bed limitation established according to 1.-3. shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous four reporting years. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment costs shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

D. Lease and rental costs. The facility's rental and lease costs shall be limited by 1.-4.

1. Lease and rental costs: short term. The costs of a rental or lease for a period of less than 60 days in a fiscal year shall be an allowable cost.

2. Lease and rental costs: long term. The cost of a rental or lease for a period of more than 60 days in a facility's fiscal year shall be the lesser of the lease or rental cost or property-related costs as calculated under 12 MCAR §§ 2.05301-2.05315 [Temporary].

3. Rentals of office items. Rental of office equipment other than furnishings shall be allowable costs.

4. Exception. Lease and rental costs for arm's length transactions signed or incurred before October 1, 1983, shall be allowed under 12 MCAR § 2.052. This exception does not apply to lease renewals, renegotiations, or extensions occurring on or after October 1, 1983, or to lease or rental costs which were disallowed under 12 MCAR § 2.052.

E. Working capital interest.

1. Working capital interest expense on loans incurred prior to December 31, 1983, shall be allowed under 12 MCAR § 2.052.

2. Working capital interest expense for existing facilities shall be limited under a. and b.

a. For the rate year beginning on or after December 31, 1983, the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed the amount included in the payment rate in effect on December 30, 1983.

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b. For the rate year beginning on or after December 31, 1984, the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed 80 percent of the allowable working capital as determined in a.

3. Working capital interest expense for newly constructed or newly established facilities shall be limited under a. and b.

a. For the interim and settle-up rates the total amount of working capital interest expense incurred shall not exceed 2.5 percent of the facility's allowable operating costs during the reporting year.

b. For the rate year following the settle-up the total amount of working capital interest expense incurred shall not exceed 80 percent of the allowable working capital as determined in a.

F. Retirement contributions.

1. Retirement contributions for each employee shall be limited to the cost of either a United States Internal Revenue Service approved pension or profit sharing plan but not both.

2. Retirement contributions made for a nonvested past employee shall be offset against the total cost of retirement contributions for the reporting year.

G. Therapeutic overnight trips, camping, and vacations for residents. The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to $300 per year per resident may be reserved in the facility budget for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

12 MCAR § 2.05310 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to capital assets, services, or supplies directly or indirectly furnished to the provider by any related organization are includable in the allowable cost of the facility at the cost to the related organization if such costs do not exceed the prices of comparable services, capital assets, or supplies that could be purchased elsewhere.

B. Exception to limitation on related organization charges. Except for the rental or leasing of facilities, if the related organization in the normal course of business sells services, capital assets, or supplies to nonrelated organizations, the cost to the provider shall be no more than the price charged to the nonrelated organization provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales.

C. Rental charges paid to or by a related organization. Lease or rental costs paid to or by a related organization shall be allowed according to 12 MCAR § 2.05309 [Temporary] D.

D. Assets of related organizations. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation was claimed as a facility cost, any gain realized by the related organization must be offset against the facility's property-related cost category.

E. Goods or services provided by a facility to related organizations. A provider which sells, leases, or provides goods or services to a related organization shall allocate the cost of the goods or services to the related organization and identify the allocations in the facility's cost report.

1. Costs of services shall be allocated based on the documentation of time spent performing the service by each individual providing services for the related organization. All direct costs shall be allocated based on the product of the hours spent by each individual providing services to the related organization times all direct costs including the individual's salary and fringe benefits, divided by the total hours spent by the individual working for the facility and the related organization.

2. Indirect costs associated with providing services to a related organization shall be allocated on the basis in 1.

3. The cost of goods sold to or used by a related organization shall be directly allocated to the related organization. The cost of goods sold to or used by more than one related organization shall be allocated proportionally to each related organization based on a reasonable estimate of actual use.

4. The cost of goods or services allocated to a related organization shall not be an allowable cost for the facility.

12 MCAR § 2.05311 [Temporary] Cost principles.

The provider must use the cost principles in A.-E. to report costs. The commissioner shall use these costs principles to determine allowable costs.

A. Cost criteria. For rate setting purposes, a cost must satisfy the following criteria:

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

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

3. The cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within 75 days after the close of the reporting period.

4. The cost effects of transactions that have the effect of circumventing 12 MCAR §§ 2.05301-2.05315 [Temporary] are not allowable under the principle that the substance of the transaction shall prevail over form.

B. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

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

b. amounts paid by the provider for the personal benefit of the provider or employees;

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

d. the costs of assets, supplies, equipment, vehicles, services, or any other in-kind benefits the provider or employees receive or use from the facility or related organization; and

e. payments to organizations of nonpaid workers.

2. The facility 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 facility and other facilities owned by the same provider.

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 against which current funds are available, 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. Compensation paid to an individual for any work, including management services, performed on less than a full-time basis shall be in proportion to a full-time basis.

C. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to:

1. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.50, subdivision 8 and rules promulgated thereunder;

2. gifts and donations from nongovernmental sources;

3. rental income from the rental or lease of space within the facility to nonrelated individuals or organizations that render therapeutic or other services to residents on a fee-for-service basis.

D. Capitalization. Capital assets shall be treated according to 1.-8. subject to the limitations in 12 MCAR § 2.05304 [Temporary] A.:

1. Expenditures for capital assets except land, additions, and betterments directly related to resident care must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit cost of $150 or more.

2. The purchase or purchases during a reporting year of capital assets except land which have a useful life of more than one year and a unit cost of less than $150 but more than $50 and which have an aggregate cost in excess of $500 must be capitalized and depreciated.

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3. The provider may expense the cost of any repair which costs more than $150. If the provider expenses the cost of a repair, the cost of the repair must be expensed in the reporting year in which the costs are incurred and must be reported on a separate schedule indicating the cost and nature of the repair. The payment rate for the rate year following the current rate year shall be adjusted for the cost of the expensed repairs according to a.-c.

a. The amount claimed for the expensed repairs shall be computed on a per diem basis.

b. The amount computed in a. shall be subtracted from the prior year's payment rate. If the prior year's payment rate is limited by 12 MCAR § 2.05305 [Temporary] C., the amount computed in a. shall be subtracted from the prior year's payment rate before application of the limitation.

c. The amount computed in b. shall be used as the base to which the limitation in 12 MCAR § 2.05305 [Temporary] C. shall be applied to determine the maximum payment rate for the following rate year.

4. Provisions 1. and 2. shall be applied to expenditures incurred on or after December 31, 1983. Expenditures incurred on or before December 30, 1983, shall be capitalized according to 12 MCAR § 2.052.

5. Items such as land, land improvements, and goodwill, whose maintenance or construction are not the responsibility of the provider shall not be depreciable assets.

6. One time pre-opening costs of new facilities which are incurred more than 30 days prior to admission of residents must be capitalized as deferred charges and amortized over a period of not less than 60 consecutive months beginning with the month in which the first resident is admitted for care. Examples of these costs are utilities, supplies, travel, and wages paid for services rendered.

7. Construction financing, feasibility studies, and other costs related to construction must be capitalized and depreciated over the life of the physical plant.

8. Financing costs must be amortized over the term of the loan or the life of the asset, whichever is greater.

E. Adequate documentation. Adequate documentation must:

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

2. be maintained in a separate file for each facility;

3. include sufficient documentation to support the validity of the transaction and its relationship to facility operations. The documentation typically includes a paid invoice or copy of a paid invoice for each transaction 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 facilities; and

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

F. Documentation of consultant, professional, or purchase service contracts. The provider must maintain copies of all contracts and invoices relating to consultant, professional, or purchase services. These documents must include the name and address of the vendor or contractor, the name of the person actually providing the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

G. 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 time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis.

H. Documentation of mileage; motor vehicle log. The provider must maintain a motor vehicle log for each vehicle used by the facility that shows personal, facility, and resident usage. Mileage paid for the use of a private vehicle must be documented.

I. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories.

12 MCAR § 2.05312 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost classification to cost categories is the process of charging costs to the appropriate cost category and compiling a total cost for each cost category to be recorded on the cost report. Cost category allocation principles shall be as provided in 1.-3.

1. The provider shall classify costs using direct identification of costs, without allocation, by routine classification of

transactions when costs are recorded in the books and records of the facility. The classification of costs shall be made according to the cost categories defined in 12 MCAR § 2.05313 [Temporary].

2. Costs that cannot be specifically classified to one or more cost category shall be classified to the general administrative cost category in accordance with 12 MCAR § 2.05313 [Temporary] C.

3. Compensation of individuals with duties in more than one cost category or facility shall be allocated to the cost categories in 12 MCAR § 2.05313 [Temporary] on the basis of time distribution records that show time spent in various cost categories and facilities or both.

B. Allocation of personal expenses for owners, providers, or employees whose primary residence is in the facility. Allocation procedures given in 1.-4. must be applied to personal expenses of owners, providers, or employees whose primary residence is in the facility to the extent that the costs were included in the facility's costs.

1. Dietary services cost allocation must be based on the number of meals served.

2. Housekeeping, and plant operations, and maintenance cost allocation must be based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

3. Depreciation, interest, real estate and personal property taxes, and property and liability insurance costs must be allocated based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

4. Laundry and linen costs, and general and administrative costs for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

C. Cost allocations for other services. Costs associated with services other than intermediate care facilities for the mentally retarded services such as apartments, semi-independent living services, and any other revenue generating operations, except respite care, must be allocated using the principles in A. and the procedures in B.

12 MCAR § 2.05313 [Tempoary] Reporting of costs by cost category.

The costs for routine services must be reported in cost categories A.-D.

A. Program operating costs. The direct costs of program functions are included in the program operating cost category. These costs include:

1. salaries for program staff, including the program director and unit coordinators;

2. supplies;

3. consultant services;

4. staff training to meet the requirements of federal and state 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;

5. therapeutic overnight trips, camping, or vacations for residents within the limitations in 12 MCAR § 2.05309 [Temporary] G.; and

6. membership or other fees for resident participation in social, sports, health, or similar organizations.

B. Maintenance operating costs. The costs listed in 1.-4. are included in the maintenance operating cost category:

1. direct costs of dietary services including:

a. salaries of dietary staff;

b. food;

c. supplies;

d. consultant services; and

e. staff training to meet the requirements of federal and state 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.

2. direct costs of laundry and linen services including:

a. salaries of laundry staff;

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b. supplies;

c. linen and bedding; and

d. purchased services.

3. direct costs of housekeeping services including:

a. salaries of housekeeping staff; and

b. supplies.

4. plant operations and maintenance services including:

a. salaries of maintenance staff;

b. supplies;

c. utilities and fuel;

d. nondepreciable repairs and equipment not subject to capitalization under 12 MCAR § 2.05304 [Temporary]; and

e. purchased services.

C. Administrative operating costs. The costs listed in 1. and 2. are included in the administrative operating cost category.

1. The costs in a.-w. are incurred by the provider for administering the overall activities of the facility including:

a. business office functions;

b. travel expenses except as provided in 12 MCAR § 2.05309 [Temporary] G.;

c. motor vehicle operating expenses;

d. telephone and telegraph charges;

e. office supplies;

f. licensing and permit fees;

g. insurance;

h. personnel costs including help wanted ads and the salaries or fees of management personnel, accounting and clerical personnel, data processing personnel, and receptionists;

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

j. business meetings and seminars;

k. postage;

l. training for other than direct resident care related personnel to meet the requirements of federal and state laws or regulations for keeping an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;

m. membership fees for associations and professional organizations which are directly related to the operation of the facility;

n. subscriptions to periodicals which are directly related to the operation of the facility;

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

p. security services or security personnel;

q. employee benefits;

r. payroll related costs;

s. management fee of a nonrelated organization;

t. purchased services;

u. amortization of pre-opening costs;

v. working capital interest expense; and

w. indirect costs allocated as provided in 12 MCAR § 2.05312 [Temporary] A.2.

2. The operating costs incurred by the facility for management fees which are charged to the facility by related organizations, and the related organizations' operating costs which are allocated to the facility, shall be included in the

administrative operating cost category if the provider submits a breakdown of the cost according to 12 MCAR § 2.05314 [Temporary] A.15. Property-related costs of the related organization which are allocated to the facility shall be reported in the property-related cost category. All related organizations' costs charged to the facility shall be subject to the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

D. Property-related costs. The costs listed in 1.-7. are included in the property-related cost category:

1. allowance for depreciation of capital assets except land;

2. capital loan interest expenses;

3. special assessments paid and accrued real estate taxes;

4. rental and lease payments;

5. amortization; and

6. related organization's property-related costs.

12 MCAR § 2.05314 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. The provider must submit an annual cost report covering the facility's reporting year on forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. If a certified audit has been prepared it must be submitted with the cost report. Other reports, supporting documentation, and worksheets which must be submitted with the cost report include:

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

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

3. the facility's balance sheet and income statement prepared in accordance with generally accepted accounting principles unless audited financial statements are submitted according to A.;

4. a list of the facility's capital and working capital loans outstanding during the reporting year, 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 loans;

5. a schedule of the facility's funded depreciation escrow account;

6. a statement of ownership of the facility 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 three percent or more in the facility, and of publicly held corporations which have an interest of 15 percent or more;

7. a list of all entities in the provider group which included costs in the cost report in excess of $1.000 annually;

8. copies of purchase agreements and other documents related to purchase of the physical plant and land, or a signed statement that no changes have been made in the documents which are on file with the department;

9. copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the department. Lease documents shall include information on the original cost of the physical plant and land and the interest rate paid by the lessor;

10. complete lapsing depreciation schedules calculated in accordance with 12 MCAR § 2.05304 [Temporary];

11. charts showing staff assignments classified according to the cost categories in 12 MCAR § 2.05313 [Temporary];

12. documentation of costs included in the payment for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, section 7, subdivision 8. These costs must be reported on an individual resident basis;

13. a schedule of repairs that cost more than $150 and that were expensed during the reporting year. This schedule shall indicate the cost and nature of the repair;

14. an explanation in the cost report, of all adjustments made by the provider to the cost report and the applicable rule citations; and

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15. a breakdown of all costs included in the related organization's management fees charged to the provider and the related organization's costs directly allocable to the facility. The breakdown shall include all costs of items as listed in 12 MCAR § 2.05313 [Temporary] C. The supporting schedules shall include the related organization's income statement, the cost allocated to each facility, related organization, and non-related organization, and explanation of the method of allocation used.

B. Supplemental reports. In order to substantiate the payment rate, the commissioner may require the provider to submit 1.-5.:

1. certified public accountant's or licensed public accountant's audit workpapers which support the audited financial statements and cost reports, if an audit has been prepared;

2. separate audited or unaudited financial statements from each entity in the provider group;

3. copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of depreciable assets, goods, and services;

4. copies of leases and other documents related to the lease of the equipment, furnishings, and goods. Lease documents shall include information on the historical capital cost of the equipment, furnishings, and goods, and the interest rate paid by the lessor; and

5. other relevant information required to support a payment rate request.

C. Short period costs reports. Only newly constructed or newly established facilities, or facilities that have an ownership change of more than 50 percent may file two short period costs reports. Not more than two short period cost reports may be filed. Each short period report must cover a period of at least six months.

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

E. Records. The provider shall maintain statistical and accounting records in sufficient detail to support information contained in the facility's required reports and financial statements for at least four years following submission of a cost report.

F. Priority. 12 MCAR §§ 2.05301-2.05315 [Temporary] will take priority over generally accepted accounting principles if a conflict arises.

G. Report certification. Required reports must be accompanied by a signed statement attesting to the accuracy of the information submitted on the required reports. The statement must be signed either by the provider or, for a partnership, one of the partners, or, for a corporation, the officer authorized to bind the firm. If reports have been prepared by a person other than the above individual, a separate statement signed by the preparer shall also be included.

H. Reporting deadlines and extensions.

1. Deadlines. Required reports must be submitted to the commissioner within three months after the close of the facility's normal reporting year. Supplemental reports and information must be submitted within 30 days of the request by the commissioner. Facilities that terminate participation in the medical assistance program must submit required reports to the commissioner within three months after termination.

2. Report deadline extension. The commissioner shall grant one 30-day extension to the reporting deadline if an extension is requested in writing by the provider prior to the deadline in 1. The commissioner shall grant an additional extension to the reporting deadlines if the provider makes a written showing of good cause. The number of extensions granted in the past reporting years shall be taken into consideration by the commissioner when granting additional extensions.

3. Rejection of reports. Within 20 days after receipt of the cost report, the commissioner shall conduct an initial review of the cost report. If the commissioner finds that the cost report is inaccurate or does not contain the items required in A., the commissioner may reject the cost report including documents and worksheets or may require additional information to support the payment rate request. The corrected report or the additional information requested must be submitted to the commissioner within 30 days of the request or the report shall be rejected. The commissioner shall extend this time if the provider makes a written showing of 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.

I. Audits and adjustments.

1. Audits. The commissioner shall subject all reports and supporting documentation to audits to determine compliance

with 12 MCAR §§ 2.05301-2.05315 [Temporary]. The provider may request in writing a field audit. If a field audit is requested, the commissioner shall commence the field audit within 180 days of receipt of the written request.

2. Adjustments. An adjustment to a payment rate determined according to 12 MCAR §§ 2.05301-2.05315 [Temporary] shall be made according to a.-h. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions.

a. Field audit adjustments shall only be made if the adjustment would result in at least a five cent per resident day or $2,000 cost change, whichever is less.

b. Retroactive adjustments to the facility's temporary payment rate or payment rate shall be made as a result of desk and field audit findings, limited by the restrictions in a. Adjustments to the payment rate shall be limited to the four complete reporting years preceding the date on which an audit commences.

c. Providers may file no more than two amendments to a previously filed cost report in which errors or omissions are uncovered by the provider, if each amendment would result in the lesser of a five cent per resident day or $2,000 adjustment for each reporting year. The commissioner shall make retroactive adjustments to the payment rate of a facility if the amendment is filed within one year of the filing of the original cost report to the amended.

d. Providers may file an amended cost report if providers have a program change approved by the commissioner according to 12 MCAR § 2.185 which results in an increase or decrease in costs within an individual facility of at least $2,000 for the remainder of the facility's reporting year. Amended cost reports must be filed not later than 30 days after the program change which leads to the increase or decrease. No more than one amended cost report may be submitted for program changes each quarter of the facility's reporting year.

e. Amended cost reports shall consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary].

f. If the adjustment results in a payment from the provider, payment shall be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider shall be made within 120 days after the date of the written notice.

g. Interest charges shall be assessed on over and under payment balances after the deadlines in f. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect 121 days after formal notification.

h. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in 12 MCAR § 2.05305 [Temporary] C.

J. Penalties. The commissioner shall impose any one or a combination of the following penalties for noncompliance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

1. If the provider fails to submit the information required in A. by the deadlines given in H., the facility's temporary payment rate or payment rate may be reduced 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 shall not be retroactive.

2. If the information or documentation described in B. is requested on a field audit and is not provided within 30 days of the request, the facility's temporary payment rate or payment rate may be reduced to 80 percent of the most recently established rate in effect. The penalty shall be removed beginning the first day of the month following the month in which the required information or documentation is received. Reinstatement of the full payment rate shall not be retroactive.

3. If, after the initial review in H.3., either a desk or field audit shows lack of adequate documentation for specific costs, the commissioner may require the facility to provide the additional documentation within 15 days of the request. If the documentation is not provided, the costs which are not adequately documented shall be disallowed.

4. If a field audit reveals inadequacies in the facility's bookkeeping and accounting practices, the commissioner may require that the provider engage competent professional assistance to properly prepare the required reports. Failure to remedy the inadequacies in the facility's bookkeeping and accounting practices within 90 days of the day of written notice may result in the application of the penalty in 1.

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5. If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

a. immediately adjust the facility's payment rate to recover the entire overpayment;

b. terminate the commissioner's agreement with the provider; or

c. prosecute under applicable state or federal law.

12 MCAR § 2.05315 [Temporary] Appeal procedures.

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

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

2. the appeal arises from application of the provisions of 12 MCAR §§ 2.05301-2.05315 [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 provider 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 with the commissioner, in writing, within 60 days after receiving the payment rate 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 provider 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 provider 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 under 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 under 12 MCAR §§ 2.05301-2.05315 [Temporary], the payment rate established by the commissioner shall be the payment rate paid to the provider while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal any overpayments or underpayments shall be paid under 12 MCAR § 2.05314 [Temporary] I. and J.

F. Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider the extent that:

1. the appeal or the individual item was resolved on behalf of the provider; and

2. this amount is not in excess of the maximum payment rate as determined under 12 MCAR § 2.05305 [Temporary].

Department of Public Welfare

Proposed Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation (12 MCAR §§ 2.0300-2.0304 Temporary)

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 312, article 9. Persons interested in these rules have until December 5, 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:

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 ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM (12 MCAR § 2.05301 - 2.05315)

FINDS OF FACT AND CONCLUSIONS

The Commissioner published notice of proposed Temporary rules on the above-entitled matter in the State Register on November 14, 1983. Notice was also sent to United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, on November 9, 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 § 2.05301 (Temporary) of the proposed rule (page 1, lines 10-13) the Department included all residential facilities for the mentally retarded participating in the Medical Assistance Program within the type of provider covered by the rule. One commentator, Tom Beer of AFSCME, suggested that the statute authorizing the temporary rule was not intended to cover rates for the state hospitals. The commissioner agrees that these rules were not intended to cover state hospital rates and, therefore, has added "except state owned facilities" to clarify that these facilities are not meant to fall within the scope of these rules. p.1

2. In 12 MCAR § 2.05301 (Temporary) of the proposed rule (page 1, line 13), one commentator, Carol Morse of Lake County Social Service, requested clarification of the effective date of these rules. The Commissioner agreed that it was not clear when the rules took effect, and, therefore, added language stating that "Rules 12 MCAR §§ 2.05301-2.05315 (Temporary) are effective on January 1, 1984 for payment rates for periods starting on, or after, January 1, 1984. p.1

3. In 12 MCAR § 2.05302 B. (Temporary) of the proposed rule (page 1, line 20), the Department defined the purpose of an "addition" as "increasing the number of licensed beds." Several commentators, including Joseph Sulentich of New Oak, Inc., R. E. Miller of REM, Inc. and Mary Martin of the Association of Residences for the Retarded in Minnesota (ARRM), suggested that this definition was too limiting and recommended that the Commissioner include "or to improve the quality of care" in the definition. The Commissioner agrees that "additions" could also be for the purpose of improving resident care and therefore adds "or improving resident care" to the definition on line 20. p.1

4. In 12 MCAR § 2.05302 C. (Temporary) of the proposed rule (page 1, lines 21-25), the Department included several types of receipts and expense reductions within the definition of "applicable credit". Several commentators requested clarification of the meaning of the term "income from incidental services", (line 23). The Commissioner agrees

that the term 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." Several other commentators, including R. E. Miller, Mary Martin, and Roger Moore of Forestview Community Homes, Inc. commented that the term "operating costs" was undefined in the rules and that it was unclear whether "applicable credits" include costs in the operating cost payment rate, costs in the property cost payment rate, or costs in both. The Commissioner agreed that this was unclear, and since applicable credits should apply to costs in both rates, deleted the word "operating" in line 25, as suggested by Carol Morse. p.1

In 12 MCAR § 2.05302 D. (Temporary) of the proposed rule (page 1, line 26), the Department defined the term "betterment" to include the "repair" of part of an existing capital asset. Commentator, Paul Martodam of Catholic Charities, requested that the word "repair" be deleted from the definition to eliminate the problem of "repair" and "betterment" of capital assets, meaning the same thing. The Commissioner agrees that the change clarifies the definition and accepts the suggestion. p.1

5. In 12 MCAR § 2.05302 F. (Temporary) of the proposed rule (page 1, lines 32-35), the Department defined the term "capital loan". Commentator R. E. Miller suggested that refinancing of capital assets should also be included in the definition. The Commissioner agreed that "a loan for the purpose of refinancing a capital loan" should be included in the definition of capital loan and therefore incorporated Mr. Miller's comment in line 35. p.1

6. In 12 MCAR § 2.05302 G. (Temporary) of the proposed rule (page 2, lines 1-4), the Department defined the term "capital loan interest expense". One commentator, Carol Morse, asked that the Commissioner specify who pays the financing cost mentioned in the definition. The Commissioner agreed that it was unclear from the definition who was responsible for these costs and therefore clarified the definition by adding "paid by the provider" on line 4. p.2

7. In 12 MCAR § 2.05302 N. (Temporary) of the proposed rule (page 2, lines 26-31), the Department defined the term "equity". Many commentators, including R. E. Miller and Mary Martin, requested that the Commissioner reconsider the treatment of equity. The Commissioner agrees that the section on equity (12 MCAR § 2.05304 D.) does not adequately define equity and therefore agrees to change the definition and treatment of equity. The definition is altered so that disallowed capital loans will not adversely affect the facility's equity. The Commissioner also clarifies the meaning of the definition by deleting (from lines 26 and 27) "paid by the current owner for," since this is part of the definition of historical capital cost. The Commissioner also makes a grammatical change in the definition substituting "subject to" for the word "within" in line 27. p.2

8. In 12 MCAR § 2.05302 R. (Temporary) of the proposed rule (page 3, lines 11-14), the Department defined the term "funded depreciation." One commentator, Carol J. Morse, questioned whether funded depreciation must

be an escrow account. The Commissioner agrees that it is not necessary to specify an escrow account for funded depreciation as 12 MCAR § 2.05304 C. states the conditions applicable to the separate account and the penalties for noncompliance. Therefore, the Commissioner deletes the word "escrow" from line 12 as unnecessary. The Commissioner also makes a grammatical change on line 14 of this provision.

9. In 12 MCAR § 2.05302 S. (Temporary) of the proposed rule (page 3, lines 15-29), the Department defined the term "historical capital costs". Several commentators, including Joseph Sulentich, Roger Moore, and R. E. Miller, requested that the date specified in line 18 and line 26 be changed from "October 1, 1983" to "the effective date of this rule." The Commissioner agrees the request is consistent with the intent of the statute authorizing a temporary rule. The Commissioner therefore accepts the request and changes the date to January 1, 1984 which is the expected date for the rule to become effective. Because the Commissioner accepted the request, it is necessary for consistency to modify the date in line 28 to December 31, 1983. Further Mr. Sulentich and Mr. Miller requested clarification that the dates apply to first use in the Medical Assistance Program. The Commissioner agrees clarification is needed and therefore accepts the request. In reviewing the definition, the Commissioner finds that in lines 20-24 the last sentence of 51 does not belong in the definition, but merely repeats material contained in 12 MCAR § 2.05304 A. The Commissioner, therefore, deletes the sentence.

10. In 12 MCAR § 2.05302 U. (Temporary) of the proposed rule (page 4, lines 16-22), the Department defined the term "management personnel". Numerous commentators including Jean Searles of RESA, Inc., R. E. Miller, and Annette Rowland of Catholic Charities of the Archdiocese of St. Paul and Minneapolis, suggested that the definition was too ambiguous or all inconclusive of the personnel in the facility and requested clarification. The Commissioner agrees clarification is needed to eliminate ambiguity and limit the types of positions included in the definition. Ms. Searles suggested the definition should refer to "top management" only. Ms. Rowland suggested the deletion of "supervising the program personnel". Mr. Lawrence Cohen suggested the definition should be limited to any person "directing the business affairs of the facility". The Commissioner accepts these suggestions and modifies the definition to limit its applicability. The Commissioner also limits and clarifies the defined term by specifying the meaning of "administrator" within the definition. The revised definition is placed in alphabetical order as 12 MCAR § 2.05302 QQ. (Temporary) (page 7).

11. In 12 MCAR § 2.05311 D. (Temporary) of the proposed rule (page 31, lines 11-36, and page 32, lines 1-25), the Department specifies which

D., should clarify which assets must be capitalized. The inclusion of a definition of minor equipment necessitates a change on line 14 of page 36.

12. In 12 MCAR § 2.05302 AA. (Temporary) of the proposed rule (page 4, lines 27-30), the Department defined the term "operating cost category". Mr. Sulentich requested clarification of the definition and suggested inserting a comma between "program" and "maintenance" in line 30. The Commissioner agrees clarification is needed and accepts the suggestion.

13. In 12 MCAR § 2.05302 BB. (Temporary) of the proposed rule (page 4, lines 31-36), the Department defined the term "payment rate". Mr. Sulentich suggested using the word "service" in line 33 in place of "care". The Commissioner finds the word "service" more appropriately describes the duties of persons employed by the facility and accepts the suggestion.

14. In 12 MCAR § 2.05302 DD. (Temporary) of the proposed rule (page 5, lines 6-10), the Department defined the term "physical plant". Paul Martodam of Catholic Charities of the Diocese of St. Cloud, requests clarification and suggests the definition be amended in lines 6-8 to include the building in which a "program licensed to serve mentally retarded residents under Minnesota Statutes section 252.28, is located". The Commissioner agrees clarification is needed and accepts the suggested amendment.

15. In 12 MCAR § 2.05302 EE. (Temporary) of the proposed rule (page 5, lines 11-14) the Department defined the term "private paying resident". Carol J. Morse questioned whether a recipient of Community Social Services Block Grant services could also be a private paying resident. The Commissioner agrees clarification is needed. Therefore, the Commissioner has defined a private paying resident as a facility resident whose care is not paid for by a program for the date of service. The Commissioner finds that the federal social services program previously known as Title XX now is entitled the Community Social Services Block Grant. Therefore, the Commissioner amends lines 11-14.

16. In 12 MCAR § 2.05302 FF. (Temporary) of the proposed rule (page 5, lines 15-19), the Department defined the term "program". One commentator, Mary Martin of ARRM, suggested that the phrase "functions of the staff" is a very restrictive definition of "program" and requests a modification to broaden the definition. The Commissioner finds that the program of the residents includes many activities that extend beyond staff functions. Therefore, the Commissioner accepts the request to broaden the definition. The Commissioner also acknowledges that the citation is incorrect, as suggested by Ms. Martin, and the correct citation has been made on line 19; this correction is also needed on page 19, line 29.

17. In 12 MCAR § 2.05302 GG. (Temporary) of the proposed rule (page 5, lines 20-22), the Department defined the term "program director". Several commentators, including Ms. Martin, G. E. Walsh of Mount Olivet

Rolling Acres, and James R. Driscoll of Orvilla, Inc., request that the definition be clarified. The Commissioner agrees clarification is needed and amends "directs" in line 21 to "supervises". p.5

18. In 12 MCAR § 2.05302 KK. (Temporary) of the proposed rule (page 6, lines 2-3), the Department defined the term "rate year". One commentator, Mr. Miller, requested amendment of the definition. The Commissioner finds that the phrase "fiscal year for which a payment rate is effective" is inconsistent with 12 MCAR § 2.05305 A. and B. (Temporary) and 12 MCAR § 2.05306 B. (Temporary) which address concerns about fiscal periods of less than one year. Therefore the Commissioner accepts the request to amend the definition. p.6

19. In 12 MCAR § 2.05302 OO. (Temporary) of the proposed rule (page 6, lines 33-36, and page 7, lines 1-2), the Department defined the term "respite care". One commentator, Ms. Martin, questioned why in-home services are included in a reimbursement rule applicable to respite care in an ICF-MR. The Commissioner finds that respite care not provided by an ICF-MR are not within the scope of this rule. Therefore, the Commissioner accepts the request to clarify the definition. p.6,7

In 12 MCAR § 2.05302 (Temporary) of the proposed rule (page 6, between lines 25 and 26), the department inserts the definition of repair to clarify changes made on page 31, 12 MCAR § 2.05311 D. (Finding #70). p.6

20. In 12 MCAR § 2.05302 PP. (Temporary) of the proposed rule (page 7, lines 3-5), the Department defined the term "Title XX program". One commentator, Ms. Martin, questioned whether the citation is correct. The Commissioner finds the citation is not needed as the program has been folded into the Community Social Services Block Grant. Therefore, the Commissioner deletes the term. The deletion required a modification of the language in 12 MCAR § 2.05302 SS. (Temporary) (page 7, line 13). p.7

In 12 MCAR § 2.05302 RR. (Temporary) of the proposed rule (page 7, lines 9 and 10), the Department defines the term vendor. The Commissioner finds the definition is not necessary to the understanding of the rules and therefore deletes the term. p.7

21. In 12 MCAR § 2.05302 TT. (Temporary) of the proposed rule (page 7, lines 14-15), the Department defined the term "working capital loan". Two commentators, Peter Leneau, CPA, and Mr. Miller, requested clarification of whether a loan to refinance capital assets is included within the definition. Mr. Miller suggested that the definition be amended to include a loan which is not used to refinance capital assets. The Commissioner agrees clarification is needed and accepts the suggestion. p.7

22. In 12 MCAR § 2.05302 UU. (Temporary) of the proposed rule (page 7, lines 6-19), the Department defined the term "working capital interest expense". One commentator, Carol J. Morse, requested clarification of the categorization of finance charges by vendors to facilities that do not pay bills in a timely manner. The Commissioner agrees clarification is needed and accepts the request to modify the definition. p.7

23. In 12 MCAR § 2.05303 A. (Temporary) of the proposed rule (page 7, lines 28-35), the Department established the historical operating cost per diem. Three commentators, Allan Baumgarten of the Office of the Legislative Auditor, Carol J. Morse, and Mr. Leneau, questioned why facilities having fewer than ten beds are treated differently from facilities having ten or more beds. The Commissioner finds that the occupancy incentive available to a facility should not depend on the number of beds in the facility. Therefore, the Commissioner has modified the provision accordingly. p.7

24. In 12 MCAR § 2.05303 B. (Temporary) of the proposed rule (page 7, line 36, and page 8, lines 1-10), the Department established the operating cost payment rate. One commentator, Donald M. Gee of Residential Alternatives, Inc., suggested that the total increase in the consumer price index be used annually to adjust the historical operating cost per diem. The Commissioner finds the suggestion will simplify the required computation and be to the advantage of both the Department and the facility. Accordingly, the Commissioner accepts the suggestion. The Commissioner finds clarification of language is needed on page 8, line 9 and therefore amends "for" to "between". One commentator, Lawrence Cohen, states that there are several different consumer price indexes and requests clarification. The Commissioner agrees clarification is needed and accordingly has specified the consumer price index to be applied; this change is also needed on page 24, lines 27-29. p.8

25. In 12 MCAR § 2.05303 C. (Temporary) of the proposed rule (page 8, lines 11-13), the Department established an operating cost adjustment allowance of $.25 per resident day. Three commentators, Messrs. Sulentich, Moore, and Eileen Harris of Outreach Group Homes, suggest that the allowance be increased to $.27. The Commissioner has balanced the provider's need to receive a reasonable adjustment allowance against the Department's need to contain rate increases. Accordingly, the Commissioner accepts the suggestion, which is an increase of 8 percent in the adjustment allowance. p.8

26. In 12 MCAR § 2.05303 D. (Temporary) of the proposed rule (page 8, lines 14-26), the Department established an efficiency incentive. Several commentators, including Bob Van Slyke of Greenbrier Home, Inc., Messrs. Sulentich, Moore, Gee, and Miller, suggested that the efficiency incentive apply during 1984. The Commissioner finds application of the efficiency incentive as soon as possible is consistent with the intent of the underlying legislation. Accordingly, the Commissioner modifies the provision to clarify that the provision will be effective January 1, 1984. Language is added on lines 21 and 22 to clarify when the provision effects the rate. p.8

27. In 12 MCAR § 2.05304 A. (Temporary) of the proposed rule (page 8, lines 29-36, and page 9, lines 1-5), the Department established the basis for calculating the depreciation of capital assets. Many commentators, including Messrs. Sulentich, Miller, Moore, and Van Slyke, and Ms. Martin, requested that the effective date for the new method of calculating depreciation be the effective date of the rule. Ms. Martin also requested clarification of the term use in lines 1 and 2 and suggested the insertion of "in the Medical Assistance Program". The Commissioner

agrees clarification is needed and accepts the suggested changes and makes the same change in 12 MCAR § 2.05304 A.1.b. (Temporary). One commentator, Carol J. Morse, requested clarification of the application of the "historical capital cost" limitation contained on page 9, lines 1-5. The Commissioner agrees clarification is needed and has changed the placement of the limitation in the section to make its application clearer. A similar clarification is made on a page 9, line 32. p. 9

28. In 12 MCAR § 2.05304 A. (Temporary) of the proposed rule (page 8, lines 29-36, and page 9, lines 1-5), the Department established the basis for calculating the depreciation of capital assets. Several commentators, including Messrs. Sulentich, Moore, and Miller, and Mmes. Martin and Patricia Winget of the Minnesota Association of Health Care Facilities, requested clarification of the term "forced buyout" in line 13. The Commissioner finds the term is not needed and accordingly has deleted it. The same commentators suggested that adjustment of the historical capital costs of capital assets for a change in ownership should be allowed in other circumstances, besides death, which are beyond the control of the owner. The Commissioner finds that the occurrence of disability, like death, is a circumstance beyond the control of the owner and accordingly modifies the provision in line 11. Further, the Commissioner finds it necessary to clarify the meaning of the term "disability" and therefore defines the conditions necessary for applicability of d. p. 9

29. In 12 MCAR § 2.05304 A.3. (Temporary) of the proposed rule (page 9, lines 17-21), the Department establishes the method of calculating accumulated depreciation. Several commentators, including Messrs. Lanigan, Miller, Moore, and Ms. Martin, suggested that the section will provide an incentive for new providers to construct new buildings and requested modification to permit payment for depreciation to a purchaser of a used facility. The Commissioner agrees that the section, as proposed, does provide such an incentive. Accordingly, the Commissioner has revised the starting date of the useful life schedule. Further, the Commissioner finds a limitation on the percent of historical capital cost of the capital assets which can be accumulated as depreciation would help to contain property-related costs. Accordingly, the Commissioner limits the accumulated depreciation. Further, the Commissioner finds that clarification of the term "facilities" in line 18 is needed for the section to be consistent with 12 MCAR § 2.05302 O. (Temporary) and the other sections of A. Therefore, the Commissioner has clarified the term used. p. 9

30. In 12 MCAR § 2.05304 A.4. (Temporary) of the proposed rule (page 9, lines 22-30), the Department establishes the basis for determining the value of an asset. p. 9

31. In 12 MCAR § 2.05304 A.5. (Temporary) of the proposed rule (page 9, lines 31-36, and page 10, lines 1-3), the Department establishes the effect of additions and betterments on historical capital cost in 1. Two commentators, Walter Baldus of the Woodvale Group, and Ann Carey of the Residence, Inc., requested clarification of the date from which an increase in depreciation expense will be recognized as a result of an addition or betterment. The Commissioner agrees clarification is needed and therefore amends the section. p. 9, 10

32. In 12 MCAR § 2.05304 A.8.b. (Temporary) of the proposed rule (page 10, lines 30-32), the Department establishes the useful life of a leasehold improvement. One commentator, Donald M. Gee, suggested the use of the Generally Accepted Accounting Principle (GAAP) that the useful life of a leasehold improvement is the remaining term of the lease. The Commissioner accepts the suggestion as a choice available to a provider and accordingly modifies the section.

33. In 12 MCAR § 2.05304 A.9. (Temporary) of the proposed rule (page 10, lines 33-36 and page 11, line 1), the Department establishes the condition necessary for allowing depreciation on a publicly-financed facility. One commentator, Carol J. Morse, requested clarification of the word "intended". The Commissioner agrees clarification is needed and therefore accepts the request to clarify.

34. In 12 MCAR § 2.05304 B.4. a. (Temporary) of the proposed rule (page 11, lines 34-36 and page 12, lines 1-7), the Department specified limits on the allowable interest rate for capitol loans. Several commentators, including Joseph Sulentich, Roger Moore, Patricia Winget, Robert Miller, Mary Martin, and Richard Lanigan have requested an increase in the limit to 2 or 2.5 percentage bonds above the published posted yield for the Federal Home Loan Mortgage Corporation. Mr. Lanigan has also requested clarification on whether or not points or financing charges are included in the limit. The Commissioner agrees that, given the commercial nature of these loans, a higher limit is appropriate, and, therefore, accepts Mr. Miller's suggestion to increase the limit to 2.5 percentage points above the published posted yield for the Federal Home Loan Mortgage Corporation. Further, the Commissioner agrees that it is necessary to clarify that any points or refinancing charges are included in the limit, and therefore the phrase "including any points or financing charges" has been inserted.

35. In 12 MCAR § 2.053 B.5. (Temporary) of the proposed rule (page 12, lines 11-18), the Department specifies the costs to which the debt reduction allowance must be applied. Commentators Dorothy Dietman, Richard Lanigan, and Paul Martodam have requested that an exception to this provision be made in cases where the lending source does not allow prepayment of the loan. The Commissioner agrees that this exception is necessary. Therefore, the Commissioner has added the exception and specified a method for applying the debt reduction allowance in those cases.

36. In 12 MCAR § 2.05304 B.7.b. (Temporary) of the proposed rule (page 13, lines 19-20), the Department specifies the instances in which increases in interest expense will be disallowed. Commentators David Peterman and James R. Driscoll requested that an exception be made for cases in which renegotiation of the interest rate is required in the original terms of the capital loan. The Commissioner agrees that this exception is necessary and revises the section. Further, the Commissioner finds that the phrase "changes in ownership" must be added in line 19 to make the provision consistent with 7.a.

37. In 12 MCAR 2.05304 B.7.c. (Temporary) of the proposed rule (page 13, lines 21-32), the Department specifies the conditions under which a refinancing allowance will be added to the property-related cost payment rate. Commentators David Peterman and James R. Driscoll identified the difficulties of refinancing capital loans with variable interest rates. The Commissioner finds that capital loans with variable interest rates must be excluded from the incentives provisions of 7.c. Further, commentator Mary Martin requested that the annual refinancing allowance reflect the savings realized during that year, rather than the savings realized over the life of the refinanced loan, to give providers a larger allowance during their first years. The Commissioner agrees with Ms. Martin's request and revises lines 29 and 30. p.13

38. In 12 MCAR § 2.05304 C. and C.1. (Temporary) of the proposed rule (page 14, lines 1-7), the Department established a formula for funding of depreciation. Commentator Peter Leneau, referring to the capital loan debt reduction allowance 12 MCAR § 2.05304 D., asked what must be done with the allowance if the facility had capital loans which restrict early principal payments. The Commissioner agrees that it is unclear what a facility should do, and adds the language on line 7 to clarify. p.14

39. In 12 MCAR § 2.05304 C.3. (Temporary) of the proposed rule (page 14, lines 11 and 12), the Department specifies the purpose for which funded depreciation may be used. Commentator Carol J. Morse asked whether these funds could be used to repair or purchase assets. The Commissioner agrees that the section is unclear concerning whether these funds may be used for such purposes and adds the language on line 12 to make such uses allowable. p.14

40. In 12 MCAR § 2.05304 C.4. (Temporary) of the proposed rule (page 14, lines 13 and 14), the Department designates what portion of the funded depreciation account may be used to purchase, replace, or repair assets. Commentators R. E. Miller and Donald Wallaker asked for clarification of what the 50 percent figure applies to. The Commissioner agrees that the sentence is unclear and adds the language on lines 13 and 14 to clarify the provision. p.14

41. In 12 MCAR § 2.05304 C.5. and C.6. (Temporary) of the proposed rule (page 14, lines 15-17), the Department specifies the funded depreciation requirements. Commentator Don Wallaker asked if all the depreciation is to be placed in one account. The Commissioner agrees that the provision is unclear regarding placement of funded depreciation and adds the language on page 14, between lines 15 and 16 to clarify. p.14

42. In 12 MCAR § 2.05304 D. (Temporary) of the proposed rule (page 14, lines 26-36 and page 5, lines 1-8), the Department defines how the capital loan reduction allowance is calculated. Several commentators, including Bob Van Slyke, Mary Martin, and R. E. Miller, commented that the capital loan reduction allowance should increase as equity increases. The Commissioner agrees that providers should receive an increased incentive for increased equity and revises the provision. p.14, 15

43. In 12 MCAR § 2.05304 E.2. (Temporary) of the proposed rule (page 15, lines 16-23), the Department specifies how the property-related cost payment will be calculated. Several commentators, including Peter Leneau, Mary Martin, and Paul Martodam, stated that the occupancy incentive (96 percent) should also apply to facilities with less than ten beds. The Commissioner agrees that these facilities should be eligible to receive the incentive and revises the provision. ✓15

44. In 12 MCAR § 2.05304 F.1. (Temporary) of the proposed rule (page 15, lines 29-36 and page 16, lines 1-16), the Department sets forth criteria for an incentive payment for vehicle purchases. Commentators Ann Carey and Paul Martodam recommend deletion of this provision since very few providers would be able to use it. After considering their comments, the Commissioner agrees that this provision is unworkable and deletes it. ✓p.15,16

45. In 12 MCAR § 2.05304 F.2. (Temporary) of the proposed rule (page 16, lines 17-31), the Department sets forth the criteria for an energy savings incentive. Several commentators, including Mary Martin, Roger Moore, and R. E. Miller, stated that the cost of the engineering or architectural study should be included in the provider's rate exception. The Commissioner does not agree that these costs should be treated as an exception, but does find that the provision does not clearly state how these costs are to be covered and adds language to clarify the status of these costs. Also commentator Carol Morse asks whether the facility would be exempt from all provisions of 12 MCAR § 2.05304 B. (Temporary) and 12 MCAR § 2.05311 D. (Temporary). The Commissioner agrees that this citation should be more specific and corrects it. ✓p.16

46. In 12 MCAR § 2.05305 A. (Temporary) of the proposed rule (page 16, lines 33-36, and page 17, lines 1-14) the Department establishes a time frame within which the temporary rate must be set. The Commissioner finds that permanent rates can sometimes be completed within the time frames given and that in such cases it would not serve the needs of the Department or the providers to issue a temporary rate. Therefore "payment rate" is inserted on line 35. ✓p.16

47. In 12 MCAR § 2.05305 A. (Temporary) of the proposed rule (page 17, line 4) the Department states that the temporary rate shall be the prior year's payment rate then in effect increased by 5 percent. Several commentators, including Mark Richardson of Valley Group Home, James R. Driscoll, Bob Van Slyke, and Mary Martin, requested that the reference to the 5 percent be deleted and that "the maximum rate increase authorized by the Legislature" be inserted. The Commissioner agrees that the change is in keeping with the intent of the Legislature and therefore adopts the suggestion. The Commissioner also finds that a similar change is needed on line 26 to clarify the limit as applied to the final rate. ✓p.17

48. In 12 MCAR § 2.05305 C.3. (Temporary) of the proposed rule (page 17, line 30), the Department cites the special needs section of the laws of

Minnesota. Several commentators pointed out that the citation was incomplete. The Commissioner agrees that the citation is incomplete and corrects the citation.

49. In 12 MCAR § 2.05306 (Temporary) of the proposed rule (page 18, lines 12-36 and page 19, lines 1-20), the Department established the rate-setting procedures for newly-constructed or newly-established facilities. Several commentators, including Mary Martin and Messrs. Moore, Driscoll, and David Peterman of AID Homes, Inc., requested clarification of whether the settle-up payment rate of a facility receiving an interim payment rate under Rule 52 would also be calculated according to Rule 52. The Commissioner agrees clarification of the applicable rule is needed and accordingly modifies the calculation of the settle-up payment rate.

Several commentators, including Messrs. Driscoll, Lanigan, and Peterson, and Mmes. Morse and Martin, questioned why the settle-up payment rate does not incorporate incentive allowances. The Commissioner finds an incentive allowance is needed in the settle-up payment rate to encourage new providers to be cost efficient and effective by operating at licensed capacity. Accordingly, the Commissioner has modified the settle-up property-related cost payment rate and the settle-up operating cost payment rate.

Because the setting of interim rates now occurs far in advance of the first day a medical assistance recipient is a resident or the date of Medical Assistance Program certification, several commentators, including Ms. Harris and Messrs. Moore, and Driscoll, requested that a method to adjust the interim rate be provided. The Commissioner agrees that a timely adjustment of interim rates is needed to reflect cost changes which occur prior to the effective date of the interim rate. Therefore, the Commissioner accepts the request and accordingly modifies the provision to permit adjustment of the interim rate.

Several commentators, including Messrs. Driscoll and Peterman, questioned why an interim payment rate is established on the basis of a projected occupancy of 100 percent even though a new provider can expect to have difficulty filling all beds at once. They requested use of a projected occupancy of a lower percent which will more nearly reflect their per bed costs in the interim period. The Commissioner accepts the request. However, the Commissioner finds a lower limit on the percentage of projected occupancy is needed to be consistent with other incentives for efficient cost effective operation. Accordingly, the Commissioner has amended the section.

One commentator, Ms. Morse, requested clarification of the percentages of licensed capacity days which are the bases of the settle-up payment rate. The Commissioner agrees clarification is needed and therefore has amended the section.

Several commentators, including Ms. Morse, suggested that the computation of occupancy level required in C. for a new facility should apply only to the first reporting year. The Commissioner accepts the suggestion and accordingly modifies the requirement.

Because of the requests for clarification and the suggestions that the Commissioner has accepted, the Commissioner finds it necessary to revise 12 MCAR § 2.05306 (Temporary) to provide clarity and consistency throughout. As a result, the Department has made numerous minor changes to correct problems of grammar and sentence arrangement in the proposed rule. Such changes incorporated the Commissioner's amendments and modifications but did not change the substance of the rule.

50. In 12 MCAR § 2.05308 (Temporary) of the proposed rule (page 20, lines 14-19), the Department introduces the costs for which reimbursement under the Medical Assistance Program is not allowed. Several commentators, including Roger Moore, Robert Miller and Mary Martin, requested that non-allowable costs be determined according to 12 MCAR § 2.052 in order to establish the historical base for rate years beginning during calendar year 1984. The Commissioner agrees with this request, and, therefore, the Commissioner revises the section to specify that payment rates established during calendar year 1984, the non-allowable costs will be determined according to 12 MCAR § 2.052. Further, several commentators, including Robert Miller, Mary Martin, and Eileen Harris, requested clarification of requirements to report on the facility's cost report on non-allowable costs. The Commissioner agrees that clarification is necessary and therefore, revises lines 18-19 to provide clarification.

51. In 12 MCAR § 2.05308 BB. (Temporary) of the proposed rule (page 22, lines 35-36), the Department specifies that payments made by providers, in lieu of real estate taxes, are not allowable. Several commentators, including Joseph Sulentich and Paul Martodam, requested recognition of agreements to make payments in lieu of real estate taxes if the agreements existed prior to the effective date of the rule. The Commissioner agrees that legally enforceable, non-cancelable, written contracts entered into prior to January 1, 1984, should be recognized and therefore, the Commissioner amends the rule.

52. 12 MCAR § 2.05308 CC. (Temporary) of the proposed rule (page 23, lines 1-3), the Department disallows costs for which adequate documentation is not maintained or provided. Several commentators, including Mary Martin, Eileen L. Harris and Lynne R. Megan, questioned the requirement that such costs be identified on the cost report. Ms. Martin suggested deletion of the provision. The Commissioner finds that these costs are disallowed in another provision of the rule and agrees with Ms. Martin's suggestion that they be deleted here and changes the rule accordingly.

53. In 12 MCAR § 2.05308 DD. (Temporary) of the proposed rule (page 23, lines 4 and 5), the Department disallows costs determined to be non-allowable in accordance with 12 MCAR § 2.05301-2.05315 (Temporary). Several commentators, including R. E. Miller, Judith Witherspoon, and Patricia Winget, stated that this provision is too broad. The Commissioner finds that the disallowances are adequately stated in other sections of the rule and therefore deletes DD.

54. In 12 MCAR § 2.05308 EE. (Temporary) of the proposed rule (page 23, lines 6 and 7), the Department disallows related organization costs for which a breakdown, in accordance with 12 MCAR § 2.05313 (Temporary), is not provided. The Commissioner finds that this provision is adequately covered in other provisions of the rule and, therefore, deletes EE.

55. In 12 MCAR § 2.05309 (Temporary) of the proposed rule the Department used the term "management compensation" in setting the payment limits for management personnel. Numerous commentators, including Mary Martin, Gerald Glomb, Thomas Reiffenberger, Ronald Davis, and Ann Carey, suggested that the term was too broad and therefore confusing. The Commissioner agrees that the term as used is too broad and therefore has changed it to read "top management compensation." This change was made on page 23, lines 9, 12, 13, 16, 19, 21, 25, 26, 35, and on page 24, lines 3, 4, 7, 8, 15, 24, 25, 26, and 30.

56. In 12 MCAR § 2.05309 A.2. (Temporary) of the proposed rule (page 23, lines 20-24), the Department specified that at least one-half of the total hours required in A.1. must be spent by the management personnel, on site, at the facility. Several commentators, including Ms. Martin, Ms. Dietman of Catholic Charities, and Annette Rowland of the Archdiocese, indicated that this would necessarily increase costs, promote inefficient use of time, and pose an undue hardship for managers responsible for groups of facilities. The Commissioner agrees that this would create a needless obstacle to efficient facility management and has deleted provision A.2. Provisions A.1. and .d. relate the number of hours of top management services required per week to licensed bed capacity, and establishes the basis for determining the number of hours for which compensation may be claimed for top management services as an alternative to A.2.

57. In 12 MCAR § 2.05309 A.4. (Temporary) of the proposed rule (page 24, lines 2 and 3), the Department establishes an upper limit on the top management compensation that may be claimed by an individual. Several commentators, including Ms. Martin, Ms. Dietman, Michael Weinandt of Wabasha County ARC, and Solvig Farseth, stated that the top management compensation limit was too low and that it was not clear who was covered by the limitation. The Commissioner agrees with those comments and has modified A.4. to remedy these concerns. The individual top management compensation limitation has been increased from $39,072 to $51,750. This change is based on a limitation that applies to comparable level positions in state government. It also clarifies how the limitation applies to less than full-time managers and the personnel who are covered by the limitation.

58. In 12 MCAR § 2.05309 B. (Temporary) of the proposed rule (page 24, line 36, and page 25, lines 1-3), the Department sets limitations on land costs. Several commentators, including Walter Baldus, Donald M. Gee, and Richard Lanigan, state that limiting land costs prior to December 31, 1983 to $1,000 does not conform with previous Department policy and would have a negative effect on existing facilities. The Commissioner

agrees that this provision should conform with the provision in Rule 52 as it regards costs incurred prior to January 1, 1984 and amends the section accordingly.

59. In 12 MCAR § 2.05309 C.1.c. (Temporary) of the proposed rule (page 25, lines 21-24), the Department describes how the adjustment to the investment per bed limitation shall be made. Commentator Mary Martin requests that the Department clarify what dates will be used for determining the change in the index. Commentator R. E. Miller requests that the adjustment be made for each full or partial increase. The Commissioner agrees with the commentators that the dates should be specified and that the increase should recognize a full or partial percentage point change and revises the provision accordingly.

60. In 12 MCAR § 2.05309 C.4. (Temporary) of the proposed rule (page 25, line 36, and page 26, lines 1 and 5), the Department establishes a fiveyear period for adjustments to the facility's investment per bed limitation. Several commentators, including Mary Martin, Roger Moore and Joe Sulentich request that adjustments be made every three years. The Commissioner agrees that adjustments should be made every three years and incorporates the change.

61. In 12 MCAR § 2.05309 D. (Temporary) of the proposed rule (page 26, lines 11-28), the Department sets limits for reimbursement of lease and rental costs. Several commentators, including Jan Carver, Mary Martin, Robert Miller and Richard Lanigan requested that leases entered into prior to the effective date of this rule be recognized in the future even if they had to be renegotiated. The commentators asked for clarificatoin of the interaction of this section with other provisions of the rules such as funded depreciation and capital debt reduction allowance. Further, the commentators requested that the October 1, 1983 cut off date be changed to conform to the effective date of this rule. The Commissioner agrees and therefore, the Commissioner revises this section.

The changes made in this provision require the following changes to be made in other provisions of these rules:

1. 12 MCAR § 2.05304 B. line 5, page 12
2. 12 MCAR § 2.05304 C. line 1, page 14
3. 12 MCAR § 2.05304 D.1. line 26, page 14
4. 12 MCAR § 2.05304 D.2. lines 6-8, page 15
5. 12 MCAR § 2.05304 E.3. line 25, page 15

62. In 12 MCAR § 2.05309 E.2.a. (Temporary) of the proposed rule (page 26, lines 35-36, and page 27, lines 1-3), the Department specifies the limit of working capital interest expense which will be allowed for payment rates established during calendar year 1984. The Commissioner finds it necessary to clarify this section so that the limit is placed on the working capital interest expense, which is allowed for purposes of establishing the payment rate, and not on the working capital interest expense which is incurred by the facility. Further, the Commissioner finds it necessary to clarify the reporting year on which the base for the limitation is established. Therefore, the commissioner revised this section to accomplish the clarification.

63. In 12 MCAR § 2.05309 E.2.b. (Temporary) of the proposed rule (page 27, lines 4-7), the Department specifies the limit of working capital interest expense which will be allowed for rate years beginning on, or after, January 1, 1985. The Commissioner finds it necessary to clarify this section to specify that the limit is placed on the working capital interest expense which is allowed for purposes of establishing the payment rate but does not limit the expense actually incurred by the facility. Therefore, the Commissioner revises the section to accomplish that clarification.

64. In 12 MCAR § 2.05309 E.3. (Temporary) of the proposed rule (page 27, lines 11-15) the Department sets limits on the amount of working capital interest expense incurred. In reviewing this provision the Commissioner finds that the intent was not to limit expense incurred but the amount of expense allowable for rate setting purposes and changes the section accordingly.

65. In 12 MCAR § 2.05309 F.2. (Temporary) of the proposed rule (page 27, lines 22-24), the Department specifies a method to offset retirement contributions made by a nonvested, past employee. Commentators Richard Lanigan, Walter Baldus, Mary Martin, Patricia Winget, and Jean Searles requested that this section be deleted on the basis that federal regulations already address this concern. The Commissioner agrees and, therefore, deletes the section.

66. In 12 MCAR § 2.05309 G. (Temporary) of the proposed rule (page 27, line 30), the Department specifies the maximum amount which may be reserved in a facility's budget for vacation expenses of residents. The Commissioner finds it necessary to clarify that this amount is the maximum allowed for the purposes of establishing a payment rate and not the maximum that the facility may either budget or spend. Therefore, the Commissioner revises the section to accomplish the clarification.

67. In 12 MCAR § 2.05310 D. (Temporary) of the proposed rule (page 28, lines 18-25), the Department allows a facility to include as an allowable the cost of ownership of a capital asset owned by a related organization and used by the facility. One commentator, Ms. Morse, requested clarification of the gain realized from the sale of such an asset. The Commissioner agrees clarification is needed and accordingly modifies the section.

68. In 12 MCAR § 2.05311 A.3. (Temporary) of the proposed rule (page 29, lines 25-27), the Department establishes a time limitation or payment as a condition of allowability for rate setting purposes. Many commentators, including Ms. Martin, Ms. Searles, Messrs. Miller and Leneau, requested a longer time to pay for goods or services following the close of the the reporting period. The Commissioner accepts the request and accordingly has amended the time limitation.

69. In 12 MCAR § 2.05311 B.1.d. (Temporary) of the proposed rule (page 30, lines 9-12 and lines 21-22), the Department defined as employee compensation "in-kind benefits" received or used by the provider or employee. Two commentators, Jean Searles and Judith Witherspoon of The Phoenix

Residence, questioned whether the provision would include equipment or services used by an employee in work-related functions and requested clarification. The Commissioner agrees that clarification is needed and accepts the suggestion to limit in-kind compensation to equipment and services received by the employee or provider for personal use. Accordingly, the Commissioner modifies the section. Further, the Commissioner finds it is necessary for a facility to have a written policy which specifies the nature and cost of the in-kind benefits included in the compensation. Therefore, the Commissioner clarifies the list of policies for payment of compensation in 12 MCAR § 2.05311 B.2. (Temporary) by the addition of c.

70. In 12 MCAR § 2.05311 D.1. and 2. (Temporary) of the proposed rule (page 31, lines 14-23), the Department established the criteria for capitalizing and depreciating capital assets other than land, additions, and betterments. Several commentators, including Douglas Butler of Hiawatha Children's Home, Kevin Staebner of Fiebiger, Swanson, West and Company, and Judith Witherspoon, suggested that an increase in the unit cost and the aggregate cost which set the criteria for capitalization and depreciation of capital assets would better reflect the cost increases that recent inflation has produced. The Commissioner agrees that inflation has caused cost increases beyond the control of the provider and accepts the suggestion to increase the unit cost and aggregate cost which require a capital asset, addition, or betterment to be capitalized and depreciated. Accordingly, the Commissioner amends the sections.

71. In 12 MCAR § 2.05311 D.3. (Temporary) of the proposed rule (page 31, lines 24-36, and page 32, lines 1-6), the Commissioner established the criteria for the cost of repairs which a provider may expense and the methodology for claiming the expensed repairs. Several commentators, including Anne Henry, Mary Martin, and Messrs. Moore, Butler, and Van Slyke, suggested that the dollar limit for expensing a repair is too low and requested an increase in the dollar amount. The Commissioner accepts the request and accordingly, modifies the section. Several commentators, including Richard Lanigan and Paul Martodam, requested clarification of the method of reporting and claiming reimbursement for the cost of expensed repairs. The Commissioner accepts the request for clarification. Commentators Sharon Kannenberg and Anne Henry suggested that removal of the cost of expensed repairs from the base limitation computation as in a.-c. will have an adverse effect on the maintenance of older facilities and those facilities serving individuals with serious behavior problems. The Commissioner finds that an allowance for funding repairs in the diem rate is needed to encourage the provider to maintain the facility in good repair and is consistent with the intent of Chapter 312 to provide incentives to increase the provider's equity in a facility. Accordingly, the Commissioner deletes a.-c.

Because the Commissioner accepted the several suggestions and requests for clarification, the Commissioner finds it necessary to revise 3. to correct the lack of clarify. Such changes did not effect the substance of 3.

72. In 12 MCAR 2.05311 G. (Temporary) of the proposed rule (page 33, lines 13-23), the Department defines the type of documentation that must be kept for compensation of personal services. Commentator Jean Searles asked how a facility can keep track of direct or indirect costs for payroll purposes. The Commissioner agrees that the concept of direct and indirect costs is not useful for these purposes and deletes that language on lines 14 and 15. The Commissioner also clarifies that "method", as used in line 19, refers to the "allocation" method.

73. In 12 MCAR 2.05311 H. (Temporary) of the proposed rule (page 33, lines 24-28), the Department requires a motor vehicle log to be maintained for each vehicle used by the facility that shows personal, facility, and resident usage. Many commentators, including Dorothy Dietman, James Driscoll, and Annette Rowland, requested that the distinction between facility and resident usage be deleted. The Commissioner agrees, and deletes the reference to resident usage. The Commissioner also finds that motor vehicle logs for vehicles used exclusively for facility business are unnecessary.

74. In 12 MCAR § 2.05311 E.2. (Temporary) of the proposed rule (page 32, lines 27-28), the Department specified the criteria for adequate documentation of individual facility transactions. Several commentators, including Dorothy Dietman, R. E. Miller and Mary Martin, said the provision of "separate files for each facility" was unreasonable and not in keeping with more centralized practices adopted by multi-facility providers. The Commissioner clarified the intention of the provision with new wording which allows for more flexibility in record-keeping methods.

75. In 12 MCAR 2.05312 B. (Temporary) of the proposed rule (page 34, lines 17-36, and page 35, lines 1-6), the Department requires the facility to allocate personal expenses for owners, providers, or employees whose primary residence is in the facility. Several commentators, including Mary Martin, Peter Leneau, Ann Carey, and Donald M. Gee, stated that requiring the facility to allocate costs for employees and providers is unreasonable and costly. The Commissioner agrees that this allocation is unnecessary and revises the section to include only owners.

76. In 12 MCAR 2.05313 A.1. (Temporary) of the proposed rule (page 35, line 14-15), the Department specifies that salaries of program staff are included in the program operating cost category. Some examples of positions which are considered program staff positions were given. Several commentators, including Roger Moore, James R. Driscoll, and David Peterman, requested that nursing staff be added to the examples. The Commissioner agrees and, therefore, revises the section to include nursing staff.

77. In 12 MCAR 2.05313 B. (Temporary) of the proposed rule (page 35, lines 27-28), the Department specifies the classification of costs in the maintenance operating cost category. Several commentators, including Walter Baldus, Mary Martin, and Robert Miller, requested simplification in the allocation of staff. The Commissioner agrees and, therefore, revises the rule to allow a facility, for reporting purposes, to combine the costs of laundry and linen services, housekeeping services, plant operations, and maintenance services.

78. In 12 MCAR 2.05314 A.4. and 5. (Temporary) of the proposed rule (page 38, line 29), the Department specifies the documentation required for capital and working capital loans outstanding during the reporting year. Mr. Robert Miller requested that the phrase "or a signed statement that no changes have been made in the documents on file with the Department" be added to the reporting requirement, when appropriate, in order to reduce duplicative documentation. The Commissioner agrees that it is appropriate to add that phrase to this section and, therefore, revises the rule accordingly.

79. In 12 MCAR § 2.5314 A.6 (Temporary) of the proposed rule (page 38, lines 32-36, and page 39, lines 1-3), the Department requests a statement of ownership of the facility. Commentator Morse sought clarification as to what percentage of ownership applies to whom, and commentator R. E. Miller sought allowance for non-submission of lengthy documents already on file with the Department if no changes have occurred. The Commissioner agrees that this section needs clarification as to ownership percentages and that re-submission of unchanged documents is not necessary and revises the provision accordingly. The change regarding the submittal of the documents is also made on line 3. A change is also made to clarify the requirement as to sole proprietors.

80. In 12 MCAR 2.05314 A.13. (Temporary) of the proposed rule (page 39, lines 23 and 24), the Department requires the provider to submit a schedule of repairs. Several commentators, including James Driscoll, Kevin Staebner, and Judith Witherspoon, requested a revision of the rule provisions which deal with repairs. To make this reporting requirement consistent with the changes made in the repairs section, the Commissioner revises this requirement.

81. In 12 MCAR 2.05314 A.15. (Temporary) of the proposed rule (page 39, lines 29-36), the Department describes the cost breakdown to be submitted for related organization management fees. Commentator Paul Martodam stated that their facility already has an allocation plan approved by the East Central Development Commission. He believes this type of allocation plan should be acceptable and the Commissioner revises accordingly.

82. In 12 MCAR 2.05314 B.2. (Temporary) of the proposed rule (page 40, lines 9 and 10), the Department states that the Commissioner may require the provider to submit separate audited or unaudited financial statements from each entity in the provider group. Several commentators, including Mary Martin, Patricia Winget, and Bob Van Slyke, interpreted this requirement to mean that the Commissioner could require a facility to have an audit. Since this was not the intent of the Commissioner, this requirement is clarified.

83. In 12 MCAR 2.05314 B.4. (Temporary) of the proposed rule (page 40, lines 14-18), the Department states that the Commissioner may require the provider to supply copies of leases and other documents related to the lease of the equipment, furnishings, and goods. In response to changes requested in the provision on leases (12 MCAR 2.05309 D.) the Commissioner finds it necessary to clarify what information may be required by this provision.

84. In 12 MCAR 2.05314 C. (Temporary) of the proposed rule (page 40, lines 21-26), the Department specifies when short period cost reports may be submitted. Several commentators, including Mary Martin, Donald M. Gee, and Roger Moore, state that this provision is unclear. The Commissioner agrees that the provision is unclear and, therefore, modifies the provision.

85. In 12 MCAR 2.05314 H.3. (Temporary) of the proposed rule (page 42, line 10), the Department allows for an extension of the deadline for submittal of a corrected report, or additional information, if the Commissioner determines that the delay will not prevent the Commissioner from establishing rates in a timely manner as required by law. Commentator R. E. Miller stated that the law does not require issuance of rates by any certain date. The Commissioner agrees and deletes the reference to the "law".

86. In 12 MCAR 2.05314 I.1. (Temporary) of the proposed rule (page 42, lines 12-17), the Department sets a deadline for commencement of a field audit requested by a provider. Commentators R. E. Miller, Mary Martin, and Richard Lanigan requested that the Commissioner establish a deadline for completion of the requested audit. The Commissioner agrees that deadlines are appropriate and revises the provision accordingly.

87. In 12 MCAR 2.05314 I.2.b. (Temporary) of the proposed rule (page 42, line 28), the Department specifies when retroactive adjustments shall be made to the facility's temporary payment rate or payment rate. Commentator Carol Morse asked whether the restrictions in a. cited in this provision apply to both desk and field audits. The Commissioner finds that application of the restrictions is unclear and modifies the provision.

88. In 12 MCAR 2.05315 A.3. (Temporary) of the proposed rule (page 45, lines 1-9), the Department specifies conditions for appeal. Commentators Martin, R. E. Miller, and Sulentich pointed out that the phrase "resolved informally" was vague and that an unfair condition to appeal was placed on them with the wording "cannot" which they said would require proving that the dispute cannot be resolved before an appeal may be made. The Commissioner agrees that the wording was too stringent and changed "cannot" to "has not been" in line 8.

89. In 12 MCAR 2.0515 B.1. (Temporary) of the proposed rule (page 45, lines 10-27), the Department specifies the criteria which must be met to file an appeal. Commentator Donald M. Gee questioned why only the provider was required to follow the criteria, procedures and time frame specified and suggested that the section also apply to the county welfare or human services board. The Commissioner agreed and the appropriate wording was added to line 12.

90. In 12 MCAR 2.0515 C. (Temporary) of the proposed rule (page 45, lines 28-34), the Department outlines the informal methods for resolution of a dispute. Commentator Martin urged that other modified appeal procedures outlined in applicable law be incorporated. The Commissioner agreed to include dispute resolution methods as specified in line 32.

91. The Commissioner finds it necessary to make the date in the following sections consistent with the effective date of the rule and accodingly amends:

12 MCAR § 2.05304 B.4.a. (page 11, line 35)
12 MCAR § 2.05304 B. 4.b. (page 12, line 10)
12 MCAR § 2.05304 B.6.a. (page 12, line 22)
12 MCAR § 2.05304 B.6.b. (page 12, line 26)
12 MCAR § 2.05304 B.6.c. (page 12, line 32)
12 MCAR § 2.05304 B.6.d. (page 13, line 2)
12 MCAR § 2.05304 B.6.e. (page 13, line 9)
12 MCAR 2.05309 E.1 (page 26, lines 31-32)
12 MCAR § 2.05309 E.2.a. (page 26, lines 35-36)
12 MCAR § 2.05309 E.2.b. (page 27, lines 4-5).

92. 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 in the proposed rules. Such changes did not affect the substance of the rules. These changes are as follows:

12 MCAR § 2.05304 A.7.b. (line 18, page 10)
12 MCAR § 2.05304 A.8.a. (line 26, page 10)
12 MCAR § 2.05304 A.10. (lines 5-7, page 11)
12 MCAR § 2.05304 A.11 (lines 8-10, page 11)
12 MCAR § 2.05304 B. (lines 11-12, page 11)
12 MCAR § 2.05304 B.2. (lines 22-24, page 11)
12 MCAR § 2.05304 B.3. (lines 26-27, page 11)
12 MCAR § 2.05304 B.4.b. (line 9, page 12)
12 MCAR § 2.05304 B.6. (line 19, page 12)
12 MCAR § 2.05304 B.6.d. (line 3, page 13)
12 MCAR § 2.05304 B.6.e. (lines 9-10, page 13)
12 MCAR § 2.05304 B.7.a. (line 16, page 13)
12 MCAR § 2.05304 C. (line 2, page 14)
12 MCAR § 2.05304 C. (line 16, page 14)
12 MCAR § 2.05304 C.7. (lines 21-23, page 14)
12 MCAR § 2.05304 E. (line 27, page 15)
12 MCAR § 2.05307 A.1. (line 29, page 19)
12 MCAR § 2.05307 B. (lines 9-11, page 20)
12 MCAR § 2.05308 Q. (line 30, page 21)
12 MCAR § 2.05308 V. (line 4, page 22)
12 MCAR § 2.05309 A.1.a. (line 14, page 23)
12 MCAR § 2.05309 A.2. (line 27, page 23)
12 MCAR § 2.05309 A.4. (lines 5-7, page 24)
12 MCAR § 2.05309 A.4. (line 16, page 24)
12 MCAR § 2.05309 E.3. (lines 8-16, page 27)
12 MCAR § 2.05309 F.1. (line 16, page 27)
12 MCAR § 2.05310 D. (lines 23-24, page 28)
12 MCAR § 2.05311 (line 15, page 29)
12 MCAR § 2.05311 D. (lines 11-13, page 31)
12 MCAR § 2.05311 D.4. and 5. (lines 7-10, page 32)
12 MCAR § 2.05311 D.7. (line 21, page 32)
12 MCAR § 2.05312 A. (line 9, page 34)

12 MCAR § 2.05313 B.4.d. (line 14, page 36)
12 MCAR § 2.05313 D.5. (line 5, page 38)
12 MCAR § 2.05314 A.6. (line 36, page 38)
12 MCAR § 2.05314 B.3. (line 13, page 40)
12 MCAR § 2.05314 (line 25, page 44)

93. All comments concerning the proposed temporary rules received within the period allowed by law were considered by the Department.

94. The changes made to the proposed temporary rule are not substantial changes.

FR-01

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December 29, 1983

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50 Sherburne Avenue
St. Paul, Minnesota 55101

Attention: Assistant Attorney General
Marty Casserly

Re: 12 MCAR §2.05301-2.05315 (temporary)

Dear Ms. Casserly:

This letter will confirm various conversations which you and I have had recently concerning the Attorney General's review of the above referenced temporary rule (hereinafter referred to as Rule 53). As I indicated to you, this law firm represents the Association of Residences for the Retarded in Minnesota (ARRM) which has instructed me to convey to you the Association's objections to proposed Rule 53. The Association has, on numerous occasions, presented to the Commissioner of the Department of Public Welfare both its substantive and legal objections to Rule 53. We will not duplicate those objections in this response to you. We will limit our response to those legal objections which we feel militate strongly against the implementation of Rule 53 currently planned for January 1, 1984.

The following are some of the legal objections which ARRM has to Rule 53. We think any one of these would be sufficient to justify not implementing Rule 53. After you have had a chance to review these objections, we would be willing to provide you with a legal memoranda (including case citations) in support of each of the legal objections we have to the implementation of Rule 53.

1. DPW has exceeded its statutory authority in enacting Rule 53. Rule 53 is proposed to implement Chapter 312, Laws of Minnesota 1983, Article 9, Section 7, Subdivisions 2 and 3. The Commissioner has failed to follow the legislative enactment, inter alia, as follows:

   A. Chapter 312 authorizes the Commissioner to implement a temporary rule. Numerous provisions of Rule 53 go beyond anything contemplated for a temporary rule. For example, a number of entirely new concepts are introduced, such as related organizations and funded depreciation which will have profound effect on provider services and extend the impact of Rule 53 long beyond the period authorized by the legislature for its existence.

   B. Chapter 312 requires that the Commissioner include requirements to ensure that the accounting principles of the facilities conform to generally accepted accounting principles. There are numerous occasions in Rule 53 where the Rule differs from generally accepted accounting principles. As an example I would refer you to the definitions of equity, working capital interest and useful life found at 12 MCAR §2.05302.

   C. Chapter 312 requires Rule 53 to promote prudent management of capital assets. Numerous provisions of Rule 53 hinder prudent management.

   D. Chapter 312 requires the Commissioner to provide a reward for the accumulation of equity. The Rule 53 actually reduces the reward a provider has for the accumulation of equity under Rule 52. At 12 MCAR §2.05304 D there is an effort to promote capital investment by paying an incentive based on the percentage of debt to equity. The proposed incentive provides no incentive for accumulation of equity beyond 40%. In fact, those providers whose facilities currently are 100% debt free are substantially penalized by Rule 53. They are paid the same incentive as a provider with 40% equity. This is clearly in violation of the legislative enactment.

2. Rule 53 is illegal since it restricts freedom of association. Rule 53 effectively denies providers the right to be represented by an association of its members when that association is involved in certain kinds of activities. 12 MCAR §2.05308(a), (b) and (c). The Commissioner was not allowed to promote this same limitation during the process of making Rule 50, however, he is trying to do so here.

If his effort was illegal in Rule 50, it should be illegal in Rule 53 also. Freedom of association is protected by the United States Constitution through the First Amendment. Freedom to engage in effective political expression through an association is at the heart of the rights protected by the First Amendment. Rule 53 will significantly impair the protected First Amendment rights of providers in Minnesota.

3. Rule 53 is illegal because it impairs contracts. Rule 53 (specifically 12 MCAR §2.05309 D) provides that rental and lease costs shall be limited by the terms of that section. Subpart 4 of that section states that lease and rental costs for arms length transactions signed or incurred before December 31, 1983, shall be allowed under Rule 52 subject to limitations included at subpart 6 of this section of Rule 53. The impact of this section is to substantially impair the rights of providers who entered into contracts prior to the effective date of Rule 53 (temporary).

4. Rule 53 is illegal since it denies the providers due process of law. 12 MCAR §2.05314 J provides a series of penalties which may be imposed singly or in combination by the Commissioner if he deems a provider to be not in compliance with the the provisions of Rule 53. Conspiciously absent from that section involving penalties is any requirement for advance notice or opportunity for the provider to be heard or to explain the process that led to the situation where the Commissioner imposed the penalty.

   Furthermore, 12 MCAR §2.05315 a 1, places a condition precedent upon a provider's right to appeal. That is, that the appeal, if successful, would result in a change to the facility's payment rate. To limit the provider's right to appeal only to those cases where there would be a change in the facility's payment rate denies the providers the right to appeal decisions by the Commissioner, as an example, which infringe upon the constitutional rights of the provider, but would not result in a change in the provider's payment rate. For instance if the Commissioner demands that a provider produce copies of it's officers personal income tax returns appealing that demand is not authorized under the proposed rule.

5. Rule 53 is illegal because it impairs the provider's right to counsel. 12 MCAR §2.05308 C and Y specifically categorize as non-allowable costs assessments by or a portion of dues charged by associations or professional organizations for lobbying, contributions to political action committees, or campaigns or litigation, except for successful challenges to decisions by agencies of the State of Minnesota and legal and related

expenses for unsuccessful challenges to decisions by governmental agencies. The right to counsel has been recognized by a constitutional right, with its roots in the Fifth Amendment to the United States Constitution. The right to retain counsel in a civil matter is implicit in the concept of Fifth Amendment due process. Presently, attorneys' fees are allowable in rate proceedings held under Rule 52. 9 MCAR §2.206, Rule for Contested Hearings, provides: "any party may be represented by legal counsel throughout the proceedings in a contested case before an agency, by a person of their choice." The effect of Rule 53 will be to seriously impinge upon the rights of providers to obtain counsel since there will be no mechanism within the Rule for a provider to be reimbursed for those legal fees. This will have a tremendous chilling effect on the exercise of rights and privileges by providers, knowing that if they fail, or that if they raise issues which do not affect their rates, their attorneys' fees will not be reimbursed. It is submitted that no other regulated industry currently operating in the State of Minnesota is denied the right to recover attorneys' fees in contested case proceedings.

6. Rule 53 is illegal since it violates the provider's right to privacy. Section 2.05314 A violates the right to privacy of providers and those with whom providers do business. That section provides that there are certain documents which must be included with the cost reports when submitted to DPW. The right to privacy has been recoginized by the Minnesota Supreme Court which has stated that although the right to privacy is not absolute and must give way in certain circumstances to the interest of the State, the extent of the State's intrusion is not limited. The means utilized to serve the State's interest must be necessary and reasonable and, in light of alternative means, the least intrusive. Rule 53 is incredibly overreaching in its requirements for the production of documents by providers. The means selected are, by far, the most intrusive to the providers right to privacy. The provider's choice under the circumstances would seem to be either to go out of business or to totally disgorge the Commissioner for whatever purposes the Commissioner might have in mind private documents relating to the affairs of the provider, its officers, directors, shareholders and contributors.

7. Rule 53 is illegal as it violates the constitutional right of equal protection. There is a denial of equal protection under the law because the mechanism by which per diem rates are determined for providers of ICF/MR facilites under Rule 53 is more restrictive, burdensome, costly and unfair that the mechanism for determining per diem rates for nursing home providers under

Rule 50. While there may be some reasons to treat ICF/MR providers differently than nursing home providers, the wholesale distinctions, most of which are detrimental to ICF/MR providers cannot be justified. As examples: Rule 53 intrudes on the right to privacy of the ICF/MR provider substantially more than Rule 50 would require an intrusion into the right to privacy of Rule 50 provider; Rule 53 substantially limits the right of appeal of ICF/MR providers when compared to the rights of Rule 50 providers to appeal decisions under that Rule. The comparison can go on and on and on.

Furthermore, 2 MCAR §2.05309 A, B3 and C provide generally for caps on certain costs that providers can pay. This is done despite any indication that similar caps are imposed on State run (and State financed) institutions providing services to the mentally retarded in this State. As such the private providers believe and assert that this violates their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. The disparity between the costs which would be reimbursed to State institutions providing services to the mentally retarded when compared to costs which will be reimbursed to private providers providing services to the mentally retarded in Minnesota is substantial.

8. Rule 53 is illegal since it fails to comply with Federal laws and regulations. 42 CFR §447.205 requires a State anticipating changes in the reimbursement scheme under medicaid which will have an impact of 1% or greater on the annual reimbursement rate, to provide 60 days' written notice of the proposed changes. The State of Minnesota published that notice in the State Register on December 26, 1983 and proposes the Rule to be effective January 1, 1984. There is clearly not the required 60 days' notice.

   Furthermore, the change in the per diem reimbursement scheme anticipated by Rule 53 is a violation of the agreement between the State of Minnesota and the Federal Government. Minnesota, through DPW and the Federal Health Care Financing Administration, an agency of the United States Department of Health and Human Services, have entered into an agreement which specifies the method by which Minnesota will determine per diem rates to compensate efficiently and economically operated providers of ICF/MR facilites for the necessary costs those providers incur in providing the required care to the residents. It is submitted that that agreement and Federal laws and regulations pertaining to that reimbursement system require that the primary duty of the State is to determine what rates would be adequate, considering

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all relevant factors, within the bounds of reasonableness, to compensate the providers. The State of Minnesota has failed to do that during the process by which Rule 53 was promulgated. As recently as 30 days ago representatives of DPW publically stated they were not in a position to express any opinion concerning the effect of Rule 53 on the reimbursement rates for the providers involved and had taken no testimony or done any analysis to be able to do so.

It is respectfully submitted that Rule 53 should not be implemented by the State of Minnesota. Aside from the substantial substantive and procedural difficulties with the Rule as drafted (in many respects its provisions are imcomprehensible) the process by which the Rule was drafted, and the providions of the Rule once drafted are violative of existing constitutional law, along with State and Federal law as it relates to reimbursement for ICF/MR providers. It is respectfully requested that the Attorney General inform the Commissioner of the Department of Public Welfare that he will not be allowed to implement Rule 53 on January 1, 1984.

If the Attorney General would like case citations with respect to each of the legal issues raised in this letter, we would be happy to provide that to him.

If you have any questions I would encourage you to contact me.

Very truly yours,

PETERSEN, TEWS & SQUIRES, P.A.

Gerald S. Duffy

GSD:jh

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES OF THE STATE OF MINNESOTA DEPARTMENT OF PUBLIC WELFARE GOVERNING THE DETERMINATION OF WELFARE PAYMENT RATES FOR ALL RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM (12 MCAR §§ 2.05301 - 2.05315 TEMPORARY)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General ~~John Kirwin~~ GAIL OLSON, 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.

Gail M. Olson
Special Assistant Attorney General

Dated: December 23, 1983

Agency Response Kinnunen

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December 29, 1983

Hubert H. Humphrey, III
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State of Minnesota
Room 204
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50 Sherburne Avenue
St. Paul, Minnesota 55101

Attention: Assistant Attorney General
Marty Casserly

Re: 12 MCAR §2.05301-2.05315 (temporary)

Dear Ms. Casserly:

This letter will confirm various conversations which you and I have had recently concerning the Attorney General's review of the above referenced temporary rule (hereinafter referred to as Rule 53). As I indicated to you, this law firm represents the Association of Residences for the Retarded in Minnesota (ARRM) which has instructed me to convey to you the Association's objections to proposed Rule 53. The Association has, on numerous occasions, presented to the Commissioner of the Department of Public Welfare both its substantive and legal objections to Rule 53. We will not duplicate those objections in this response to you. We will limit our response to those legal objections which we feel militate strongly against the implementation of Rule 53 currently planned for January 1, 1984.

The following are some of the legal objections which ARRM has to Rule 53. We think any one of these would be sufficient to justify not implementing Rule 53. After you have had a chance to review these objections, we would be willing to provide you with a legal memoranda (including case citations) in support of each of the legal objections we have to the implementation of Rule 53.

1. DPW has exceeded its statutory authority in enacting Rule 53. Rule 53 is proposed to implement Chapter 312, Laws of Minnesota 1983, Article 9, Section 7, Subdivisions 2 and 3. The Commissioner has failed to follow the legislative enactment, inter alia, as follows:

A. Chapter 312 authorizes the Commissioner to implement a temporary rule. Numerous provisions of Rule 53 go beyond anything contemplated for a temporary rule. For example, a number of entirely new concepts are introduced, such as related organizations and funded depreciation which will have profound effect on provider services and extend the impact of Rule 53 long beyond the period authorized by the legislature for its existence.

B. Chapter 312 requires that the Commissioner include requirements to ensure that the accounting principles of the facilities conform to generally accepted accounting principles. There are numerous occasions in Rule 53 where the Rule differs from generally accepted accounting principles. As an example I would refer you to the definitions of equity, working capital interest and useful life found at 12 MCAR §2.05302.

C. Chapter 312 requires Rule 53 to promote prudent management of capital assets. Numerous provisions of Rule 53 hinder prudent management.

D. Chapter 312 requires the Commissioner to provide a reward for the accumulation of equity. The Rule 53 actually reduces the reward a provider has for the accumulation of equity under Rule 52. At 12 MCAR §2.05304 D there is an effort to promote capital investment by paying an incentive based on the percentage of debt to equity. The proposed incentive provides no incentive for accumulation of equity beyond 40%. In fact, those providers whose facilities currently are 100% debt free are substantially penalized by Rule 53. They are paid the same incentive as a provider with 40% equity. This is clearly in violation of the legislative enactment.

2. Rule 53 is illegal since it restricts freedom of association. Rule 53 effectively denies providers the right to be represented by an association of its members when that association is involved in certain kinds of activities. 12 MCAR §2.05308(a), (b) and (c). The Commissioner was not allowed to promote this same limitation during the process of making Rule 50, however, he is trying to do so here.

If his effort was illegal in Rule 50, it should be illegal in Rule 53 also. Freedom of association is protected by the United States Constitution through the First Amendment. Freedom to engage in effective political expression through an association is at the heart of the rights protected by the First Amendment. Rule 53 will significantly impair the protected First Amendment rights of providers in Minnesota.

3. Rule 53 is illegal because it impairs contracts. Rule 53 (specifically 12 MCAR §2.05309 D) provides that rental and lease costs shall be limited by the terms of that section. Subpart 4 of that section states that lease and rental costs for arms length transactions signed or incurred before December 31, 1983, shall be allowed under Rule 52 subject to limitations included at subpart 6 of this section of Rule 53. The impact of this section is to substantially impair the rights of providers who entered into contracts prior to the effective date of Rule 53 (temporary).

may argue that the provider, by contracting with 3rd party, is prevented from changing reimbursement system.

R.53 doesn't impair their contracts - doesn't say they can't honor them. Only limits reimbursement we'll pay. Their argument would prevent state from changing reimbursement system, because of their contracts.

4. Rule 53 is illegal since it denies the providers due process of law. 12 MCAR §2.05314 J provides a series of penalties which may be imposed singly or in combination by the Commissioner if he deems a provider to be not in compliance with the the provisions of Rule 53. Conspiciously absent from that section involving penalties is any requirement for advance notice or opportunity for the provider to be heard or to explain the process that led to the situation where the Commissioner imposed the penalty.

Furthermore, 12 MCAR §2.05315 a 1, places a condition precedent upon a provider's right to appeal. That is, that the appeal, if successful, would result in a change to the facility's payment rate. To limit the provider's right to appeal only to those cases where there would be a change in the facility's payment rate denies the providers the right to appeal decisions by the Commissioner, as an example, which infringe upon the constitutional rights of the provider, but would not result in a change in the provider's payment rate. For instance if the Commissioner demands that a provider produce copies of it's officers personal income tax returns appealing that demand is not authorized under the proposed rule.

If provider incurs penalty because of failure to comply, that is appealable. Provider wishing to vindicate other challengers will have to pursue other remedies. he may have for violation of const. rights.

5. Rule 53 is illegal because it impairs the provider's right to counsel. 12 MCAR §2.05308 C and Y specifically categorize as non-allowable costs assessments by or a portion of dues charged by associations or professional organizations for lobbying, contributions to political action committees, or campaigns or litigation, except for successful challenges to decisions by agencies of the State of Minnesota and legal and related

State has no obligation to pay these attys fees. The legislature recognized this re nursing homes - (see 1983 Laws, ch. 199, §13, subd. 1(5))

expenses for unsuccessful challenges to decisions by governmental agencies. The right to counsel has been recognized by a constitutional right, with its roots in the Fifth Amendment to the United States Constitution. The right to retain counsel in a civil matter is implicit in the concept of Fifth Amendment due process. Presently, attorneys' fees are allowable in rate proceedings held under Rule 52. 9 MCAR §2.206, Rule for Contested Hearings, provides: "any party may be represented by legal counsel throughout the proceedings in a contested case before an agency, by a person of their choice." The effect of Rule 53 will be to seriously impinge upon the rights of providers to obtain counsel since there will be no mechanism within the Rule for a provider to be reimbursed for those legal fees. This will have a tremendous chilling effect on the exercise of rights and privileges by providers, knowing that if they fail, or that if they raise issues which do not affect their rates, their attorneys' fees will not be reimbursed. It is submitted that no other regulated industry currently operating in the State of Minnesota is denied the right to recover attorneys' fees in contested case proceedings.

6. Rule 53 is illegal since it violates the provider's right to privacy. Section 2.05314 A violates the right to privacy of providers and those with whom providers do business. That section provides that there are certain documents which must be included with the cost reports when submitted to DPW. The right to privacy has been recoginized by the Minnesota Supreme Court which has stated that although the right to privacy is not absolute and must give way in certain circumstances to the interest of the State, the extent of the State's intrusion is not limited. The means utilized to serve the State's interest must be necessary and reasonable and, in light of alternative means, the least intrusive. Rule 53 is incredibly overreaching in its requirements for the production of documents by providers. The means selected are, by far, the most intrusive to the providers right to privacy. The provider's choice under the circumstances would seem to be either to go out of business or to totally disgorge the Commissioner for whatever purposes the Commissioner might have in mind private documents relating to the affairs of the provider, its officers, directors, shareholders and contributors.

7. Rule 53 is illegal as it violates the constitutional right of equal protection. There is a denial of equal protection under the law because the mechanism by which per diem rates are determined for providers of ICF/MR facilites under Rule 53 is more restrictive, burdensome, costly and unfair that the mechanism for determining per diem rates for nursing home providers under

Rule 50. While there may be some reasons to treat ICF/MR providers differently than nursing home providers, the wholesale distinctions, most of which are detrimental to ICF/MR providers cannot be justified. As examples: Rule 53 intrudes on the right to privacy of the ICF/MR provider substantially more than Rule 50 would require an intrusion into the right to privacy of Rule 50 provider; Rule 53 substantially limits the right of appeal of ICF/MR providers when compared to the rights of Rule 50 providers to appeal decisions under that Rule. The comparison can go on and on and on.

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What do they mean? Rule 50 requires that payment rate cannot be affected by out come.

Furthermore, 2 MCAR §2.05309 A, B3 and C provide generally for caps on certain costs that providers can pay. This is done despite any indication that similar caps are imposed on State run (and State financed) institutions providing services to the mentally retarded in this State. As such the private providers believe and assert that this violates their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. The disparity between the costs which would be reimbursed to State institutions providing services to the mentally retarded when compared to costs which will be reimbursed to private providers providing services to the mentally retarded in Minnesota is substantial.

§256B.501 dealing w/ "Community based Services" - DPW not cautious to include state hosps in rule.

Large state facilities not comparable to smaller community facilities.

8. Rule 53 is illegal since it fails to comply with Federal laws and regulations. 42 CFR §447.205 requires a State anticipating changes in the reimbursement scheme under medicaid which will have an impact of 1% or greater on the annual reimbursement rate, to provide 60 days' written notice of the proposed changes. The State of Minnesota published that notice in the State Register on December 26, 1983 and proposes the Rule to be effective January 1, 1984. There is clearly not the required 60 days' notice.

They cite outdated rule - see CFR RPI. We rely on CFR RPZ - 447.205 & 447.254.

Furthermore, the change in the per diem reimbursement scheme anticipated by Rule 53 is a violation of the agreement between the State of Minnesota and the Federal Government. Minnesota, through DPW and the Federal Health Care Financing Administration, an agency of the United States Department of Health and Human Services, have entered into an agreement which specifies the method by which Minnesota will determine per diem rates to compensate efficiently and economically operated providers of ICF/MR facilites for the necessary costs those providers incur in providing the required care to the residents. It is submitted that that agreement and Federal laws and regulations pertaining to that reimbursement system require that the primary duty of the State is to determine what rates would be adequate, considering

1st job of 96 to Jol was CPW re adequacy of rates

Standard - 42 CFR 447.25 Rates fixed to meet costs of efficient & economically operated providers

(b) & (c) State agency must make the determ + make assurance to HHS

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all relevant factors, within the bounds of reasonableness, to compensate the providers. The State of Minnesota has failed to do that during the process by which Rule 53 was promulgated. As recently as 30 days ago representatives of DPW publically stated they were not in a position to express any opinion concerning the effect of Rule 53 on the reimbursement rates for the providers involved and had taken no testimony or done any analysis to be able to do so.

Jane-hasn't done analysis.

It is respectfully submitted that Rule 53 should not be implemented by the State of Minnesota. Aside from the substantial substantive and procedural difficulties with the Rule as drafted (in many respects its provisions are imcomprehensible) the process by which the Rule was drafted, and the providions of the Rule once drafted are violative of existing constitutional law, along with State and Federal law as it relates to reimbursement for ICF/MR providers. It is respectfully requested that the Attorney General inform the Commissioner of the Department of Public Welfare that he will not be allowed to implement Rule 53 on January 1, 1984.

If the Attorney General would like case citations with respect to each of the legal issues raised in this letter, we would be happy to provide that to him.

If you have any questions I would encourage you to contact me.

Very truly yours,

PETERSEN, TEWS & SQUIRES, P.A.

Gerald S. Duffy

GSD:jh