

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LEONARD W. LEVINE, Commissioner
Department of Human Services

DATE: 10-21-85

ATTN: GARY VAN CLEVE
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Temporary Amendments to Temporary Rules Governing Nursing Home Payment Rate, Minnesota Rules, Parts 9549.0050 to 9540.0059 [Temporary]

The above-referenced rule has been approved as to its legality by the Attorney General on October 21, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:pmf

Enclosures

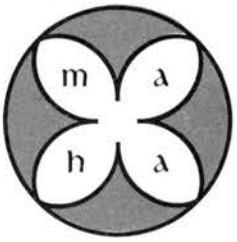
cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RECEIVED
OCT 18 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MYC

minnesota association of homes for the aging



representing nonprofit homes

October 18, 1985

Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
Saint Paul, MN 55155

To Whom It May Concern:

On behalf of the Minnesota Association of Homes for the Aging, an association representing approximately 200 non-profit nursing homes located throughout the state of Minnesota, I would like to submit the following comments regarding the adoption of proposed temporary amendments to rules for determining operating cost payment rates for nursing homes, Parts 4549.0050 to 9549.0059 (Temporary). Enclosed you will find a copy of the comments we have already submitted to the Department of Human Services. In addition to those comments, I would submit for your consideration that the rule as currently proposed does not meet the existing standard for "form and legality" in that it:

a) Exceeds statutory authority or fails to meet required conditions;

b) Conflicts with the governing statute or other relevant law;

c) Has no reasonable relationship to statutory purposes; and

d) Is unconstitutional, arbitrary or unreasonable. (1 MCAR §1; Chap. 3, Atty. Gen. 305.)

The major issue of concern to our Association is the fact that the Department of Human Services is manipulating the nursing home reimbursement structure in a fashion which serves to coerce nursing homes in Minnesota to delicense existing nursing home beds to avoid financial penalty. Given the current moratorium on licensure of nursing home beds, a licensed nursing home bed in this state is a very valuable property right. Attempts by the Department of Human Services to deprive nursing homes of that property right, i.e., "coerced delicensure" of nursing home beds, is an act of condemnation. The Department of Human Services has no legal authority to force delicensure, via the reimbursement mechanism or any other methodology. It is clearly arbitrary and unreasonable to compute limits for nursing home costs that are based on theoretical maximums (i.e., licensed bed capacity) versus real life criteria like the level at which a nursing home is actually staffed and operated. We disagree with the Department that "facilities operating at less than 90% occupancy are not operating efficiently." (Finding of Fact and Conclusions) Given the moratorium, it is not inefficient to be licensed for 100 beds even though they may only (currently) be staffed and operating 90 of those 100

2221 UNIVERSITY AVE., S.E. MINNEAPOLIS, MINNESOTA 55414-3085 PHONE (612) 331-5571
AFFILIATED WITH AMERICAN ASSOCIATION OF HOMES FOR THE AGING AND THE MINNESOTA HOSPITAL ASSOCIATION

beds. On the contrary, it makes sound business sense to hang on to those licensed beds given the uncertainty of the current moratorium law. We urge you to consider the legality of the current proposal and stand ready to discuss this issue with you further at your convenience.

Sincerely,

Kristin K. Larson

Kristin K. Larson
Director of Government Relations

KKL/kk

Enc.

minnesota association of homes for the aging

representing nonprofit homes

September 23, 1985

Rosemary Chapin
Department of Human Services
Sixth Floor Space Center
444 Lafayette Road
St. Paul, MN 55101

Dear Ms. Chapin:

On behalf of the Minnesota Association of Homes for the Aging, I am submitting the following written comments on the proposed amendments to the (Temporary) Nursing Home Payment Rule, 9549.0050 to 9549.0059. I'd also be happy to discuss these comments with you or other departmental staff if that would be helpful. I hope that you will seriously consider the issues we are raising with you today and modify the temporary rule accordingly.

Page 3, 9549.0054 [Temporary] DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.

Subparts 4 and 5. Allowable historical other care related and other operating cost per diems.

MAHA strongly supports the changes being proposed to the temporary rule in these subparts. The use of arbitrary thresholds for calculating allowable cost per diems unfairly penalizes efficient nursing home operators who may, for a variety of reasons, be operating below the imputed capacity levels of 90 percent or 80 percent. It is especially unfair for a state reimbursement methodology to financially penalize nursing homes for their reduced number of resident days when that appears to be the logical consequence of state efforts to encourage alternatives to institutional care. There has been no clear documentation for the theory that a nursing home operating below 90 percent or 80 percent of the number of licensed beds in the facility is inefficient. The fact of the matter is that there are a variety of factors that contribute to a reduced resident population in a nursing home and many of those factors are outside of the control of even the most efficient nursing home operator. One of the most important factors has emerged as a result of the moratorium on any new licensure of nursing home beds. It is an obvious fact that it makes very sound business sense for nursing homes to hang on to every licensed bed they currently have, even if they have a temporary occupancy problem. For example, some nursing homes have future obligations to consumers in affiliated housing or continuing care retirement communities which they must be able to fulfill when necessary, independent of what may be happening with the nursing home moratorium. Given the many complexities that contribute to the occupancy issue, we feel strongly that the proposed amendments are an appropriate adjustment to the current (temporary) rule.

Pages 3-5, 9549.0055 [Temporary] DETERMINIATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

2221 UNIVERSITY AVE., S.E. MINNEAPOLIS, MINNESOTA 55414-3085 PHONE (612) 331-5571
AFFILIATED WITH AMERICAN ASSOCIATION OF HOMES FOR THE AGING AND THE MINNESOTA HOSPITAL ASSOCIATION

Subpart 2. Limits.

For all the reasons we have given for supporting the changes being made in the previous section, we are in strong opposition to the language being proposed in sections B and E. It defies logic to modify the formula for allowable cost per diems and then to use different data to compute the limits that will be imposed on all the nursing homes throughout the state. At a minimum, the Department should take the time to justify a reimbursement formula which spreads costs across a certain number of residents when some of those residents don't even exist. This inconsistency in policymaking is unacceptable and unjustified and should be reconsidered. Given the fact that a state's reimbursement methodology must provide appropriate reimbursement for "efficiently and economically operated" nursing homes, (Boren Amendment), we believe that a rule which establishes cost category limits on the basis of completely arbitrary occupancy standards clearly violates the law which governs this area. We urge the Department to reconsider and delete these provisions and modify the rule accordingly. Our association stands ready to discuss our position in more detail and to work with the Department to resolve this conflict.

Thank you for the opportunity to comment on the proposed rule amendments. Please notify me regarding the submission of material to the Attorney General and send me a copy of the adopted temporary rule amendments.

Sincerely,

Kristin K. Larson
Director of Government Relations

KKL/mc

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Human Services

PHONE : 7-1488

DATE : October 10, 1985

TO : Judith Wehrwein

FROM : Rosemary Chapin RC
DHS - Rulemaking

SUBJECT : Amendments to Rule Parts 9549.0050 - 9549.0059

These rule parts are submitted for your review in accordance with Minnesota Statutes 256B.431, Subdivision 6, which states "any emergency rules adopted by the Commissioner of Health or the Commissioner of Human Services under this section shall be adopted in accordance with the provisions contained in sections 14.29 to 14.36 in effect on March 1, 1984. . . . The procedures for the adoption of the emergency rules authorized by this subdivison shall prevail over any other act that amends Chapter 14 regardless of the date of final enactment of those amendments". Under these provisions it is my understanding that the Attorney General Administration has five working days to review the rule.

Please contact me at 297-1488 if you have any further questions.

Our File No. 211 05-ecw1-0850

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-11
DATE FOR REVIEW
DATE DUE 10-~~25~~ 18

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

Approved 10-18-85 mjc Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10-21-85 Revisor approved 10.11.85 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 10.10.85 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
✓ 8.27.85 At least ~~30~~ 20 days prior to ~~hearing~~/adoption
✓ Affidavit of Additional mailing (20)
✓ Mailing list Certificate

✓ Publication in State Register
✓ 9.2.85 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

AG copy

Department of Human Services

Adopted Temporary Rules Relating to Determination of Nursing Home Payment Rate

Rules as Adopted, Temporary

DEPARTMENT OF HUMAN SERVICES

NURSING HOME PAYMENT RATE DETERMINATION [Temporary]

9549.0051 [Temporary] DEFINITIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Case mix operating costs.** "Case mix operating costs" means the operating costs listed in part 9549.0040, subpart 5, and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category in accordance with part 9549.0053.

Subp. 6. and 7. [Unchanged.]

Subp. 8. **Other care related operating costs.** "Other care related operating costs" means the operating costs listed in part 9549.0040, subpart 6, and the portion of fringe benefits and payroll taxes allocated to the other care related cost category, the cost of food, and the required dietician consulting fees charged by a nonrelated organization in accordance with part 9549.0053.

Subp. 9. **Other operating costs.** "Other operating costs" means the operating costs listed in part 9549.0040, subparts 1, 2, 3, 4, and 7, and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories in accordance with part 9549.0053, excluding the cost of food.

Subp. 10. to 13. [Unchanged.]

9549.0052 [Temporary] ESTABLISHMENT OF GEOGRAPHIC GROUPS.

The commissioner shall classify Minnesota nursing homes according to their geographic location as indicated in subparts 1 to 3.

Subpart 1. **Group 1.** All nursing homes in Beltrami, Big

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Stone, Cass, Chippewa, Clearwater, Cottonwood, Crow Wing, Hubbard, Jackson, Kandiyohi, Lac Qui Parle, Lake of the Woods, Lincoln, Lyon, Mahnomen, Meeker, Morrison, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Swift, Todd, Yellow Medicine, and Wadena counties must be placed in geographic group 1.

Subp. 2. and 3. [Unchanged.]

9549.0053 DETERMINATION AND ALLOCATION OF FRINGE BENEFITS AND PAYROLL TAXES, FOOD COSTS, AND REQUIRED DIETICIAN CONSULTING FEES.

Subpart 1. **Fringe benefits and payroll taxes.** Fringe benefits and payroll taxes must be allocated to case mix, other care-related costs, and other operating costs according to items A to D.

A. Fringe benefits and payroll taxes must be allocated to case mix operating costs in the same proportion to salaries reported under part 9549.0040, subpart 5.

B. Fringe benefits and payroll taxes must be allocated to other care-related costs in the same proportion to salaries reported under part 9549.0040, subpart 6.

C. Fringe benefits and payroll taxes must be allocated to other operating costs in the same proportion to salaries reported under part 9549.0040, subparts 1, 2, 3, 4, and 7.

D. [Unchanged.]

Subp. 2. **Determination of food costs.** For any nursing home which has not separately reported the cost of food under part 9549.0040, subpart 1, the commissioner shall determine the food costs according to items A and B.

A. and B. [Unchanged.]

Subp. 3. [Unchanged.]

In SR this is "94" which is an error

9549.0054 [Temporary] DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.

The commissioner shall annually review and adjust the operating costs incurred by the nursing home during the

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reporting year preceding the rate year to determine the nursing home's actual allowable historical operating costs. The review and adjustment must comply with the provisions of parts 9549.0010 to 9549.0080.

Subpart 1. **Standardized resident days for rate year beginning July 1, 1985.** For the rate year beginning on July 1, 1985, each nursing home's standardized resident days must be determined according to items A to H I.

A. The commissioner shall select the two most recent QAR assessments completed prior to April 1, 1985. If only one QAR assessment is available, the commissioner shall compute the standardized resident days in accordance with item I. Any nursing home whose most recent QAR assessment completed before April 1, 1985, does not include assessments of nonmedical assistance residents may make a written request to the commissioner to consider a different QAR assessment to be the most recent if that assessment:

(1) includes nonmedical assistance residents; and

(2) was completed by the Department of Health before July 1, 1985.

The request must be in writing. Written requests must be received by the commissioner by December 31, 1985.

B. to I. [Unchanged.]

Subp. 2. and 3. [Unchanged.]

Subp. 4. **Allowable historical other care related operating cost per diem.** The allowable historical other care related operating cost per diem must be computed by dividing the allowable historical other care related operating costs by the actual number of resident days.

Subp. 5. **Allowable historical other operating cost per diem.** The allowable historical other operating cost per diem must be computed by dividing the allowable historical other operating costs by the actual number of resident days.

9549.0055 [Temporary] DETERMINATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

Subpart 1. [Unchanged.]

does not appear in SR - see FF 2

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Subp. 2. **Limits.** For each geographic group established in part 9549.0052 [Temporary] the operating costs limits must be determined according to items A to F. No redetermination of the operating costs limits shall be made due to audit adjustments or appeal settlement.

A. [Unchanged.]

B. The commissioner shall compute 115 percent of the median of the array of the allowable historical other care related operating cost per diems for the base year. For the purpose of establishing operating cost limits, the commissioner shall compute the allowable historical other care related per diems for the base year by dividing the allowable historical other care related operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case, the allowable historical other care related operating costs must be divided by the greater of resident days or 80 percent of its number of licensed beds multiplied by the number of days in the reporting period.

C. and D. [Unchanged.]

E. The other operating costs limits must be determined in accordance with subitems (1) to (5). For the purpose of establishing operating costs limits, the commissioner shall compute the allowable historical other operating costs per diems for the base year by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case, the allowable historical other operating costs must be divided by the greater of resident days or 80 percent of the

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number of licensed beds multiplied by the number of days in the reporting period.

(1) to (5) [Unchanged.]

F. [Unchanged.]

Subp. 3. [Unchanged.]

9549.0056 [Temporary] DETERMINATION OF THE OPERATING COST PAYMENT RATE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Adjusted prospective other operating cost payment rate.** The adjusted prospective other operating cost payment rate must be determined according to items A to C.

A. to C. [Unchanged.]

D. The nursing home's efficiency incentives in item A or B must not be changed as a result of field audit adjustment.

Subp. 5. [Unchanged.]

9549.0057 [Temporary] DETERMINATION OF THE INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.

To receive an interim payment rate, a nursing home must comply with the requirements and is subject to the conditions of part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle-up operating cost payment rates for a newly constructed nursing home, or one with a capacity increase of 50 percent or more according to subparts 1 and 2.

Subpart 1. **Interim operating cost payment rate.** For the rate year or portion of an interim period beginning on or after July 1, 1985, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 [Temporary], except that:

A. and B. [Unchanged.]

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem.

D. and E. [Unchanged.]

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F. The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, must not apply.

Subp. 2. **Settle-up operating cost payment rate.** The settle-up total operating cost payment rate must be determined according to items A to C.

A. [Unchanged.]

B. The settle-up operating cost payment rate for a nursing home which commenced construction after June 30, 1985, or whose interim reporting period included a period of time after that date must be determined for the portion of that interim period occurring after June 30, 1985, as in parts 9549.0050 to 9549.0059 [Temporary].

(1) The standardized resident days occurring after June 30, 1985, must be annualized for the interim reporting period.

(2) [Unchanged.]

(3) The commissioner shall use the actual resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem.

(4) to (6) [Unchanged.]

C. [Unchanged.]

9549.0058 [Temporary] RESIDENT CLASSES AND CLASS WEIGHTS.

Subpart 1. **Resident classes.** Each resident must be classified according to items A to E based on the assessments performed under part 9549.0059 [Temporary] on the assessment form.

A. to E. [Unchanged.]

F. The commissioner shall establish resident classes based on the definitions in items A to E and according to subitems (1) to (11).

(1) to (6) [Unchanged.]

(7) Class G. High ADL, and scoring less than three on the eating ADL in item A, and not defined special nursing, and not defined behavioral condition.

(8) to (11) [Unchanged.]

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Subp. 2. [Unchanged.]

9549.0059 [Temporary] RESIDENT ASSESSMENT.

Subpart 1. **Assessment of nursing home applicants and newly admitted residents.** Each nursing home applicant or newly admitted resident shall be assessed for the purpose of determining the applicant's or newly admitted resident's class according to items A to I.

A. Each county preadmission screening team or hospital screening team under contract with the county must assess all nursing home applicants for whom preadmission screening is required by Minnesota Statutes, section 256B.091, and any applicant for whom a preadmission screening is not required but who voluntarily requests such a screening in accordance with Minnesota Statutes, section 256B.091, except as provided in subitems (1) and (2).

(1) [Unchanged.]

(2) A nursing home applicant whose admission to the nursing home is for the purpose of receiving respite care services need not be reassessed more than once every six months for the purpose of computing resident days under part 9549.0054 [Temporary], subpart 2, if the applicant has been classified by the Department of Health within the prior six-month period. In this case, the resident class established by the Department of Health within the prior six-month period may be the resident class of the applicant. However, in no case shall a resident receive more than one assessment per respite care stay.

B. to I. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. **Semiannual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to E.

A. to C. [Unchanged.]

D. Any change in resident class due to a semi-annual assessment must be effective as of the first day of the month following the date of the completion of the semiannual assessments.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

E. [Unchanged.]

Subp. 4. **Change in classification due to annual assessment by Department of Health.** Any change in resident class due to an annual assessment by the Department of Health's QAR team will be effective as of the first day of the month following the date of completion of the Department of Health's assessments.

Subp. 5. and 6. [Unchanged.]

Subp. 7. **Change in resident class due to request for reconsideration of resident classification.** Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part 4656.0060 is pending.

B. Any change in a resident class due to a reclassification under part 4656.0060 must be effective as of the effective date of the classification established by the original assessment for which a reconsideration was requested. FF6

Subp. 8. **Reconsideration of resident classification.** Any request for reconsideration of a resident classification must be made pursuant to the procedures set forth in part 4656.0060.

Subp. 9. [Unchanged.]

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 2 1 1985
Joan Anderson Growe
Secretary of State
8:45 AM

APPROVED AS TO FORM AND LEGALITY
October 18 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING OPERATING COST PAYMENT RATES FOR NURSING HOMES, PARTS 9549.0050 TO 9549.0059. (TEMPORARY)

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on September 2, 1985, as proposed temporary amendments to a 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 Rules for Determining Operating Cost Payment Rates for Nursing Homes, parts 9549.0050-9549.0059 (Temporary) are adopted this 10 day of October, 1985, pursuant to authority vested in my by Minnesota Statutes, section 256B.431, subdivision 6 and laws of Minnesota 1984, chapter 641, section 22, subdivision 6.

STATE OF MINNESOTA



COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATE, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

ORDER FOR PUBLICATION OF TEMPORARY AMENDMENTS

IT IS ORDERED this 19th day of August, 1985, that the proposed temporary amendments in the above-entitled matter be published in the State Register and that Notice of Intent to Adopt Temporary Amendments be given to all persons who have registered their names with the State Department of Human Services for that purpose.

STATE OF MINNESOTA

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATE, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

NOTICE OF INTENT TO ADOPT TEMPORARY RULE AMENDMENTS

The State Department of Human Services proposes to adopt temporary amendments to the above-entitled temporary rules in accordance with Laws of Minnesota 1984, chapter 641, section 22, subdivision 6 and Minnesota Statutes, section 256B.431, subdivision 6.

Persons interested in these amendments have until 4:30 p.m. on September 23, 1985, to submit written comments. The proposed temporary amendements 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
Sixth Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

After consideration of all comments received, the Department of Human Services shall submit the temporary amendments as published, with any modifications, this notice, required supporting documents, and all written comments received to the Attorney General.

The Attorney General shall review the proposed temporary amendments, with any modifications, as to its legality, review its form to the extent the form relates to legality and shall approve or disapprove the amendments and any modifications within five working days.

The approved amendments shall also be certified by the Revisor of Statutes.

The temporary amendments adopted under the provision of Laws of Minnesota, chapter 641, section 22, subdivision 6, and Minnesota Statutes, section 256B.431, subdivision 6, shall have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule.

The Department of Human Services' authority for adoption of these amendments is found in Laws of Minnesota 1984, chapter 641 and Minnesota Statutes, sections 256B.41, 256B.21, and 256B.431, subdivisions 1, 2 c, and 6.

The purpose of Minnesota Rules, parts 9549.0050 to 9549.0059 [Temporary] is to implement a case mix reimbursement system which bases nursing home operating costs payments on the condition and needs of residents in each home.

The rule impacts the operating cost payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities licensed under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program.

The purpose of the amendment of part 9549.0052, subpart 1, is to delete language in the rule which contradicts Laws of Minnesota, 1985 Special Session, Chapter 3.

The purpose of the amendments to part 9549.0054, subpart 4 and 5, is to clarify how to calculate the allowable historical other care related operating cost per diems and the allowable historical other operating cost per diem, for the first rate year following the nursing home's interim reporting period.

The purpose of the amendments to part 9549.0055, subpart 2, is to clarify the way in which operating cost limits will be set. The other amendments are made to correct minor problems of reference or lack of clarity in the proposed rule.

These temporary amendments will not result in additional state or county spending in excess of $100,000 annually beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Mary Ann Bredesen, Department of Human Services, Space Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

Upon adoption of the temporary rule amendments by the agency, the rule amendments as adopted and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission to this material to the Attorney General, or who wish to receive a copy of the adopted temporary rule amendments, must submit the written request to Rosemary Chapin.

Dated: 8/19/85

LEONARD W. LEVINE
Commissioner of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATES, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

AFFIDAVIT OF MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 27th day of August, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, I 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.

Nancy Storelee

Subscribed and sworn to before me

this 27 day of August, 1985.

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 TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATE, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

NOTICE OF INTENT TO ADOPT TEMPORARY RULE AMENDMENTS

The State Department of Human Services proposes to adopt temporary amendments to the above-entitled temporary rules in accordance with Laws of Minnesota 1984, chapter 641, section 22, subdivision 6 and Minnesota Statutes, section 256B.431, subdivision 6.

Persons interested in these amendments have until 4:30 p.m. on September 23, 1985, to submit written comments. The proposed temporary amendements 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
Sixth Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

After consideration of all comments received, the Department of Human Services shall submit the temporary amendments as published, with any modifications, this notice, required supporting documents, and all written comments received to the Attorney General.

The Attorney General shall review the proposed temporary amendments, with any modifications, as to its legality, review its form to the extent the form relates to legality and shall approve or disapprove the amendments and any modifications within five working days.

The approved amendments shall also be certified by the Revisor of Statutes.

The temporary amendments adopted under the provision of Laws of Minnesota, chapter 641, section 22, subdivision 6, and Minnesota Statutes, section 256B.431, subdivision 6, shall have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule.

The Department of Human Services' authority for adoption of these amendments is found in Laws of Minnesota 1984, chapter 641 and Minnesota Statutes, sections 256B.41, 256B.21, and 256B.431, subdivisions 1, 2 c, and 6.

The purpose of Minnesota Rules, parts 9549.0050 to 9549.0059 [Temporary] is to implement a case mix reimbursement system which bases nursing home operating costs payments on the condition and needs of residents in each home.

The rule impacts the operating cost payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities licensed under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program.

The purpose of the amendment of part 9549.0052, subpart 1, is to delete language in the rule which contradicts Laws of Minnesota, 1985 Special Session, Chapter 3.

The purpose of the amendments to part 9549.0054, subpart 4 and 5, is to clarify how to calculate the allowable historical other care related operating cost per diems and the allowable historical other operating cost per diem, for the first rate year following the nursing home's interim reporting period.

The purpose of the amendments to part 9549.0055, subpart 2, is to clarify the way in which operating cost limits will be set. The other amendments are made to correct minor problems of reference or lack of clarity in the proposed rule.

These temporary amendments will not result in additional state or county spending in excess of $100,000 annually beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Mary Ann Bredesen, Department of Human Services, Space Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

Upon adoption of the temporary rule amendments by the agency, the rule amendments as adopted and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission to this material to the Attorney General, or who wish to receive a copy of the adopted temporary rule amendments, must submit the written request to Rosemary Chapin.

Dated: 8/19/85

LEONARD W. LEVINE
Commissioner of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATES, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 27th day of August, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Temporary Rule Amendments 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, I 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:

.The 87 Minnesota County Human Services Agencies
.450 Nursing Homes in Minnesota
.120 Accountants
.200 Advocates and Other Interested Parties

Nancy Storelee

Subscribed and sworn to before me

this 27 day of August, 1985.

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 TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATE, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

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Rosemary Chapin
Department of Human Services
Sixth Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

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The Attorney General shall review the proposed temporary amendments, with any modifications, as to its legality, review its form to the extent the form relates to legality and shall approve or disapprove the amendments and any modifications within five working days.

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Dated: 8/19/85

LEONARD W. LEVINE
Commissioner of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATES, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 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 2:00 p.m., this 27th day of August, 1985.

Nancy Stoelle

RULE HEARING MAILING LIST
1ST CLASS MAIL
PAGE ONE
2:00 pm 8-27-85

Regulatory Department
S & FA Reporting Serv., Inc.
1101 - 15th ST. NW
Washington, D.C. 20005

South Center Manor, Inc.
Park Island
Center City, MN 55012

Leo Fitzpatrick
8138 Henslowe Ave. S.
Cottage Grove, MN 55016

Forestview - Hemmingway
8045 Hemmingway Ave. S.
Cottage Grove, MN 55016

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Faribault, MN 55021

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Mora, MN 55051

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South St. Paul, MN 55075

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~~Peterson, Popovich, Knutson & Flynn~~
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~~St. Paul, MN 55101~~

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National Assn of Social Workers
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St. Paul, MN 55103

Mental Health Advocates Coalition
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St. Paul, MN 55102

Phillips Legislative Service
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St. Paul, MN 55103

S. MN Reg. Legal Services, Inc.
Migrant Legal Services
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Fargo, ND 58103

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St. Paul, MN 55104

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Minnesota Dental Association
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Mary Absolon
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Nekton, Inc.
633 North Snelling Ave.
St. Paul, MN 55104

Our House of Minnesota, Inc.
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Attn: Lynne R. Megan

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St. Paul, MN 55117

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~~Minneapolis, MN 55403~~

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Legal Aid Society of Mpls.,
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Attn: Welfare Unit

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Legal Advocacy for Developmentally Disabled Persons in M
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Park Rapids, MN 56470

Pine River Group Home
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Pine River, MN 56474

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Chief Executive Officer
Cambridge State Hospital

Executive Secretary
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Martha Schmitt, Research Cons.
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John Anderson
Rules Unit
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Rae Bly
Rules Unit
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Rosemary Chapin
DHS, Rules Unit
6th Floor, Space Center

Mike Dean
DHS, Rules Unit
6th Floor, Space Center

Jane Delage
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4th Floor, COB

Dan Lipschultz
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4th Floor, COB

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Eleanor Weber
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Alice Weck
Rules Unit
4th Floor, COB

Department of Human Services

Proposed Temporary Rules Relating to Determination of Nursing Home Payment Rate

Notice of Intent to Adopt Temporary Rule Amendments

The State Department of Human Services proposes to adopt temporary amendments to the above-entitled temporary rules in accordance with Laws of Minnesota 1984, chapter 641, section 22, subdivision 6 and Minnesota Statutes, section 256B.431, subdivision 6.

Persons interested in these amendments have until 4:30 p.m. on September 23, 1985, 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
Sixth Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

After consideration of all comments received, the Department of Human Services shall submit the temporary amendments as published, with any modifications, this notice, required supporting documents, and all written comments received to the Attorney General.

The Attorney General shall review the proposed temporary amendments, with any modifications, as to its legality, review its form to the extent the form relates to legality and shall approve or disapprove the amendments and any modifications within five working days.

The approved amendments shall also be certified by the Revisor of Statutes.

The temporary amendments adopted under the provision of Laws of Minnesota, chapter 641, section 22, subdivision 6, and Minnesota Statutes, section 256B.431, subdivision 6, shall have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule.

The Department of Human Services' authority for adoption of these amendments is found in Laws of Minnesota 1984, chapter 641 and Minnesota Statutes, sections 256B.41, 256B.21, and 256B.431, subdivisions 1, 2 c, and 6.

The purpose of Minnesota Rules, parts 9549.0050 to 9549.0059 [Temporary] is to implement a case mix reimbursement system which bases nursing home operating costs payments on the condition and needs of residents in each home.

The rule impacts the operating cost payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities licensed under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program.

The purpose of the amendment of part 9549.0052, subpart 1, is to delete language in the rule which contradicts Laws of Minnesota, 1985 Special Session, Chapter 3.

The purpose of the amendments to part 9549.0054, subpart 4 and 5, is to clarify how to calculate the allowable historical other care related operating cost per diems and the allowable historical other operating cost per diem, for the first rate year following the nursing home's interim reporting period.

The purpose of the amendments to part 9549.0055, subpart 2, is to clarify the way in which operating cost limits will be set. The other amendments are made to correct minor problems of reference or lack of clarity in the proposed rule.

These temporary amendments will not result in additional state or county spending in excess of $100,000 annually beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Mary Ann Bredesen, Department of Human Services, Space Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

Upon adoption of the temporary rule amendments by the agency, the rule amendments as adopted and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission to this material to the Attorney General, or who wish to receive a copy of the adopted temporary rule amendments, must submit the written request to Rosemary Chapin.

Leonard W. Levine
Commissioner of Human Services

Temporary Rules as Proposed

DEPARTMENT OF HUMAN SERVICES
NURSING HOME PAYMENT RATE DETERMINATION [Temporary]

9549.0051 [Temporary] DEFINITIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. Case mix operating costs. "Case mix operating costs" means the operating costs listed in part 9549.0040, subpart 5, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985,~~ and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category in accordance with part 9549.0053.

Subp. 6. and 7. [Unchanged.]

Subp. 8. Other care related operating costs. "Other care related operating costs" means the operating costs listed in part 9549.0040, subpart 6, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985,~~ and the portion of fringe benefits and payroll taxes allocated to the other care related cost category, the cost of food, and the required dietician consulting fees charged by a nonrelated organization in accordance with part 9549.0053.

Subp. 9. Other operating costs. "Other operating costs" means the operating costs listed in part 9549.0040, subparts 1, 2, 3, 4, and 7, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985,~~ and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories in accordance with part 9549.0053, excluding the cost of food.

Subp. 10. to 13. [Unchanged.]

9549.0052 [Temporary] ESTABLISHMENT OF GEOGRAPHIC GROUPS.

The commissioner shall classify Minnesota nursing homes according to their geographic location as indicated in subparts 1 to 3.

Subpart 1. Group 1. All nursing homes in Beltrami, Big Stone, Cass, Chippewa, Clearwater, Cottonwood, Crow Wing, Hubbard, Jackson, Kandiyohi, Lac Qui Parle, Lake of the Woods, Lincoln, Lyon, Mahnomen, ~~McLeod,~~ Meeker, Morrison, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Swift, Todd, Yellow Medicine, and Wadena counties must be placed in geographic group 1.

Subp. 2. and 3. [Unchanged.]

9549.0053 DETERMINATION AND ALLOCATION OF THE FRINGE BENEFITS AND PAYROLL TAXES, FOOD COSTS, AND REQUIRED DIETICIAN CONSULTING FEES.

Subpart 1. Fringe benefits and payroll taxes. Fringe benefits and payroll taxes must be allocated to case mix, other care-related costs, and other operating costs according to items A to D.

A. Fringe benefits and payroll taxes must be allocated to case mix operating costs in the same proportion to salaries reported under part 9549.0040, subpart 5, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985~~.

B. Fringe benefits and payroll taxes must be allocated to other care-related costs in the same proportion to salaries reported under part 9549.0040, subpart 6, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985~~.

C. Fringe benefits and payroll taxes must be allocated to other operating costs in the same proportion to salaries reported under part 9549.0040, subparts 1, 2, 3, 4, and 7, ~~as proposed in *State Register*, volume 9, page 1716, February 4, 1985~~.

D. [Unchanged.]

Subp. 2. Determination of food costs. For any nursing home which has not separately reported the cost of food under part 9549.0040, subpart 1, ~~as proposed in *State Register*, volume 9, page 1716 (February 4, 1985),~~ the commissioner shall determine the food costs according to items A and B.

A. and B. [Unchanged.]

Subp. 3. [Unchanged.]

9594.0054 [Temporary] DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.

The commissioner shall annually review and adjust the operating costs incurred by the nursing home during the reporting year

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preceding the rate year to determine the nursing home's actual allowable historical operating costs. The review and adjustment must comply with the provisions of parts 9549.0010 to 9549.0080~~, as proposed in *State Register*, volume 9, page 1716 (February 4, 1985)~~.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Allowable historical other care related operating cost per diem. The allowable historical other care related operating cost per diem must be computed by dividing the allowable historical other care related operating costs by the ~~greater~~ actual number of resident days ~~or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period, except that a nursing home that is certified to provide a skilled level of care and that has an average length of stay of 180 days or less in their skilled level of care must divide the allowable historical other care related operating costs by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period~~.

Subp. 5. Allowable historical other operating cost per diem. The allowable historical other operating cost per diem must be computed by dividing the allowable historical other operating costs by the ~~greater~~ actual number of resident days ~~or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period, except that a nursing home that is certified to provide a skilled level of care and that has an average length of stay of 180 days or less in their skilled level of care must divide the allowable historical other operating costs by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period~~.

9549.0055 [Temporary] DETERMINATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

Subpart 1. [Unchanged.]

Subp. 2. Limits. For each geographic group established in part 9549.0052 [Temporary] the operating costs limits must be determined according to items A to F. No redetermination of the operating costs limits shall be made due to audit adjustments or appeal settlement.

A. [Unchanged.]

B. The commissioner shall compute 115 percent of the median of the array of the allowable historical other care related operating cost per diems for the base year. For the purpose of establishing operating cost limits, the commissioner shall compute the allowable historical other care related per diems for the base year by dividing the allowable historical other care related operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case, the allowable historical other care related operating costs must be divided by the greater of resident days or 80 percent of its number of licensed beds multiplied by the number of days in the reporting period.

C. and D. [Unchanged.]

E. The other operating costs limits must be determined in accordance with subitems (1) to (5). For the purpose of establishing operating costs limits, the commissioner shall compute the allowable historical other operating costs per diems for the base year by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case, the allowable historical other operating costs must be divided by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

(1) to (5) [Unchanged.]

F. [Unchanged.]

Subp. 3. [Unchanged.]

9549.0056 [Temporary] DETERMINATION OF THE OPERATING COST PAYMENT RATE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Adjusted prospective other operating cost payment rate. The adjusted prospective other operating cost payment rate must be determined according to items A ~~or B~~ to C.

A. to C. [Unchanged.]

D. The nursing home's efficiency incentives in ~~items~~ item A or B must not be changed as a result of field audit adjustment.

Subp. 5. [Unchanged.]

9549.0057 [Temporary] DETERMINATION OF THE INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.

To receive an interim payment rate, a nursing home must comply with the requirements and is subject to the conditions of part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle-up operating cost payment rates for a newly constructed nursing home, or one with a capacity increase of 50 percent or more according to subparts 1 and 2.

Subpart 1. Interim operating cost payment rate. For the rate year or portion of an interim period beginning on or after July 1, 1985, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 [Temporary], except that:

A. to B. [Unchanged.]

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem. ~~Ninety percent of licensed beds multiplied by the number of days in the reporting period must not be used in determining these per diems.~~

D. and E. [Unchanged.]

F. The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, must not apply.

Subp. 2. Settle-up operating cost payment rate. The settle-up total operating cost payment rate must be determined according to items A to C.

A. [Unchanged.]

B. The settle-up operating cost payment rate for a nursing home which commenced construction after June 30, 1985, or whose interim reporting period included a period of time after that date must be determined for the portion of that interim period occurring after June 30, 1985, as in parts 9549.0050 to 9549.0059 [Temporary].

(1) The standardized resident days occurring after ~~July~~ June 30, 1985, must be annualized for the interim reporting period.

(2) [Unchanged.]

(3) The commissioner shall use the actual resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem. ~~Ninety percent of licensed beds multiplied by the number of days in the reporting period must not be used in determining these per diems.~~

(4) to (6) [Unchanged.]

C. [Unchanged.]

9549.0058 [Temporary] RESIDENT CLASSES AND CLASS WEIGHTS.

Subpart 1. Resident classes. Each resident must be classified according to items A to E based on the assessments performed under part 9549.0059 [Temporary] on the assessment form.

A. to E. [Unchanged.]

F. The commissioner shall establish resident classes based on the definitions in items A to E and according to subitems (1) to (11).

(1) to (6) [Unchanged.]

(7) Class G. High ADL, and scoring less than three on the eating ADL in item A, and not defined special nursing, and not defined behavioral condition ~~on assessment form~~.

(8) to (11) [Unchanged.]

Subp. 2. [Unchanged.]

9549.0059 [Temporary] RESIDENT ASSESSMENT.

Subpart 1. Assessment of nursing home applicants and newly admitted residents. Each nursing home applicant or newly admitted resident shall be assessed for the purpose of determining the applicant's or newly admitted resident's class according to items A to I.

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

A. Each county preadmission screening team or hospital screening team under contract with the county must assess all nursing home applicants for whom preadmission screening is required by Minnesota Statutes, section 256B.091, and any applicant for whom a preadmission screening is not required but who voluntarily requests such a screening in accordance with Minnesota Statutes, section 256B.091, except as provided in subitems (1) and (2).

(1) [Unchanged.]

(2) A nursing home applicant whose admission to the nursing home is for the purpose of receiving respite care services ~~under the Alternative Care Grants program or under the medical assistance program~~ need not be reassessed more than once every six months for the purpose of computing resident days under part 9549.0054 [Temporary], subpart 2, if the applicant has been classified by the Department of Health within the prior six-month period. In this case, the resident class established by the Department of Health within the prior six-month period may be the resident class of the applicant. However, in no case shall a resident receive more than one assessment per respite care stay.

B. to I. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. Semiannual assessment by nursing homes. Semiannual assessments of residents by the nursing home must be completed in accordance with items A to E.

A. to C. [Unchanged.]

D. Any change in resident class due to a semi-annual assessment must be effective as of the first day of the month following the date of the completion of the semiannual ~~assessment~~ assessments.

E. [Unchanged.]

Subp. 4. Change in classification due to annual assessment by Department of Health. Any change in resident class due to an annual assessment by the Department of Health's QAR team will be effective as of the first day of the month following the date of completion of the Department of Health's ~~assessment~~ assessments.

Subp. 5 and 6. [Unchanged.]

Subp. 7. Change in resident class due to request for reconsideration of resident classification. Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part ~~4546.0060~~ 4656.0060 is pending.

B. Any change in a resident class due to a reclassification under part ~~4546.0060~~ 4656.0060 must be effective as of the date of the assessment for which a reconsideration was requested.

Subp. 8. Reconsideration of resident classification. Any request for reconsideration of a resident classification must be made pursuant to the procedures set forth in part ~~4546.0060~~ 4656.0060.

Subp. 9. [Unchanged.]

Department of Public Safety

Proposed Rules Relating to License Revocation for Alcohol- and Controlled-Substance-Related Incidents

Notice of Public Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14, subd. 1, in the above-entitled matter on October 3, 1985 in Room 300, State Office Building, St. Paul, Minnesota. The hearing will commence at 9:00 a.m. and will continue until all interested persons and groups have had an opportunity to be heard concerning adoption of the proposed rules by submitting either oral or written data, statements or arguments. The hearing will be conducted by Administrative Law Judge George Beck, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone: (612) 241-7601.

The hearing procedure is governed by Minnesota Statutes, sections 14.14 through 14.20 and 14.48 through 14.56, and by Minnesota Rules 1400.0200 through 1400.1200. Questions regarding the hearing procedure may be directed to the Administrative Law Judge at the above-listed address.

As a result of the hearing process, the proposed rules may be modified. Statements and briefs may be submitted without appear-

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING OPERATING COST PAYMENT RATES FOR NURSING HOMES, PARTS 9549.0050 TO 9549.0059. (TEMPORARY).

FINDINGS OF FACT AND CONCLUSIONS

The Notice of the Commissioner's intent to adopt proposed temporary amendments to the above-entitled temporary rules was published in the State Register on September 2, 1985. Notice was also sent by the United States mail to all persons on a list maintained by the Department pursuant to Minnesota Statutes, Section 14.14, Subdivision 1 on August 27, 1985. 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. Part 9549.0051

Ms. Mary Alcorn of Good Neighbor Services, Inc., commented that subpart 8, Other Care Related Operating Costs, needs to be amended so that required dietician consulting fees charged by a related organization would be handled in the same manner as non-related organization fees. She also stated that subpart 9, Other Operating Costs, should be amended to exclude dietician consulting fees from this cost category. The Commissioner agrees there may be a need to clarify language that deals with this matter in several locations in the rule. However, the procedure currently used by the department to calculate the required

dietician consulting fees is such that any home that separately reported these consulting fees had these costs reallocated to the other care related cost category. Therefore, dietician consulting fees charged by a related organization were included in the other care related cost category if identified by the nursing home. The Department would prefer to address this issue further in the permanent rule.

2. Part 9549.0054

Mr. Michael D. McConnell, representing the firm of Larson, Allen, Weishair and Co., commented that for those facilities where the second quality assurance review did not include private pay residents, the calculation of standardized days proposed by the Department may be inequitable.

The Commissioner finds that some facilities where the second quality assurance review did not include private pay residents may be penalized by the proposed method of calculating standardized resident days and therefore modifies part 9549.0054, subpart 1, item A, as follows:

After "in accordance with item I", insert, "Any nursing home whose most recent QAR assessment completed before April 1, 1985, does not include assessments of non-medical assistance residents may make a written request to the Commissioner to consider a different QAR assessment to be the most recent if that assessment:

1) includes non-medical assistance residents; and

2) was completed by the Department of Health before July 1, 1985. The request must be in writing. Written requests must be received by the Commissioner by December 31, 1985.

p. 3

3. Part 9549.0054

Mr. Bob Rau, representing the law firm of Broeker and Grant, points out that nursing homes with declining case mix would get less than their historical costs. Mr. Rau's computation does not take into consideration that when a nursing home's case mix is decreasing, its care related operating costs should also be decreasing. Further, it is an intended feature of the system that facilities with declining case mix will receive declining revenues. The Department believes that the present method is correct, and wishes to retain current rule language.

4. Part 9549.0055

Myron J. Brose of Larson, Allen, Weishair and Co., Ms. Rebecca Knapp, of United Health, Inc., and Ms. Kristin Larson of Minnesota Association of Homes for the Aged, commented that the computation of limits should be based on actual resident days. The Commissioner finds that the department is mandated to insure that reimbursements to nursing homes are for costs that "must be incurred" in "efficiently and economically operated facilities." (Minnesota Stat. 256B.41, subd. 1.) Facilities operating at less than 90% occupancy are not operating efficiently. Further, Minnesota Stat., 256B.431, subd. 2b(d) authorizes the department to use 90% of licensed beds for computing limits.

5. Part 9549.0055

Mr. William Hargis stated that the rule should allow for redetermination of limits when correction of errors, audit adjustments, and appeal settlements affect the limits of each cost category.

The Commissioner finds that such adjustment of limits is administratively impossible. If such adjustments were made, limits would be constantly fluctuating up and down. Rates would have to be recalculated each time facilities won or lost appeals.

6. Part 9549.0059

Robert Manske, Assistant to the Director, Health Resources Division, Minnesota Department of Health pointed out that part 9549.0059, subp. 7, item B, requires the establishment of an effective date for payment upon reconsideration that may be earlier than the date which would arise without reconsideration.

The Commissioner agrees with this analysis and finds that Part 9549.0059, subp. 7, item B should be modified as follows:

After "be effective as of the," insert "effective". After "date of the " insert "classification established by the original."

Item B will now read:

Any change in a resident class due to a reclassification under part 4656.0060 must be effective as of the effective date of the classification established by the original assessment for which a reconsideration was requested.

9-8

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 modifications made to the proposed temporary amendments are supported by the Findings of Fact and are not substantial changes.

4. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

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

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

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

DATED: 10-10-85

STATE OF MINNESOTA

LEONARD W. LEVINE, COMMISSIONER
Department of Human Services

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO TEMPORARY RULES GOVERNING NURSING HOME PAYMENT RATE, MINNESOTA RULES, PARTS 9549.0050 TO 9549.0059 [TEMPORARY]

STATEMENT OF COMPLIANCE WITH RULE-MAKING PROCEDURES

I, Gary Van Cleve, Attorney, 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.

Gary A. Van Cleve
Special Assistant - Attorney General

Dated: 10/10/85

IN THE MATTER OF THE PROPOSED ADOPTION OF PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING OPERATING COST PAYMENT RATES FOR NURSING HOMES, PARTS 9549.0050 TO 9549.0059. (TEMPORARY).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Nancy Storelee, being first duly sworn, deposes and says:

That on the 11th day of October, 1985, in the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing (or) United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Nancy Storelee

Subscribed and sworn to before me

this 11 day of October, 1985.

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 PROPOSED TEMPORARY AMENDMENTS TO RULES FOR DETERMINING OPERATING COST PAYMENT RATES FOR NURSING HOMES, PARTS 9549.0050 TO 9549.0059. (TEMPORARY)

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32.

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, October 11, 1985, for review as to form and legality. The Attorney General will not approve the rules for at least five working days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota, 55155, telephone (612) 296-7030. Please note that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

We have enclosed a copy of the rule proposed for adoption and the Findings of Fact per your request.

Rosemary Chapin