

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1119

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-7-84
DATE FOR REVIEW _____
DATE DUE 12-21-84

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

Approved 12-21-84 mg/ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 12-26-84 Revisor approved 12/10/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 12.7.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
10.31.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
11.5.84 At least ~~30~~/20 25 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

TO Judith Wehrwein

FROM Rosemary Chapin
Rulemaking – DHS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

SUBJECT: Temporary amendments to 12 MCAR §§ 2.05301-2.05335 (Temporary) DATE: 12/7/84

Enclosed please find the documents that must be submitted to the Attorney General on amendments to temporary rules.

Please notify me if you have any questions. I can be reached at 297-1488

SIGNED RC.

AN EQUAL OPPORTUNITY EMPLOYER

DPW-696b
(4-77)

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard W. Levine
Commissioner, Human Services

DATE: 12-21-84

ATTN: Gary VanCleve

FROM : Special Assistant Attorney General

PHONE:

Martha J. Casserly MJC
Special Assistant Attorney General

296-4692

SUBJECT: In the Matter of the Proposed Adoption of Temporary Amendments to Rules for Determining Welfare Per Diem Rates for ICF/MR Facilities 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.

MJC:sz
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Human Services

Long Term Care Rates Management

Adopted Emergency Rules Governing Rates for Intermediate Care Facilities for the Mentally Retarded

Temporary Rules as Adopted

12 MCAR S 2.05302 [Temporary] Definitions.

A.-R. [Unchanged.]

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

1. [Unchanged.]

2. for a capital asset first placed in use in the medical assistance program prior to 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 December 31, 1983, except as provided in 12 MCAR S 2.05304 [Temporary] A.1.d.

T.-GG. [Unchanged.]

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] D.

II.-JJ. [Unchanged.]

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

LL.-UU. [Unchanged.]

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.-d.

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a.-c. [Unchanged.]

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 or disability of a principal owner who has a 50 percent 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 S 2.05302 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.

2. [Unchanged.]

3. Initial accumulated depreciation on used capital assets. The initial accumulated depreciation on used capital assets for providers entering the medical assistance program after December 31, 1983, shall be calculated using the useful life schedule in 7. and 8. starting from the later of the date of completion of construction, or the time of purchase by the current owner. In no case shall the initial accumulated depreciation on the capital assets exceed 50 percent of the historical capital cost of the capital assets.

4.-9. [Unchanged.]

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.d. Recapture of depreciation for transfers of ownership allowed under A.1.d. shall be calculated according to rules and regulations in effect on December 31, 1983.

11. [Unchanged.]

B. Interest. Allowable capital loan interest expense shall be determined in accordance with 1.-7.

1.-6. [Unchanged.]

7. Changes in interest expense. Subject to the limits in 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans or changes

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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. Changes in interest expense due to refinancing of existing capital loans or changes in ownership shall be subject to the provisions in a.-f.

a. Increases in interest expense due to changes in ownership or the refinancing of a capital loan, except for renegotiations of a capital loan allowed under b.-d., are not allowable costs.

b. Increases in interest expense due to renegotiation of a construction capital loan for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital loan which does not exceed the limitation in 6.c. The interest rate on the refinanced construction capital loan shall be limited under 4.a.

c. Increases in interest expense due to refinancing of a capital loan with a balloon payment are an allowable cost for the amount of the refinanced capital loan which does not exceed the balloon payment. The interest rate on the refinanced capital loan shall be limited under 4.a. The term of the refinanced capital loan shall not exceed the remaining term of the original loan computed as though the balloon payment did not exist.

d. Increases in interest expense for a variable or adjustable rate capital loan are allowable if the effective interest rate does not exceed the limits in 4.a. For each variable or adjustable rate capital loan, the effective interest rate shall be computed by dividing the interest expense for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital loan shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital loans which have a zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.

e. Fifty percent of the annual savings resulting from

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decreased interest expense due to refinancing or renegotiation of existing fixed interest rate capital loans shall be a refinancing allowance added to the property-related cost payment rate of the provider or its successor in interest. 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 savings in interest expense each year. The annual refinancing allowance shall consist of one-half of the savings realized in the reporting year. The annual refinancing allowance 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.

f. In order to qualify for the allowance in e., 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. Except as provided in 12 MCAR S 2.05309 [Temporary] D., providers shall fund depreciation according to the provisions in 1.-9.

1.-7. [Unchanged.]

8. The amount deposited in the funded depreciation account must not exceed the amount of accumulated depreciation.

9. Funds deposited to meet the requirements of the Minnesota Housing Finance Administration shall fulfill the requirements of C.

D. [Unchanged.]

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

1. [Unchanged.]

2. The commissioner shall compute the property-related cost payment rate for facilities with more than ten beds by dividing the audited, property-related costs by 96 percent of licensed capacity days. For facilities with ten or fewer beds the commissioner shall use the lesser of 96 percent of licensed capacity days or resident days, except that in no case shall

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resident days be less than 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related cost payment rate shall be calculated according to 12 MCAR S 2.05306 [Temporary] A.-C.

3. [Unchanged.]

F. Energy savings incentive. The commissioner shall approve requests for exceptions to the provisions of 12 MCAR SS 2.05304 [Temporary] B.6.d. and e. 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:

1. 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. and e. and 2.05311 [Temporary] D.2.; or

2. 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. and e.

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

A. [Unchanged.]

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. [Unchanged.]

2. The interim payment rates established on or after January 1, 1984, shall be subject to retroactive upward or downward adjustment in accordance with 12 MCAR SS

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2.05301-2.05315 [Temporary] except that:

a. 12 MCAR SS 2.05303 [Temporary] C. and D. and 2.05304 [Temporary] B.7.c. and F. shall not apply;

b.-d. [Unchanged.]

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 SS 2.05301-2.05315 [Temporary] except that 12 MCAR S 2.05303 [Temporary] D. shall not apply and the calculation of resident days shall be based on the greater of an annualization of the resident days in the last three months of the interim reporting period, or the resident days for the interim reporting period.

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.-9.

1.-4. [Unchanged.]

5. Top management compensation shall not include within the limits of 2., 3., and 4. the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, or governmentally-required retirement plans, paid vacations, holidays, or sick leaves.

6. If the employee benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level that portion of the employee benefits paid to top management personnel that is not provided to all or substantially all of the facility's employees shall be disallowed.

7. An individual compensated for top management services on a less than full-time basis for a facility or 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. and G. may be subject to licensing review by the commissioner.

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8. Compensation paid to 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.

9. For each full percentage difference between the previous two Octobers, the all urban consumer price index (CPI-U) 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.

B. [Unchanged.]

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. and 2. [Unchanged.]

3. One exception to the limitations stated in 1., is that depreciation on investments in additions, betterments, or newly acquired equipment 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. [Unchanged.]

D.-G. [Unchanged.]

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.-C. [Unchanged.]

D. Property-related costs. The costs listed in 1.-6. are included in the property-related cost category:

1.-6. [Unchanged.]

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

A.-H. [Unchanged.]

I. Audits and adjustments.

1. [Unchanged.]

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.-i. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions or if the commissioner approves a program staff change for the facility under Minnesota Statutes, section 252.28 and 12 MCAR S 2.185. For the purposes of this rule a program staff change is an increase or decrease in program staff due to an alteration in the individual program plans of the greater of two residents or 20 percent of the facility's residents.

a.-c. [Unchanged.]

d. A provider who has a program staff change approved by the commissioner which will result in an increase or decrease of program staff salary costs of at least ~~$10,000~~ 25 cents per resident day over the remainder of the facility's rate year must file an amendment to the cost report to adjust the facility's payment rate. The amendment to the cost report must be filed within 30 days of the date the commissioner approved the program staff change. The provider must submit a copy of the commissioner's letter approving the program staff change, a schedule of total program staff hours showing staffing changes due to the program staff change, and a breakdown of the additional program staff costs on a per hour basis with the amendment.

e. The adjustment to the payment rate made under d. may be adjusted by the commissioner if the cost of the program staff change is less than the provider projected or if the savings due to the program staff change is more or less than the savings the provider projected. No further adjustment to the payment rate shall be made if the program staff change costs

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more than the provider projected.

f. 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].

g. 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.

h. 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.

i. 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. [Unchanged.]

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

December 21 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 26 1984

Joan Anderson Growe
Secretary of State

10:55 A.M.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR §§ 2.05301-2.05315 (TEMPORARY).

ORDER ADOPTING TEMPORARY AMENDMENTS

The above-entitled matter was published in the State Register on November 5 , 1984, as a proposed emergency 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 25 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 Amendments to Rules for Determining Welfare Per Diem Rates for ICF/MR Facilities 12 MCAR §§ 2.05301-2.05315 (Temporary),

are adopted this 7th day of December , 1984, pursuant to authority vested in me by

STATE OF MINNESOTA

James E. Gibson, Deputy Commissioner, for

LEONARD W. LEVINE
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Proposed Temporary Amendments to Rules for Determining Welfare Per Diem Rates for ICF/MR Facilities 12 MCAR § 2.05301-2.05315 (Temporary).

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 23 day of October, 1984 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Temporary Amendments to Rules
for Determining Welfare Per Diem
Rates for ICF/MR Facilities
12 MCAR § 2.05301-2.05315 [Temporary].

Notice of Intent to Adopt
Temporary Amendments

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules 12 MCAR § 2.05301-2.05315 [Temporary] to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., November 30, 1984 to submit written comments. The proposed temporary amendments 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:

Rosemary Chapin
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Upon adoption of these temporary amendments, 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.

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

The adopted temporary amendments will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the temporary amendments' form. Temporary amendments take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional days if the Commissioner gives notice of continuation by publishing notice in the State Register and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary amendments shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of the proposed temporary amendments is to clarify certain provisions of rules 12 MCAR §§ 2.05301-2.05315 [Temporary].

Rules 12 MCAR §§ 2.05301 to 2.05315 [Temporary] determine welfare per diem rates for ICF/MR facilities. The temporary amendments clarify internal rule references and provisions on accumulated depreciation, changes in interest expense, funded depreciation, interim payment rates, top management compensation, and amended cost reports.

These temporary amendments will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Rosemary Chapin at 612/297/1488.

LEONARD W. LEVINE
Commissioner of Human Services

BD1/JD3

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATER OF THE PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR S 2.05301-2.05315 (TEMPORARY).

AFFIDAVIT OF MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 31st day of October, 1984, she served the attached Notice of Intent to Adopt Temporary Amendments 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 Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department.

Ann M. Berg

Subscribed and sworn to before me

this 5 day of November, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 26, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR SS 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. S 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 12:00, this 31st day of October, 1984.

Ann M. Berg

aEV.
vThe EV. Lutheran Good Samaritan
Society
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vDennis R. Wilczek
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vSteven Winthrop
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B10A/E

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR S 2.05301-2.05315 (TEMPORARY).

AFFIDAVIT OF ADDITIONAL MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 31st day of October, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Temporary Amendments to all persons and associations who have requested that their names be placed on file with the Department of Human Services 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:

340 Intermediate Care Facilities in Minnesota
The Rule 53 Advisory Committee
(See Attached)

Ann M. Berg

Subscribed and sworn to before me
this 5 day of November 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 26, 1990

Department of Human Services
Long Term Care Rates Management

Proposed Emergency Rules Governing Rates for Intermediate Care Facilities for the Mentally Retarded

Notice of Intent to Adopt Temporary Amendments

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules 12 MCAR § 2.05301-2.05315 [Temporary] to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., November 30, 1984 to submit written comments. The proposed temporary amendments 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:

Rosemary Chapin
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Upon adoption of these temporary amendments, 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.

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

The adopted temporary amendments will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the temporary amendments' form. Temporary amendments take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary amendments shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of the proposed temporary amendments is to clarify certain provisions of rules 12 MCAR §§ 2.05301-2.05315 [Temporary].

Rules 12 MCAR §§ 2.05301 to 2.05315 [Temporary] determine welfare per diem rates for ICF/MR facilities. The temporary amendments clarify internal rule references and provisions on accumulated depreciation, changes in interest expense, funded depreciation, interim payment rates, top management compensation, and amended cost reports.

These temporary amendments will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Rosemary Chapin at 612/297-1488.

Leonard W. Levine
Commissioner of Human Services

Temporary Rules as Proposed

12 MCAR § 2.05302 [Temporary] Definitions.

A.-R. [Unchanged.]

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

1. [Unchanged.]

2. for a capital asset first placed in use in the medical assistance program prior to 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 December 31, 1983, except as provided in 12 MCAR § 2.05304 [Temporary] A.1.e.d.

T.-GG. [Unchanged.]

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

II.-JJ. [Unchanged.]

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

LL.-UU. [Unchanged.]

12 MCAR § 2.05302 [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. e~~ a.-d.

a.-c. [Unchanged.]

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 or disability of a principal owner who has a 50 percent 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~~ 12 MCAR § 2.05302 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.

2. [Unchanged.]

3. Initial accumulated depreciation on used capital assets. The initial accumulated depreciation on used capital assets for providers entering the medical assistance program after December 31, 1983, shall be calculated using the useful life schedule in 7. and 8. starting from the later of the date of completion of construction, or the time of purchase by the current owner. In no cases shall the initial accumulated depreciation on the capital assets exceed 50 percent of the historical capital cost of the capital assets.

4.-9. [Unchanged.]

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.~~e.~~ d. Recapture of depreciation for transfers of ownership allowed under A.1.~~e.~~ d. shall be calculated according to rules and regulations in effect on December 31, 1983.

11. [Unchanged.]

B. Interest. Allowable capital loan interest expense shall be determined in accordance with 1.-7.

1.-6. [Unchanged.]

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. Changes in interest expense due to refinancing of existing capital loans or changes in ownership shall be subject to the provisions in a.-f.

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

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

b. Increases in interest expense due to renegotiation of a construction capital loan for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital loan which does not exceed the limitation in 6.c. The interest rate on the refinanced construction capital loan shall be limited under 4.a.

c. Increases in interest expense due to refinancing of a capital loan with a balloon payment are an allowable cost for the amount of the refinanced capital loan which does not exceed the balloon payment. The interest rate on the refinanced capital loan shall be limited under 4.a. The term of the refinanced capital loan shall not exceed the remaining term of the original loan computed as though the balloon payment did not exist.

d. Increases in interest expense for a variable or adjustable rate capital loan are allowable if the effective interest rate does not exceed the limits in 4.a. For each variable or adjustable rate capital loan, the effective interest rate shall be computed by dividing the interest expense for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital loan shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital loans which have a zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.

~~c.~~ e. 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 allowance added to the property-related cost payment rate of the provider or its successor in interest. 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 savings in interest expense each year. The annual refinancing allowance shall consist of one-half of the savings realized in the reporting year. The annual refinancing allowance 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.~~ f. In order to qualify for the allowance in ~~c.~~ e., 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. Except as provided in 12 MCAR § 2.05309 [Temporary] D., providers shall fund depreciation according to the provisions in ~~1.-5~~ 1.-9.

1.-7. [Unchanged.]

8. The amount deposited in the funded depreciation account must not exceed the amount of accumulated depreciation.

9. Funds deposited to meet the requirements of the Minnesota Housing Finance Administration shall fulfill the requirements of C.

D. [Unchanged.]

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

1. [Unchanged.]

2. The commissioner shall compute the property-related cost payment rate for facilities with more than ten beds by dividing the ~~desk audited~~ audited, property-related costs by 96 percent of licensed capacity days. For facilities with ten or fewer beds the commissioner shall use the lesser of 96 percent of licensed capacity days or resident 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 cost payment rate shall be calculated according to 12 MCAR § 2.05306 [Temporary] ~~A. and B~~ A.-C.

3. [Unchanged.]

F. Energy savings incentive. The commissioner shall approve requests for exceptions to the provision of 12 MCAR §§ 2.05304 [Temporary] B.6.d. and e. 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.~~ 1. 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.6.d. and e. and 2.05311 [Temporary] D.2; or

~~b.~~ 2. 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.6.d. and e.

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

A. [Unchanged.]

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. [Unchanged.]

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

a. 12 MCAR ~~§~~ §§ 2.05303 [Temporary] C. and D. and 2.05304 [Temporary] B.7.c. and F. shall not apply;

b.-d. [Unchanged.]

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 12 MCAR § 2.05303 [Temporary] D. shall not apply and the calculation of resident days shall be based on the greater of an annualization of the resident days in the last three months of the interim reporting period, or the resident days for the interim reporting period.

12 MCAR § 2.05309 [Temporary] Cost limitations.

A. Top management compensation. Annual compensation for top management personnel shall be paid according to the limits in ~~1. 8~~ 1.-9.

1.-4. [Unchanged.]

5. Top management compensation shall not include~~,~~ within the limits of 2., 3., and 4. ~~and 5.,~~ the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, or governmentally-required retirement plans, ~~or~~ paid vacations, holidays, or sick leaves~~,~~.

6. If the ~~same benefit and the same benefit level is~~ employee benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level that portion of the employee benefits paid to top management personnel that is not provided to all or substantially all of the facility's employees shall be disallowed.

~~6.~~ 7. An individual compensated for top management services on a less than full-time basis for a facility or 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 § 2.05311 [Temporary] E. ~~3.~~ and G. may be subject to licensing review by the commissioner.

~~7.~~ 8. Compensation paid to 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.~~ 9. For each full percentage difference between the previous two Octobers, the all urban consumer price index (CPI-U) 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.

B. [Unchanged.]

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. and 2. [Unchanged.]

3. One exception to the limitations stated in 1., is that depreciation on investments in ~~capital assets~~ additions, betterments, or newly acquired equipment shall be allowed if the investments were required to comply with the Life Safety

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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. [Unchanged.]

D.-G. [Unchanged.]

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

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

A.-C. [Unchanged.]

D. Property-related costs. The costs listed in ~~1.-7.~~ 1.-6. are included in the property-related cost category:

1.-6. [Unchanged.]

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

A.-H. [Unchanged.]

I. Audits and adjustments.

1. [Unchanged.]

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.~~ a.-i. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions or if the commissioner approves a program staff change for the facility under Minnesota Statutes, section 252.28 and 12 MCAR § 2.185. For the purposes of this rule a program staff change is an increase or decrease in program staff due to an alteration in the individual program plans of the greater of two residents or 20 percent of the facility's residents.

a.-c. [Unchanged.]

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~~ A provider who has a program staff change approved by the commissioner which will result in an increase or decrease of program staff salary costs of at least $10,000 over the remainder of the facility's rate year must file an amendment to the cost report to adjust the facility's payment rate. The amendment to the cost report must be filed within 30 days of the date the commissioner approved the program staff change. The provider must submit a copy of the commissioner's letter approving the program staff change, a schedule of total program staff hours showing staffing changes due to the program staff change, and a breakdown of the additional program staff costs on a per hour basis with the amendment.

e. The adjustment to the payment rate made under d. may be adjusted by the commissioner if the cost of the program staff change is less than the provider projected or if the savings due to the program staff change is more or less than the savings the provider projected. No further adjustment to the payment rate shall be made if the program staff change costs more than the provider projected.

f. 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.~~ g. 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.~~ h. 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.~~ i. 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. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF PROPOSED TEMPORARY
AMENDMENTS TO RULES FOR DETERMINING
WELFARE PER DIEM RATES FOR ICF/MR
FACILITIES 12 MCAR §§ 2.05301-2.05315
(TEMPORARY).

FINDINGS OF FACT
AND CONCULSIONS

The Commissioner published notice of the proposed temporary amendments on the above entitled matter in the State Register on November 5, 1984. Notice was also sent by United States mail to all persons on a list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, on October 31, 1984. After affording all interested and affected persons an opportunity to submit comments for 25 days after the notice and reviewing and considering the comments, I find the following:

1. In 12MCAR S 2.05314I.2.D of the proposed amendments the Department specified that, "A provider who has a program staff change approved by the Commissioner which will result in an increase or decrease of program staff salary costs of at least $10,000 over the remainder of the facility's rate year must file an amendment to the cost report to adjust the facility's payment rate." This changes the minimum amount of increase or decrease of program salary costs which necessitates the filing of an amendment to the cost report. Commentator Mary Martin pointed out that the change to $10,000 from $2,000 would make it more difficult for a facility to request and receive a rate change as a result of program changes. This would be particularly burdensome for a small facility. The Commissioner finds that the change from $2,000 to $10,000 may be burdensome for small facilities. Using a per diem amount insures fairness of treatment for all sizes of facilities. Therefore the Commissioner changes the amount to "25 cents per resident day."

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these amendments.

2. Proper notice of the Department's intent to adopt the proposed above-captioned temporary amendments to the temporary rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed temporary amendments.

3. The modification made to the proposed temporary amendments is supported by the data and views submitted to the Department, and are not substantial changes.

4. The temporary amendments, as modified, are necessary and reasonable.

5. The Department has complied with all applicable provisions of law and rule in the promulgation of these temporary amendments.

6. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

DATED: December 7, 1984

STATE OF MINNESOTA
James E. Ulberson, Deputy Commissioner, for
LEONARD W. LEVINE, COMMISSIONER
Department of Human Services

STATE OF MINNESOTA

IN THE MATTER OF THE PROPOSED ADOPTION OF THE PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR §§ 2.05301-2.05315 (TEMPORARY).

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, 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 Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Special Assistant Attorney General

Dated: 12/7/84

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR §§ 2.05301-2.05315 (TEMPORARY).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Ann M. Berg , being first duly sworn, deposes and says:

That on the 7th day of December , 1984, in the City of St. Paul, County of Ramsy, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Ann M. Berg

Subscribed and sworn to before me
this 7 day of December, 1984.
Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES TEMPORARY AMENDMENTS TO RULES FOR DETERMINING WELFARE PER DIEM RATES FOR ICF/MR FACILITIES 12 MCAR §§ 2.05301-2.05315 (TEMPORARY).

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes 1984, section 14.30 and 14.32:

PLEASE TAKE NOTICE that the above-captioned amendments have been submitted to the Office of the Attorney General on this date, December 7, 1984, for review for form and legality.

The attorney general shall review the proposed amendments as to legality, review form to the extent the form relates to legality, and shall approve or disapprove the proposed amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

If you desire to comment on the legality of the above-captioned amendments, you should direct your comments to the Office of the Attorney General, Room 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030.

The proposed emergency rule has been modified. A free copy of the proposed emergency rule, as modified, is available upon request from:

Rosemary Chapin
Department of Human Services
Rulemaking Division
4th Floor, Centennial Building
St. Paul, MN 55155
(612) 297-1488