

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1372 Docket No. 05.0009.0881

DATE RECEIVED 5/29/87
REVIEW DATE 6/6/87
DUE DATE 6/12/87

APPROVED 6/12/87
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
12/15/86 Date published in State Register
Yes Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule
Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
256.50 subd 1-3 Statutory Authority (Incorrect)
N Small business statement
Yes Expenditure of public money statement
Yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
4/8/87 Date 30/25 days before adoption

✓ Publication in State Register
4/13/87 Date 30/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting
5/ /87 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Ben Heydinger Name of SAAG representing agency

✓ Fiscal Notes
~~Notice of Submission to Attorney General~~

✓ Certificate
~~Affidavit of Mailing Notice to Attorney General~~

✓ aff. of add'l Mailing

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : June 16, 1987

TO : Jane Delage
Department of Human Services
Rules Unit

FROM : MIKE MILES
Assistant Attorney General

PHONE : 6-6555

SUBJECT : In the Matter of the Adopted Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions

The above-referenced rule has been approved as to its legality by the Attorney General on June 12, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth 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.

JMM:nah
Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Human Services

Adopted Permanent Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons With Mental Retardation and Related Conditions

Rules as Adopted

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.** The commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical operating cost per diem shall be established according to items A to F.

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to (5).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

(a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's

licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year.

(3) For the rate year beginning October 1, 1986, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

(a) to (c) [Unchanged.]

(5) The limits in subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

B. to F. [Unchanged.]

Subp. 2. **Establishment of total operating cost payment rate.** The total operating cost payment rate shall be established according to items A to F.

A. The allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban

consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U.

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G:

A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined according to the following table:

Percentage Of Equity In Capital Assets	Total Capital Debt Reduction Allowance	Amount Which Must Be Applied To

Used By The Facility	Per Resident Day (In Dollars)	Reduce Capital Debt (In Dollars)
Less than 20.01	.50	.40
20.01 to 40.00	.50	0
40.01 to 60.00	.70	0
60.01 to 80.00	.90	0
80.01 to 100.00	1.10	0

B. to G. [Unchanged.]

Subp. 6. and 7. [Unchanged.]

9553.0061 LIFE SAFETY CODE ADJUSTMENT.

Subpart 1. **Determination of adjustment.** Adjustments to the special operating cost payment rate for actions taken to comply with the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, shall be determined under subparts 2 to 9.

Subp. 2. **Conditions.** The commissioner shall allow an adjustment to a facility's special operating cost payment rate when the state fire marshal has issued a statement of deficiencies to the facility under the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, if the criteria in items A to D are met.

A. The physical plant for which the statement of deficiencies was issued has 16 or fewer licensed beds.

B. The commissioner has determined that the most programmatically sound and cost effective means of correcting the deficiencies is to modify the physical plant or add depreciable equipment.

C. The cost of the physical plant modification or additional depreciable equipment cannot be covered by reallocating facility staff and costs including funds accumulated in the facility's funded depreciation account and other savings or investment accounts of the provider.

D. The provider has complied with the requirements in subparts 3 and 4.

Subp. 3. **Request for life safety code adjustment.** The provider shall submit to the commissioner a written request for a life safety code adjustment to the special operating cost payment rate. The request must include:

A. a copy of the state fire marshal's statement of

deficiencies;

B. a copy of the facility's plan of correction approved by the state fire marshal; and

C. a description of the type of physical plant modifications or additional depreciable equipment required to meet the approved plan of correction including the estimated cost based on bids developed in accordance with subpart 4.

Subp. 4. **Bid requirements.** Bids must be obtained from nonrelated organizations. Only the costs of items required to correct the deficiencies may be included in a bid. Each bid must include:

A. a detailed description of the physical plant modifications needed to correct the deficiencies;

B. the cost of any depreciable equipment needed to correct the deficiencies;

C. the cost of materials and labor; and

D. the name, address, and phone number of the bidder.

If the commissioner determines that the bid submitted by the provider is excessive or includes items not required to correct the deficiencies, the commissioner may require a second bid and may recommend another organization that must supply the bid. This subpart shall not apply to a facility that has implemented a plan of correction before the effective date of this part.

Subp. 5. **Evaluation of documents submitted.** The commissioner shall evaluate the documents submitted under subpart 3. If the commissioner determines that the plan of correction is not programmatically sound or cost effective, the commissioner may require the facility to submit an alternative plan of correction to the state fire marshal for approval. If the state fire marshal approves the alternative plan of correction, the commissioner may require the facility to resubmit bids under subpart 4.

Subp. 6. **Computation of life safety code adjustment.** If the request meets the criteria in subparts 2 to 5, the commissioner shall compute the life safety code adjustment to

the special operating cost payment rate under items A to E.

A. Upon completion of the physical plant modifications and purchase of the additional depreciable equipment, the facility shall submit copies of invoices showing the total cost of the physical plant modifications and additional depreciable equipment to the commissioner.

B. The commissioner shall allow the lesser of the amount in item A or the final bid approved by the commissioner. The amount allowed shall be reduced by 75 percent of the funded depreciation that may be withdrawn for purchase or replacement of capital assets or payment of capitalized repairs as determined in part 9553.0060, subpart 1, item E, subitem (4), and other savings or investment accounts of the provider or the provider group.

C. If a facility is financed by the Minnesota Housing Finance Agency, the facility must use amounts deposited in the development cost escrow account required by the Minnesota Housing Finance Agency to purchase physical plant modifications or additional depreciable equipment allowed under this part. The amount withdrawn from the development cost escrow account must be reimbursed to the facility as provided in subpart 7. The facility must use the reimbursement to replace the amount withdrawn from the development cost escrow account as required by the Minnesota Housing Finance Agency.

D. If the amount determined in item B is less than $500 per licensed bed, the amount must be divided by the resident days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than $500 per licensed bed, the amount in excess of $500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of $500 per licensed bed must be divided by the resident days from the cost report that was used to set the facility's total payment rate for the rate year

following the rate year in which the statement of deficiencies was issued.

Subp. 7. **Adjustment of special operating cost payment rate.** If the amount in subpart 6, item B or C, is greater than zero, the commissioner shall adjust the facility's special operating cost payment rate under items A and B.

A. The per diem amount in subpart 6, item D, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item D, and will be effective on the first day of that rate year.

B. The per diem amount in subpart 6, item E, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item E, and shall be effective on the first day of that rate year.

Subp. 8. **Reimbursement limits.** If a life safety code adjustment to the special operating cost payment rate is allowed under this part, the cost of the physical plant modifications and additional depreciable equipment allowed in subpart 6, item B, must not be claimed for reimbursement under other provisions of parts 9553.0010 to 9553.0080. The cost of the physical plant modifications and additional depreciable equipment not allowed under subpart 6, item B, shall be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

Subp. 9. **Changes in one-time adjustment.** If a facility has been given a one-time adjustment under part 9553.0050, subpart 3, and the commissioner determines under subpart 2, item A, that the life safety code deficiency should be corrected under this part, the facility's one-time adjustment or the portion of that one-time adjustment that related to the life safety code deficiency shall be subtracted from the facility's total payment rate on the date the life safety code adjustment under this part is effective. If more than 50 percent of the one-time adjustment is subtracted from the facility's total payment rate under this subpart, the facility may apply for another one-time adjustment within the three-year period established in part 9553.0050, subpart 3, item G.

9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. Parts 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which all the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle-up.

Subp. 2. **Interim payment rate settle-up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December

31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. [Unchanged.]

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle-up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) to (5) [Unchanged.]

Subp. 3. **Total payment rate for nine-month period following settle-up period.** For the nine-month period following the settle-up reporting period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) [Unchanged.]

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/St. Paul as published by the Bureau of Labor Statistics between the two most recent Decembers before the beginning of the rate year, new series index (1967=100).

B. and C. [Unchanged.]

Subp. 4. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 16 1987

Joan Anderson Growe
Secretary of State

3:50 pm

APPROVED AS TO FORM AND LEGALITY

6/12 1987

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

VII. **Part 9505.0065, subpart 7, item C.** Costs of utilities allowed as a deduction from gross rental income.

The proposed rule allows the cost of utilities to be deducted from rental income if the rental agreement specifies that provision of utilities is the owner's responsibility. It is estimated that this change will add $10,000 to Medical Assistance program costs.

VIII. **Part 9505.0065, subpart 10.** Anticipating income on a semi-annual basis rather than an annual basis.

Current law requires eligibility to be determined by anticipating income on an annual basis. The rule, as required by federal regulation, requires the use of a period of six months to compute anticipated income. It is anticipated this change will have minimal effect to the Medical Assistance program cost.

Effect on Medical Assistance Administrative Expenditures

IX. **Part 9505.0130, Subpart 4.** Right to review records.

This subpart requires a local agency to provide a person one photocopy of all material from the person's record without cost. This is a change from current practice. The estimated cost of this change to the Medical Assistance program is $16,000.

X. **Part 9505.0140, subpart 1, item B.** Mileage allowed for medical care.

The cost of routine transportation of medical assistance recipients to obtain necessary health care services is a local agency administrative cost to which the federal government contributes 50%.

The rate allowed for mileage affects administrative expenditures as well as program expenditures. This increase produces an annual increase to the Medical Assistance program of $58,000. (The county share is $29,000.)

XI. **Part 9505.0140, subpart 2.** Local agency procedure to ensure access.

This subpart requires a local agency to have and to submit to the department every two years a transportation plan that ensures access to medically necessary services. This is a new requirement that is expected to lead some counties to provide increased transportation service. A 20% increase in the current level of service is assumed at a total annual cost to the Medical Assistance program of $50,000.

Department of Human Services
Long Term Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to the Rules Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation, Minnesota Rules, Parts 9553.0110 to 9553.0080

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of amendments to the rules governing the determination of payment rates for intermediate care facilities for persons with mental retardation, Minnesota Rules, parts 9553.0010 to 9553.0080. The adoption of these amendments is authorized by Minnesota Statutes, section 256B.501, subdivisions 2 and 3, which permit the agency to establish procedures and rules for determining rates for care of residents of intermediate care facilities for persons with mental retardation.

The Department is proposing changes in the historical limits on maintenance and administrative costs and the capital debt reduction allowance and is proposing the addition of a new subpart to address adjustments to the property-related payment rate for 1985 Life Safety Code deficiency citations requiring facility modifications or additions.

The State Department of Human Services requests information and opinions concerning the proposed subject matter of the amendments. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Jane Delage
Department of Human Services, Rules Unit
Centennial Office Building
658 Cedar Avenue
St. Paul, Minnesota
55155

Oral statements will be received during regular business hours over the telephone at (612) 297-4302 and in person at the above address.

All statements of information and opinions shall be accepted until further notice. Any written material received by the State

Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 8 December 1986

Sandra Gardebring
Commissioner of Human Services

Department of Human Services Division of Mental Retardation

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Minnesota Rules, Parts 9540.0100 to 9540.0500 Governing the Family Subsidy Program

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing amendments to Minnesota Rules, parts 9540.0100 to 9540.0500. The amendments to these rules are authorized by Minnesota Statutes, section 252.32, subdivision 4. Amendments are proposed because of statutory changes and include: the age of eligibility; individual service plans; transition planning for a child who is seventeen; application process; criteria for approval; annual review of family eligibility; subsidy amounts, uses and emergency appropriations; coordination with other programs such as Home and Community-Based Waivered Services and income maintenance programs; and other areas necessary to implement the family subsidy program.

The State Department of Human Services requests information and opinions concerning the subject matter of the amendments. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Thomas Fields
Department of Human Services
Division of Mental Retardation
Centennial Office Building, 4th Floor
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone by Thomas Fields at 612/296-2147 and in person at the above address.

All statements of information and opinions shall be accepted until further notice. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 5 December 1986

Francis E. Giberson
Deputy Commissioner

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 6, 1987.

REHABILITATION REVIEW PANEL has 1 vacancy open for a physician, chiropractor or rehabilitation consultant to serve as an alternate member. The panel reviews rehabilitation plans and rules; advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry. Members must file with the Ethical Practices Board. Compensation for members governed by section 15.0575. For specific information contact the Rehabilitation Review Panel, Dept. of Labor and Industry, Office of Public Affairs, Space Center, 444 Lafayette Rd., St. Paul 55101; (612) 297-4374.

MORTUARY SCIENCE ADVISORY COUNCIL has 2 vacancies open for the following: 1 public member and 1 professional member. The council licenses and regulates morticians and funeral directors; inspects and registers funeral facilities; advises the Commissioner of Health in the implementation of mortuary science law and rules of the Commissioner, and sits as a panel on

Department of Human Services

Proposed Permanent Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons With Mental Retardation and Related Conditions

Rules as Proposed

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.** The commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical operating cost per diem shall be established according to items A to F.

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to ~~(3)~~ (5).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

(a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied

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by the facility's licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in ~~each of~~ the maintenance ~~and administrative~~ operating cost ~~categories~~ category must not exceed the ~~respective~~ operating cost payment rate for ~~each of those~~ the maintenance operating cost ~~categories~~ category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year.

(3) For the rate year beginning October 1, 1986, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

(a) to (c) [Unchanged.]

~~(3)~~ (5) The limits in ~~subitem~~ subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

B. to F. [Unchanged.]

Subp. 2. **Establishment of total operating cost payment rate.** The total operating cost payment rate shall be established according to items A to F.

A. The allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be

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adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U.

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G:

A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined

Approved by Revisor _____

according to the following table:

Percentage Of Equity In Capital Assets Used By The Facility	Total Capital Debt Reduction Allowance Per Resident Day (In Dollars)	Amount Which Must Be Applied To Reduce Capital Debt (In Dollars)
Less than 20.01	.50	~~.50~~ .40
20.01 to 40.00	.50	~~.25~~ 0
40.01 to 60.00	~~.65~~ .70	0
60.01 to 80.00	~~.80~~ .90	0
80.01 to 100.00	~~1.00~~ 1.10	0

B. to G. [Unchanged.]

Subp. 6. and 7. [Unchanged.]

9553.0061 LIFE SAFETY CODE ADJUSTMENT.

Subpart 1. **Determination of adjustment.** Adjustments to the special operating cost payment rate for actions taken to comply with the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, shall be determined under subparts 2 to 9.

Subp. 2. **Conditions.** The commissioner shall allow an adjustment to a facility's special operating cost payment rate when the state fire marshal has issued a statement of deficiencies to the facility under the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, if the criteria in items A to D are met.

A. The physical plant for which the statement of deficiencies was issued has 16 or fewer licensed beds.

B. The commissioner has determined that the most programmatically sound and cost effective means of correcting the deficiencies is to modify the physical plant or add depreciable equipment.

C. The cost of the physical plant modification or additional depreciable equipment cannot be covered by reallocating facility staff and costs including funds accumulated in the facility's funded depreciation account and other savings or investment accounts of the provider.

D. The provider has complied with the requirements in subparts 3 and 4.

Subp. 3. **Request for life safety code adjustment.** The provider shall submit to the commissioner a written request for a life safety code adjustment to the special operating cost

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payment rate. The request must include:

A. a copy of the state fire marshal's statement of deficiencies;

B. a copy of the facility's plan of correction approved by the state fire marshal; and

C. a description of the type of physical plant modifications or additional depreciable equipment required to meet the approved plan of correction including the estimated cost based on bids developed in accordance with subpart 4.

Subp. 4. **Bid requirements.** Bids must be obtained from nonrelated organizations. Only the costs of items required to correct the deficiencies may be included in a bid. Each bid must include:

A. a detailed description of the physical plant modifications needed to correct the deficiencies;

B. the cost of any depreciable equipment needed to correct the deficiencies;

C. the cost of materials and labor; and

D. the name, address, and phone number of the bidder.

If the commissioner determines that the bid submitted by the provider is excessive or includes items not required to correct the deficiencies, the commissioner may require a second bid and may recommend another organization that must supply the bid. This subpart shall not apply to a facility that has implemented a plan of correction before the effective date of this part.

Subp. 5. **Evaluation of documents submitted.** The commissioner shall evaluate the documents submitted under subpart 3. If the commissioner determines that the plan of correction is not programmatically sound or cost effective, the commissioner may require the facility to submit an alternative plan of correction to the state fire marshal for approval. If the state fire marshal approves the alternative plan of correction, the commissioner may require the facility to resubmit bids under subpart 4.

Subp. 6. **Computation of life safety code adjustment.** If

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the request meets the criteria in subparts 2 to 5, the commissioner shall compute the life safety code adjustment to the special operating cost payment rate under items A to E.

A. Upon completion of the physical plant modifications and purchase of the additional depreciable equipment, the facility shall submit copies of invoices showing the total cost of the physical plant modifications and additional depreciable equipment to the commissioner.

B. The commissioner shall allow the lesser of the amount in item A or the final bid approved by the commissioner. The amount allowed shall be reduced by 75 percent of the funded depreciation that may be withdrawn for purchase or replacement of capital assets or payment of capitalized repairs as determined in part 9553.0060, subpart 1, item E, subitem (4), and other savings or investment accounts of the provider or the provider group.

C. If a facility is financed by the Minnesota Housing Finance Agency, the facility must use amounts deposited in the development cost escrow account required by the Minnesota Housing Finance Agency to purchase physical plant modifications or additional depreciable equipment allowed under this part. The amount withdrawn from the development cost escrow account must be reimbursed to the facility as provided in subpart 7. The facility must use the reimbursement to replace the amount withdrawn from the development cost escrow account as required by the Minnesota Housing Finance Agency.

D. If the amount determined in item B is less than $500 per licensed bed, the amount must be divided by the resident days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than $500 per licensed bed, the amount in excess of $500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of $500 per licensed bed must

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be divided by the resident days from the cost report that was used to set the facility's total payment rate for the rate year following the rate year in which the statement of deficiencies was issued.

Subp. 7. **Adjustment of special operating cost payment rate.** If the amount in subpart 6, item B or C, is greater than zero, the commissioner shall adjust the facility's special operating cost payment rate under items A and B.

A. The per diem amount in subpart 6, item D, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item D, and will be effective on the first day of that rate year.

B. The per diem amount in subpart 6, item E, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item E, and shall be effective on the first day of that rate year.

Subp. 8. **Reimbursement limits.** If a life safety code adjustment to the special operating cost payment rate is allowed under this part, the cost of the physical plant modifications and additional depreciable equipment allowed in subpart 6, item B, must not be claimed for reimbursement under other provisions of parts 9553.0010 to 9553.0080. The cost of the physical plant modifications and additional depreciable equipment not allowed under subpart 6, item B, shall be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

Subp. 9. **Changes in one-time adjustment.** If a facility has been given a one-time adjustment under part 9553.0050, subpart 3, and the commissioner determines under subpart 2, item A, that the life safety code deficiency should be corrected under this part, the facility's one-time adjustment or the portion of that one-time adjustment that related to the life safety code deficiency shall be subtracted from the facility's total payment rate on the date the life safety code adjustment under this part is effective. If more than 50 percent of the one-time adjustment is subtracted from the facility's total payment rate under this subpart, the facility may apply for

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another one-time adjustment within the three-year period established in part 9553.0050, subpart 3, item G.

9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. Parts 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which all the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle-up.

Subp. 2. **Interim payment rate settle-up.** The interim

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payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. [Unchanged.]

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle-up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) to (5) [Unchanged.]

Subp. 3. **Total payment rate for nine-month period following settle-up period.** For the nine-month period following the settle-up reporting period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) [Unchanged.]

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/St. Paul as published by the Bureau of Labor Statistics between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year, new series index (1967=100).

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B. and C. [Unchanged.]

Subp. 4. [Unchanged.]

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons With Mental Retardation and Related Conditions

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9553

The attached rules are approved for publication in the State Register

Susan E. Quayle
Assistant Revisor

Department of Human Services
In The Matter Of The Proposed
Adoption Of Permanent Rules
Governing The Determination
Of Payment Rates For Intermediate
Care Facilities For Persons With
Mental Retardation Or Related
Conditions, Parts 9553.0010
To 9553.0080.

Notice of Intent
To Adopt A Rule Without
A Public Hearing

Notice is hereby given that the state Department of Human Services intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on Wednesday, May 13, 1987 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing or the agency withdraws the rule. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Beverly Gausman
Department of Human Services
Appeals and Regulations Division
Third Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

The proposed amendments result in the following changes in the rule parts:

Part 9553.0050
1. the all urban consumer price index (CPI/U) used in the calculation of payments rates has been changed from the January index to the December index; and
2. the historical operating cost limit for administrative operating costs has been eliminated for rate years beginning on or after October 1, 1987, except for the purpose of calculating the efficiency incentive.

Part 9553.0060
1. the amount of the capital debt reduction allowance which must be applied to reduce capital debt has been decreased for facilities with 40 percent equity or less; and
2. the total capital debt reduction allowance has been increased for facilities with over 40 percent equity.

Part 9553.0061 (new part)
A new part has been added to provide for adjustments to the special operating cost payment rate for actions taken to comply with the 1985 Life Safety Code. This provision applies to facilities with sixteen or fewer beds.

Part 9553.0075
Technical changes to update references to other parts of the rule have been made and the reference to the CPI/U has been changed from January to December.

The Department is proposing these changes to:

1. correct the index cited;
2. eliminate a cost limitation which is no longer seen as necessary;
3. increase provider flexibility with regard to the capital debt reduction allowance;
4. increase the amount of capital debt reduction allowance for facilities with over 40 percent equity; and
5. provide an accelerated means of reimbursing facilities for the cost of complying with the 1985 Life Safety Code.

A free copy of the rule amendments is available upon request from Beverly Gausman at the address given above. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Beverly Gausman at the address given above.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Beverly Gausman, Department of Human Services.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Beverly Gausman.

Date:

Vicki Sleeper for
SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO PERMANENT
RULES GOVERNING THE DETERMINATION
OF PAYMENT RATES FOR INTERMEDIATE
CARE FACILITIES FOR PERSONS WITH
MENTAL RETARDATION OR A RELATED
CONDITION, PARTS 9553.0010 TO 9553.0080

STATEMENT OF NEED
AND REASONABLENESS

Authority

Minnesota Rules, parts 9553.0010 to 9553.0080 establish procedures for determining rates for all intermediate care facilities for persons with mental retardation participating in the medical assistance program, except intermediate care facilities in state owned hospitals as defined in Minnesota Statutes, section 246.50, subdivision 5. These rules took effect on December 16, 1985. They were developed to implement Minnesota Statutes, section 256B.501, subdivisions 1 to 3.

The rule parts were promulgated according to the requirements of federal statutes 42 USC 1396 (a)(13)(A) and federal regulations 42 CFR Part 447.

Legislative History

Minnesota Statutes, section 256B.501, subdivisions 1 to 3 specify that the commissioner of human services shall establish by rule, procedures for determining rates for care of residents of ICF/MRs. The legislation indicates that the rates should cover only "costs that must be incurred" in the care of residents in efficiently and economically operated facilities, and "that in developing the procedures, the commissioner shall include:

(a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy;

(b) limits on the amounts of reimbursement for property, general and administration, and new facilities;

(c) requirements to ensure that the accounting practices of the facilities conform to generally accepted accounting principles;

(d) incentives to reward accumulation of equity; and

(e) appeals procedures that satisfy the requirements of section 256B.50 for appeals of decisions arising from the application of standards or methods pursuant to Minnesota Rules, part 9510.0500 to 9510.0890, 9553.0010 to 9553.0080, and 12 MCAR 2.05301 to 2.05315 (temporary)."

This legislation reflects the continuing concern of the citizens of Minnesota that quality care for the mentally retarded be provided in a cost-efficient manner. The legislation further stipulates that in developing the rule, "the commissioner shall consider the recommendations contained in the February 11, 1983, Report of the Legislative Auditor Community Residential Programs for the Mentally Retarded and the recommendations contained in the 1982 Report of the Department of Public Welfare Rule 52 Task Force." Information from these reports, as well as other sources comprise the background for the permanent rule, which sets out procedures for determining the total payment rates for ICF/MRs participating in the Medical Assistance Program.

Amendment Process

The Department published a "Notice of Intent to Solicit Outside Opinion" in the State Register, December 15, 1986 (11 S.R. 1079). Advisory committee meetings were held December 23, 1986, February 11, 1987 and March 23, 1987. Several modifications were made to the proposed amendments based on the input received from the advisory committees. A list of the advisory committee members is contained in Exhibit A.

The Department and the industry's experience with Minnesota Rules parts 9553.0010 to 9553.0080 since the rules took effect led to the identification of several issues that need to be addressed to improve the providers' ability to manage their facilities. The purpose of the proposed amendments is to address those issues so that quality care can be provided in a cost effective manner.

Statement of Need and Reasonableness for Specific Rule Provisions

The specific provisions of parts 9553.0010 to 9553.0080 which are to be amended are affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

Part 9553.0050, Subpart 1, item A, subitem (1) unit (f); part 9553.0050, subpart 2, item A; and part 9553.0075, subpart 3, item A, subitem (3).

These amendments change the time period used to calculate the percentage change in the All Urban Consumer Price Index CPI/U from "between the two most recent Januarys prior to the beginning of the rate year" to "between the two most recent Decembers before the beginning of the rate year." It is necessary to change the months used for the consumer price index because this statistic is no longer published in January. The federal government only publishes the CPI/U in June and December, currently all facilities governed by this rule have a common reporting year of January 1 through December 31. It is reasonable to use the December statistics because they will more closely reflect inflation for the period during which the reported costs were incurred.

Minnesota Rules, Part 9553.0050, subpart 1, item A, subitems (2)and (3).

This section of the rule imposes limits on the allowable historical operating costs in the maintenance and administrative cost categories. It is necessary to limit these costs to comply with Minnesota Statutes, section 256B.501, subdivision 3 which states that the commissioner shall establish procedures for determining rates for the care of residents of ICF/MR which "shall include: (a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy; [and] (b) limits on the amounts of reimbursement for property, general and administration, and new facilities".

The rule currently in effect limits allowable historical operating costs in both the maintenance and administrative cost categories to "the operating cost payment rate for each of those categories in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year." The purpose of the amendment proposed to subpart 1 item A, subitem (2) is to remove this limit on the administrative cost categories for rate years beginning on or after October 1, 1987. It is reasonable to remove this limit on administrative costs because the rule already contains an administrative cost per licensed bed limit in part 9553.0050, subpart 1, item A, subitem (1), units (f) and (g) which meets the requirements in Minnesota Statutes, section 256B.501, subdivision 3.

The Department has examined the use of two limits on these costs and has determined that the historical limit is no longer necessary to contain costs. It is reasonable to discontinue use of this limit because by retaining the per bed limit and discontinuing the historical limit, the Department can control the overall amount spent on administration without penalizing facilities that had low administrative costs in the past.

Minnesota Rules, parts 9553.0050 and 9553.0075

The rule sections listed below all refer to the amended sections in part 9553.0050, subpart 1, item A, subitems 2 and 3. It is necessary and reasonable to correct the references in these sections to clarify when the amended provisions apply.

1. Part 9553.0050, subpart 1, item A, subitem (3):
   Delete "(3)"; insert "(5)".

2. Part 9553.0050, subpart 1, item A, subitem (3):
   Delete "(3)"; insert "(5)".
   Delete "subitem (2)"; insert "subitems (2), (3), and (4)"

3. Part 9553.0050, subpart 2, item E:
   In both places that refer to subitem (2), strike "subitem (2)"; insert "subitems (2), (3), and (4)."

4. Part 9553.0075, subpart 1, sentence number 3:
   Strike "subpart 1"; insert " (2), (3), and (4)."

5. Part 9553.0075, subpart 2, item B, subitem (1):
   Strike "subitem (2); insert "subitems (2), (3) and (4)."

6. Part 9553.0075, subpart 3, item A, subitem (1):
   Strike "subitem (2)"; insert "subitems (2), (3), and (4)."

Minnesota Rules Part 9553.0060, subpart 5, item A

Subpart 5 is necessary to encourage the efficient and prudent management of capital assets and reward the accumulation of defined equity. The purpose of the provision is:

1. to reduce the amount of allowable capital debt outstanding by the portion of the capital debt reduction allowance to be applied to reduce capital debt; and

2. to establish a payment which rewards the accumulation of equity as defined in part 9553.0020, subpart 18 by allowing an increase in payments to the facility as the amount of equity increases.

The amendments to subpart 5 are necessary to decrease the amount of the capital debt reduction allowance which must be applied to reduce outstanding capital debt and to increase the payment which rewards the accumulation of equity. These changes increase the reward for the accumulation of equity for facilities with more than 40 percent equity and give all providers greater flexibility to use payments made under the property reimbursement system for capital acquisitions or program changes to meet the needs of newly admitted residents. It is reasonable to increase the capital debt reduction allowance for facilities with more than 40 percent equity to give a more equitable return on equity for those providers. The current system is somewhat skewed in favor of the facilities with less equity because the department wants them to increase their equity. This change is necessary to better reward facilities that already have significant amounts of equity. Increasing their ability to use existing financial resources is a reasonable way to enable providers with equity of 40% or less to meet the needs of the more disabled residents who are now being admitted to community-based ICFs/MR.

Minnesota Rules, Part 9553.0061.

Background

In November 1985, the federal government published amendments to the fire safety standards for intermediate care facilities for the mentally retarded. These amendments require ICFs/MR to meet the provisions of the 1985 edition of the National Fire Protection Association's 1985 edition of the Life Safety Code. (1985 Life Safety Code). The amendments were adopted as published in the April 1986 Federal Register (Volume 51, No. 75 pages 13224 to 13228) and were effective May 19, 1986. The new standards

apply to all residential facilities licensed to serve persons with mental retardation or a related condition under Minnesota Statutes, section 252.28 and licensed as a supervised living facility under Minnesota Statutes chapter 144 which is certified as an intermediate care facility for persons with mental retardation or related condition by the Minnesota Department of Health. The Federal Regulations allow facilities with more than 16 beds to be operated under the version of the Life Safety Code in effect at the time the facilities were licensed. However, facilities with 16 or fewer beds are required to meet the new fire safety standards.

Chapter 21, Appendix F of the 1985 Life Safety Code sets forth the method used to determine the level of evacuation status of the facility based on the physical plant configuration and the type of occupants. Based on the criteria in Appendix F, facilities are placed in one of three categories; prompt, slow, and impractical. The 1985 Life Safety Code permits the facilities to comply with the standards for their level of evaluation in a variety of ways. Equivalencies for each factor are established in Appendix G of Chapter 21. Several combinations of corrective actions that can be used to achieve compliance with the different types of deficiencies are also included in Appendix G. Among the factors considered are staffing levels and physical plan modifications.

Part 9553.0050, subpart 3 currently provides a method for immediately adjusting a facility's program operating costs for staff additions required to correct federal or state licensure deficiencies. This one-time adjustment can be used to provide additional reimbursement for staff necessary to satisfy a fire safety deficiency. However, the rule does not contain a provision to provide additional immediate reimbursement for the cost of physical plant modifications or the addition of new depreciable equipment needed to correct deficiencies under the 1985 Life Safety Code.

Because modifications to the facility's physical plant or the purchase of additional depreciable equipment may be necessary to comply with the 1985 Life Safety Code, the Department developed part 9553.0061 to provide some additional reimbursement for these costs. It is reasonable to add a rule part to reimburse these costs more quickly to promote efficient use of existing class A beds, to facilitate rapid compliance with the 1985 Life Safety Code, and to avoid incurring unnecessary financing costs.

Subpart 1. This subpart clarifies that adjustments may be made to the facility's special operating cost payment rate to permit compliance with section of the Code of Federal Regulations which incorporates the 1985 Life Safety Code. It is necessary to state that the adjustment will be made to the facility's special operating cost rate so that the providers will know which part of the rate will be affected. It is reasonable to adjust the special operating cost rate and not the other portions of the facility's rate because these costs can be handled more easily as special operating costs. Other provisions in the current rule can be used to meet other cost increases needed to comply with the 1985 Life Safety Code. Limiting the adjustment to physical plant modifications and the addition of new depreciable equipment and handling these costs through the special operating cost payment rate is a reasonable means to limit the scope of the adjustment to only necessary costs increases that can not be accomodated by the current rule.

Subparts 2 to 5. Subparts 2 to 5 establish the conditions, the documentation, and the evaluation process which must be met by a facility in order to receive a rate adjustment for the cost of additional assets needed to correct a fire safety deficiency. These provisions are necessary to notify providers of the commissioner's expectations. The provisions are also necessary to limit the rate adjustments made under this part to those the commissioner determines are necessary to meet the fire safety in the 1985 Life Safety Code requirements. It is reasonable to limit this provision to the cost of assets necessary to meet the fire safety requirements in the 1985 Life Safety Code because other allowable costs can be reimbursed under other provisions of the rules. It is reasonable to accelerate payment for some of these asset costs to improve the facility's cash flow and to decrease the need for additional financing of debt.

Subpart 2, item A. This item is necessary to limit the rate adjustments made under this part to facilities with 16 or fewer licensed beds. It is reasonable to limit the application of the rate adjustment to facilities with 16 or fewer beds because the purpose of the proposed rule part is to provide relief for facilities that are required to modify their physical plant or purchase new equipment to meet the requirements in the 1985 Life Safety Code. It is not necessary to adjust the rate for facilities with more than 16 beds because these facilities were not affected by the 1985 Life Safety Code changes. The 1985 Life Safety Code specifically "grandfathers" in these large facilities under the Life Safety Code in effect when these facilities were licensed. Since these facilities have not been required to make any changes due to adoption of the 1985 Life Safety Code, it is not necessary to provide them with an immediate rate adjustment.

Subpart 2, item B. Under the 1985 Life Safety Code there are combinations of corrective actions that can be taken to correct deficiencies. Item B is necessary to give the commissioner the authority to determine the most programmatically sound and cost effective means of correcting the deficiency. It is reasonable for the commissioner to make this determination so that the added cost to the MA program of the corrective actions can be balanced against the effectiveness and programmatic impact of the corrective actions.

Subpart 2, item C. Item C is necessary to assure that other existing resources available to the facility are used before the facility receives a special operating cost payment rate adjustment under this part. It is reasonable to limit rate adjustments under this part to costs that can not be covered using other available resources because this part was developed to provide relief to facilities that were having difficulty meeting the requirements of the 1985 Life Safety Code under the existing rules. Facilities that can meet the requirements of the 1985 Life Safety Code using existing resources do not need the special operating cost payment rate adjustment provided under this part.

Subpart 2, item D. Item D is necessary to clarify that the facility must also meet the procedural requirements in subparts 3 and 4 in order to receive a rate adjustment under this part. The reasonableness of the requirements in subparts 3 and 4 are discussed in the rationale for those subparts.

Subpart 3. This subpart specifies the documentation which providers must provide to the commissioner. It is necessary to include this information in the rule so that providers know what documentation to provide. It is reasonable to request that the facility submit the information requested because this information is easily accessible to the provider. The documentation in subpart 3, item A is already produced by the state fire marshal. The documentation in items B and C would be acquired by the facility in the process of addressing the fire safety deficiencies. It is necessary for the commissioner to receive this information so that the commissioner can determine if the request meets the requirements in subpart 2. In addition, the commissioner will need this information in order to evaluate the cost effectiveness and programmatic impact of the proposed plan of correction.

Subpart 4. This subpart is necessary to specify what the commissioner expects the facility to do with regard to the bidding process. The documentation required is necessary to enable the Commissioner to make an informed decision concerning the scope of the project for which the bid was prepared, its relationship to the fire safety deficiency, and the cost effectiveness of the project. Requiring that the facility obtain a bid from a nonrelated organization is a reasonable way to ensure that the bid reflects the cost of obtaining the necessary assets in a competitive market. Using a bid rather than the provider's estimate to determine the cost of the project is reasonable because the bid would more closely represent the "true" cost of the project. It is reasonable to give the commissioner authority to reject the bid when it is excessive or includes items unrelated to the fire safety deficiencies because this part was designed to pay only for necessary and reasonable costs to correct the deficiencies. It is reasonable to permit the commissioner to recommend another organization which must supply a second bid because the commissioner may be aware of a more cost effective way to correct the life safety deficiency based on her knowledge of proposals submitted by other providers.

It is reasonable not to apply this subpart to a facility that has implemented a plan of correction before the effective date of this part because the provider did not know of the requirement when the plan was implemented and could not benefit from seeking a second bid.

Subpart 5. This subpart gives the commissioner authority to require the facility to submit an alternate plan of correction to the State Fire Marshal when the Department determines that another plan is more programmatically sound or cost effective. Since the commissioner is required under Minnesota Statutes, section 256B.501, subdivision 2 to establish approved rates based on methods and standards that the commissioner finds adequate to provide for costs that must be incurred for

the "quality care of residents in efficiently and economically operated facilities and services", it is necessary for the commissioner to evaluate the cost and programmatic impact of plans submitted. To ensure that state funds are used to maximum advantage, it is reasonable to require the facility to submit an alternative plan when the commissioner determines that another plan would be more cost effective or programmatically sound. Requiring the facility to develop the alternative plan ensures that there is facility involvement in the plan. It is necessary to require that the facility submit the alternative plan to the fire marshal to ensure that the alternative plan corrects the deficiency.

Subpart 6. This subpart specifies the process and computations necessary to determine the allowable cost of the fire safety deficiency which can be reimbursed under this part. This subpart is necessary to inform providers of the method to be used to compute the rate.

Subpart 6, Item A. This item is necessary to document the costs incurred by the provider to correct the deficiency. It is reasonable to require copies of actual invoices showing the cost of the project to assure that only necessary costs are reimbursed.

Subpart 6, item B. It reasonable to allow the lesser of the actual cost or the approved bid to ensure that only costs that are actually incurred are reimbursed and to encourage submittal of accurate bids. It is reasonable to reduce the final bid amount allowed by 75% of the facility's accumulated funded depreciation or other savings or investments because the purpose of this part is to reimburse only costs that the facility can not cover using existing resources. It is reasonable to require the use of only 75% of the facility's accumulated funded depreciation or other savings or investments because the facility may need to replace other assets using these funds. The reference to part 9553.0060, subpart 1, item E, subitem (4) is necessary to identify that only the portion of the accumulated depreciation targeted for the purchase, replacement, or repair of capital assets must be used to reduce the amount of the life safety code adjustment. This portion of the funded depreciation accumulated by the provider only represents up to 50% of the facility's funded depreciation account. The other 50% is to be used to repay the principal portion of outstanding debt. The purpose of the portion of the funded depreciation account referred to in this item is to purchase, replace, or repair capital assets. Since the costs included in the life safety code adjustment are also related to the purchase, replacement, or repair of capital assets it is reasonable to reduce these costs by using this portion of the facility's funded depreciation account.

Subpart 6, item C. A significant number of the facilities reimbursed under these rule parts are financed by Minnesota Housing Finance Agency (MHFA). As a condition of the mortgage, MHFA requires facilities to set aside an additional amount of money to be used in case the facility defaults on its mortgage. This money is deposited in the development cost escrow account. A facility is permitted to withdraw money from this account to make repairs or replace capital assets as long as the amount

withdrawn is later replaced. It is reasonable to require the use of this money for the physical plant modifications and additions of new depreciable equipment needed to correct a fire safety deficiency since the money is available to the facility for that purpose and since this part provides the means for replacing the amount withdrawn.

Subpart 6, items D and E. Items D and E are necessary to spread the cost of the major modifications or depreciable equipment purchases over two years rather than one. It is reasonable to spread these costs over a greater period of time to enable the Department to keep the total cost of the program within the budget constraints and legislative appropriations.

Subpart 7. This subpart is necessary to establish the additional per diem amount to be included in the facility's special operating cost payment rate. It is reasonable to handle reimbursement in this way to assure that allowable costs are reimbursed while minimizing the administrative burden on the Department in setting rates. This method of reimbursing these costs minimizes the administrative burden on the Department because it only requires minor modifications to the Department's computerized rate setting system.

Subpart 8. This subpart is necessary to avoid the duplication of reimbursement which would occur if the allowable costs under this part were reimbursed through these provisions and also were allowed to be capitalized and depreciated under other rule parts. It is reasonable to apply existing rule provisions to capitalize and depreciate costs not allowed under these parts so that the facility is reimbursed for those costs in the same way that it would be reimbursed for other similar costs.

Subpart 9. This subpart is necessary because some facilities which have received a one-time adjustment under Part 9553.0050, subpart 3 may more appropriately be reimbursed under this part. When it is acceptable to the state fire marshal and more programatically sound or cost effective to satisfy the fire safety deficiency through payments under this part, it is reasonable for the commissioner to require that the change be made. This provision assures that programatically sound and cost effective decisions can be implemented. It is reasonable to allow the provider to reapply for a one-time adjustment under part 9553.0050, subpart 3 when a majority of the initial one-time adjustment is subtracted from the facility's total payment rate because this means that the initial one-time adjustment was used to correct a fire safety deficiency and the facility may need another one-time adjustment for other reasons.

CONCLUSION

The foregoing statements demonstrate the need for and the reasonableness of the proposed amendments to parts 9553.0010 to 9553.0080. To a great extent, the need for the amendments is prescribed expressly by state statute, federal requirements, and the inherent responsible of the Minnesota Department of Human Services to exercise prudent management of public funds.

3/31/87
DATE

Vicki Sleeper for
SANDRA S. GARDEBRING

EXHIBIT A

RULE 53 (PARTS 9553.0010 TO 9553.0080)

ADVISORY COMMITTEE

Ms. Jean Searles
Resa, Inc.
38 Seventh Avenue South
Hopkins, MN 55343

Mr. Tim Madden
Dungarvin, Inc.
690 Cleveland Avenue South
St. Paul, MN 55116

Mr. Roy Harley, Director
Vasa Lutheran Children's Home
5225 Highway 61 West
Red Wing, MN 55066

Ms. Georgine Busch
Our House of Minnesota, Inc.
1846 Dayton Avenue
St. Paul, MN 55104

Mr. Dan Kastrul
Chez Nous, Inc.
2204 Girard Avenue South
Minneapolis, MN 55405

Ms. Eileen Harris
Valor Resources
8441 Wayzata Boulevard
Suite 290
Minneapolis, MN 55426

Ms. Kathleen Pine
Dakota's Children, Inc.
400 West Marie
West St. Paul, MN 55118

Ms. Patti Cullen
MAHCF
2850 Metro Drive, Suite 429
Minneapolis, MN 55420

Mr. Dave Kiely
ARRM
1885 University Avenue
St. Paul, MN 55104

Ms. Diane Loeffler
ARC - St. Paul
65 East Kellogg
Suite 437
St. Paul, MN 55101

Mr. Dennis Johnson, Director
Wadena County
Courthouse Annex
22 Southeast Dayton
Wadena, MN 56482

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES RELATING TO DETERMINATION OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS, MINNESOTA RULES, PARTS 9553.0010 TO 9553.0080

AFFIDAVIT OF MAILING

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

That on the 8th day of April, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, 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 hearing by this Department.

Nancy Storelee

Subscribed and sworn to before me

this 8 day of April, 1987

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

Department of Human Services
In The Matter Of The Proposed
Adoption Of Permanent Rules
Governing The Determination
Of Payment Rates For Intermediate
Care Facilities For Persons With
Mental Retardation Or Related
Conditions, Parts 9553.0010
To 9553.0080.

Notice of Intent
To Adopt A Rule Without
A Public Hearing

Notice is hereby given that the state Department of Human Services intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on Wednesday, May 13, 1987 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing or the agency withdraws the rule. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Beverly Gausman
Department of Human Services
Appeals and Regulations Division
Third Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

The proposed amendments result in the following changes in the rule parts:

Part 9553.0050
1. the all urban consumer price index (CPI/U) used in the calculation of payments rates has been changed from the January index to the December index; and
2. the historical operating cost limit for administrative operating costs has been eliminated for rate years beginning on or after October 1, 1987, except for the purpose of calculating the efficiency incentive.

Part 9553.0060
1. the amount of the capital debt reduction allowance which must be applied to reduce capital debt has been decreased for facilities with 40 percent equity or less; and
2. the total capital debt reduction allowance has been increased for facilities with over 40 percent equity.

Part 9553.0061 (new part)
A new part has been added to provide for adjustments to the special operating cost payment rate for actions taken to comply with the 1985 Life Safety Code. This provision applies to facilities with sixteen or fewer beds.

Part 9553.0075
Technical changes to update references to other parts of the rule have been made and the reference to the CPI/U has been changed from January to December.

The Department is proposing these changes to:

1. correct the index cited;
2. eliminate a cost limitation which is no longer seen as necessary;
3. increase provider flexibility with regard to the capital debt reduction allowance;
4. increase the amount of capital debt reduction allowance for facilities with over 40 percent equity; and
5. provide an accelerated means of reimbursing facilities for the cost of complying with the 1985 Life Safety Code.

A free copy of the rule amendments is available upon request from Beverly Gausman at the address given above. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Beverly Gausman at the address given above.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Beverly Gausman, Department of Human Services.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Beverly Gausman.

Date:

Vicki Sleeper for
SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons With Mental Retardation and Related Conditions

Notice of Intent To Adopt A Rule Without A Public Hearing

Notice is hereby given that the Department of Human Services intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on Wednesday, May 13, 1987 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing or the agency withdraws the rule. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Beverly Gausman
Department of Human Services
Appeals and Regulations Division
Third Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

The proposed amendments result in the following changes in the rule parts:

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.

Part 9553.0050

1. the all urban consumer price index (CPI/U) used in the calculation of payments rates has been changed from the January index to the December index; and

2. the historical operating cost limit for administrative operating costs has been eliminated for rate years beginning on or after October 1, 1987, except for the purpose of calculating the efficiency incentive.

Part 9553.0060

1. the amount of the capital debt reduction allowance which must be applied to reduce capital debt has been decreased for facilities with 40 percent equity or less; and

2. the total capital debt reduction allowance has been increased for facilities with over 40 percent equity.

Part 9553.0061 (new part)

A new part has been added to provide for adjustments to the special operating cost payment rate for actions taken to comply with the 1985 Life Safety Code. This provision applies to facilities with sixteen or fewer beds.

Part 9553.0075

Technical changes to update references to other parts of the rule have been made and the reference to the CPI/U has been changed from January to December.

The Department is proposing these changes to:

1. correct the index cited;
2. eliminate a cost limitation which is no longer seen as necessary;
3. increase provider flexibility with regard to the capital debt reduction allowance;
4. increase the amount of capital debt reduction allowance for facilities with over 40 percent equity; and
5. provide an accelerated means of reimbursing facilities for the cost of complying with the 1985 Life Safety Code.

A free copy of the rule amendments is available upon request from Beverly Gausman at the address given above. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Beverly Gausman at the address given above.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Beverly Gausman, Department of Human Services.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Beverly Gausman.

Dated: 31 March 1987

Sandra S. Gardebring
Commissioner of Human Services

Rules as Proposed

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.** The commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical operating cost per diem shall be established according to items A to F.

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to ~~(3)~~ (5).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

____ (a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in ~~each of~~ the maintenance ~~and administrative~~ operating cost ~~categories~~ category must not exceed the ~~respective~~ operating cost payment rate for ~~each of those~~ the maintenance operating cost ~~categories~~ category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year.

(3) For the rate year beginning October 1, 1986, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

(a) to (c) [Unchanged.]

~~(3)~~ (5) The limits in ~~subitem~~ subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

B. to F. [Unchanged.]

Subp. 2. **Establishment of total operating cost payment rate.** The total operating cost payment rate shall be established according to items A to F.

A. The allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U.

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G:

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

A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined according to the following table:

Percentage Of Equity In Capital Assets Used By The Facility		Total Capital Debt Reduction Allowance Per Resident Day (In Dollars)		Amount Which Must Be Applied To Reduce Capital Debt (In Dollars)
Less than 20.01		.50	~~.50~~	.40
20.01 to 40.00		.50	~~.25~~	0
40.01 to 60.00	~~.65~~	.70		0
60.01 to 80.00	~~.80~~	.90		0
80.01 to 100.00	~~1.00~~	1.10		0

B. to G. [Unchanged.]

Subp. 6. and 7. [Unchanged.]

9553.0061 LIFE SAFETY CODE ADJUSTMENT.

Subpart 1. **Determination of adjustment.** Adjustments to the special operating cost payment rate for actions taken to comply with the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, shall be determined under subparts 2 to 9.

Subp. 2. **Conditions.** The commissioner shall allow an adjustment to a facility's special operating cost payment rate when the state fire marshal has issued a statement of deficiencies to the facility under the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, if the criteria in items A to D are met.

A. The physical plant for which the statement of deficiencies was issued has 16 or fewer licensed beds.

B. The commissioner has determined that the most programmatically sound and cost effective means of correcting the deficiencies is to modify the physical plant or add depreciable equipment.

C. The cost of the physical plant modification or additional depreciable equipment cannot be covered by reallocating facility staff and costs including funds accumulated in the facility's funded depreciation account and other savings or investment accounts of the provider.

D. The provider has complied with the requirements in subparts 3 and 4.

Subp. 3. **Request for life safety code adjustment.** The provider shall submit to the commissioner a written request for a life safety code adjustment to the special operating cost payment rate. The request must include:

A. a copy of the state fire marshal's statement of deficiencies;

B. a copy of the facility's plan of correction approved by the state fire marshal; and

C. a description of the type of physical plant modifications or additional depreciable equipment required to meet the approved plan of correction including the estimated cost based on bids developed in accordance with subpart 4.

Subp. 4. **Bid requirements.** Bids must be obtained from nonrelated organizations. Only the costs of items required to correct the deficiencies may be included in a bid. Each bid must include:

A. a detailed description of the physical plant modifications needed to correct the deficiencies;

B. the cost of any depreciable equipment needed to correct the deficiencies;

C. the cost of materials and labor; and

D. the name, address, and phone number of the bidder.

If the commissioner determines that the bid submitted by the provider is excessive or includes items not required to correct the deficiencies, the commissioner may require a second bid and may recommend another organization that must supply the bid. This subpart shall not apply to a facility that has implemented a plan of correction before the effective date of this part.

Subp. 5. **Evaluation of documents submitted.** The commissioner shall evaluate the documents submitted under subpart 3. If the commissioner determines that the plan of correction is not programmatically sound or cost effective, the commissioner may require the facility to submit an alternative plan of correction to the state fire marshal for approval. If the state fire marshal approves the alternative plan of correction, the commissioner may require the facility to resubmit bids under subpart 4.

Subp. 6. **Computation of life safety code adjustment.** If the request meets the criteria in subparts 2 to 5, the commissioner shall compute the life safety code adjustment to the special operating cost payment rate under items A to E.

A. Upon completion of the physical plant modifications and purchase of the additional depreciable equipment, the facility shall submit copies of invoices showing the total cost of the physical plant modifications and additional depreciable equipment to the commissioner.

B. The commissioner shall allow the lesser of the amount in item A or the final bid approved by the commissioner. The amount allowed shall be reduced by 75 percent of the funded depreciation that may be withdrawn for purchase or replacement of capital assets or payment of capitalized repairs as determined in part 9553.0060, subpart 1, item E, subitem (4), and other savings or investment accounts of the provider or the provider group.

C. If a facility is financed by the Minnesota Housing Finance Agency, the facility must use amounts deposited in the development cost escrow account required by the Minnesota Housing Finance Agency to purchase physical plant modifications or additional depreciable equipment allowed under this part. The amount withdrawn from the development cost escrow account must be reimbursed to the facility as provided in subpart 7. The facility must use the reimbursement to replace the amount withdrawn from the development cost escrow account as required by the Minnesota Housing Finance Agency.

D. If the amount determined in item B is less than $500 per licensed bed, the amount must be divided by the resident days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than $500 per licensed bed, the amount in excess of $500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of $500 per licensed bed must be divided by the resident days from the cost report that was used to set the facility's total payment rate for the rate year following the rate year in which the statement of deficiencies was issued.

Subp. 7. **Adjustment of special operating cost payment rate.** If the amount in subpart 6, item B or C, is greater than zero, the commissioner shall adjust the facility's special operating cost payment rate under items A and B.

A. The per diem amount in subpart 6, item D, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item D, and will be effective on the first day of that rate year.

B. The per diem amount in subpart 6, item E, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item E, and shall be effective on the first day of that rate year.

Subp. 8. **Reimbursement limits.** If a life safety code adjustment to the special operating cost payment rate is allowed under this part, the cost of the physical plant modifications and additional depreciable equipment allowed in subpart 6, item B, must not be claimed for reimbursement under other provisions of parts 9553.0010 to 9553.0080. The cost of the physical plant modifications and additional depreciable equipment not allowed under subpart 6, item B, shall be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

Subp. 9. **Changes in one-time adjustment.** If a facility has been given a one-time adjustment under part 9553.0050, subpart 3, and the commissioner determines under subpart 2, item A, that the life safety code deficiency should be corrected under this part, the facility's one-time adjustment or the portion of that one-time adjustment that related to the life safety code deficiency shall be subtracted from the facility's total payment rate on the date the life safety code adjustment under this part is effective. If more than 50 percent of the one-time adjustment is subtracted from the facility's total payment rate under this subpart, the facility may apply for another one-time adjustment within the three-year period established in part 9553.0050, subpart 3, item G.

9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. Parts 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment

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.

rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which all the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle-up.

Subp. 2. **Interim payment rate settle-up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. [Unchanged.]

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle-up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) to (5) [Unchanged.]

Subp. 3. **Total payment rate for nine-month period following settle-up period.** For the nine-month period following the settle-up reporting period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, ~~subitem~~ subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) [Unchanged.]

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/St. Paul as published by the Bureau of Labor Statistics between the two most recent ~~Januarys prior to~~ Decembers before the beginning of the rate year, new series index (1967 = 100).

B. and C. [Unchanged.]

Subp. 4. [Unchanged.]

Department of Human Services

Proposed Permanent Rules Relating to Licensure of Training and Habilitation Services for Adults with Mental Retardation or Related Conditions

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Veterans Service Building, Room D, 20 West 12th Street, St. Paul, MN 55155 on May 15, 1987 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Richard C. Luis, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7610, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Parts 9553.0010 to 9553.0080

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on April 13, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on April 8, 1987. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency did not receive any requests for a public hearing. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. PART 9553.0060, SUBPART 5, ITEM A - CAPITAL DEBT REDUCTION ALLOWANCE. Commentators Mary Martin of Mary Martin & Associates and James M. Horan and Juanita Turner of REM, Inc. suggest that the Department increase the Capital Debt Reduction Allowance to further reward the accumulation of equity. The Department has considered the proposals submitted by the commentators. Each of these proposals would result in a significant increase in the cost of ICF/MR services which is not included in the Department's budget. The amendments proposed were developed to improve the providers' cash flow while containing the costs of the program. This was accomplished by giving them more flexibility in the use of their Capital Debt Reduction Allowance and by increasing the amount of the Capital Debt Reduction Allowance paid to facilities with more equity. The Department staff do not think the additional cost that would be incurred by adopting the proposals submitted is warranted because the Capital Debt Reduction Allowance as proposed adequately rewards the accumulation of equity. Therefore, the Commissioner retains the provision as proposed.

2. PART 9553.0050, SUBPART 1, ITEM A, SUBITEM 2 - LIMITATIONS ON MAINTENANCE COSTS. Commentators Martin, Horan and Turner recommended removing the limitations on maintenance costs. They object to the limits for the following reasons.

A. They think the use of the urban consumer price index for Minneapolis/St. Paul (CPI-U) is inappropriate for these costs.

B. They think that extraordinary repair costs should be treated separately.

C. They think the limits have a greater impact on newer facilities.

RESPONSE TO CONCERN ABOUT LIMITS.

The Department believes that some rate limitations are necessary to contain costs and that removal of the maintenance cost limitation would be inconsistent with Minnesota Statutes, section 256B.501, subdivision 3 which requires that the Commissioner develop reimbursement procedures that include "cost containment measures" and "limits on the amounts of reimbursement for property, general and administration, and new facilities". In addition, the Department believes the rules are reasonable since they limit less than 20 percent of the ICF/MR industry's costs.

RESPONSE TO CONCERNS ABOUT CPI-U.

Since the reimbursement system developed for the ICF/MR industry is a prospective system and as such is based on historical information, it is necessary to include an index to adjust costs based on inflation. No matter what index is used, during years when inflation is increasing some costs may not be recognized. However, when inflation is decreasing, rates will be overstated. These differences are an inherent part of a prospective system.

The Department chose the CPI-U because it reflects cost changes in a market basket of goods that represents goods purchased by all consumers, including ICF/MR providers. Since the index is a market basket index, a number of commodities such as supplies, utilities, and food are included in it. The Department believes it is appropriate to use an index which includes these costs and that the CPI-U is an appropriate index for costs of this type.

Commentators Horan and Turner also commented on the time lag between the reporting year and the rate year. The Department recognizes that there is a time lag and therefore adjusts the CPI-U to account for the 21 month differential between midpoints of the reporting and rate years. Since this process is already in place the Commissioner finds no additional change is needed.

RESPONSE TO CONCERNS ABOUT EXTRAORDINARY REPAIRS.

The method of reimbursement for repairs was designed to prevent wild fluctuations in rates caused by extraordinary repairs. Under the rule in effect, these costs can and should be capitalized and depreciated over the remaining useful life of the asset. When these repairs are capitalized, the cost of the repair is not disallowed under the maintenance cost limit; it is paid over a period of years. This alternative prevents dramatic fluctuations in rates while allowing the facility to be reimbursed for the cost of the extraordinary repair. The Commissioner finds that this provision functions as intended and therefore retains the provision as is.

RESPONSE TO CONCERNS ABOUT NEW FACILITIES.

The Department has not found that the current system unfairly limits new facilities. Therefore, the Commissioner does not propose any changes in the rule to address the commentators' concerns at this time. The Commissioner will, however, monitor the effects of the limits on new facilities in the future.

3. PART 9553.0061 - LIFE SAFETY CODE ADJUSTMENT. Commentators Horan and Turner state that the adjustment should be revised to allow all programs to qualify. In its statement of need and reasonableness (SNR), the Department explained why the adjustment was limited to facilities with 16 or fewer beds. For the reasons stated in the SNR, the Commissioner retains the provision as proposed.

Commentators Horan and Turner also state that there is no means to recapture expenses for staffing increases. The new rule part does not address staffing increases because these costs can be reimbursed under other provisions in the existing rules such as the one-time adjustment in part 9553.0050, subpart 3.

Commentator Martin states that the Commissioner should spell out standards or criteria for determining if physical plant modifications are programmatically sound and cost effective. During the development of the proposed rule part, the Department did consider developing more specific criteria. Due to the variety of violations that may be cited and the variety of solutions that could be proposed, it was determined that the development of more specific criteria would unduly limit the flexibility needed to make appropriate decisions.

Commentator Martin also questions the use of funded depreciation and other savings and investments to pay for the life safety code modifications. The Department addresses the use of funded depreciation for this purpose in its SNR. As stated in the SNR for this part, the purpose of the adjustment is to provide relief to facilities that were having difficulty meeting the requirements of the 1985 Life Safety Code under the existing rules. If the facility has other resources available to meet the requirements of the Life Safety Code, it is appropriate to require the use of those resources before increasing the cost of ICF/MR services by giving the facility an unneeded rate adjustment.

For the reasons stated above the Commissioner retains this part as proposed.

4. The Department did not receive any comments on the other amendments published, therefore, the Commissioner retains the provisions as proposed.

CONCLUSIONS

The Commissioner hereby concludes that:

1. The rule amendments are necessary and reasonable.

2. 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.

3. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

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

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions are adopted this day of May, 1987, pursuant to authority vested in me by Minnesota Statutes, section 256B.501, subdivisions 1 to 3.

Vicki Sleeper for
SANDRA S. GARDEBRING
Commissioner

In the Matter of the Adoption of the Rule of the State Department of Human Services Relating to the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Ralated Conditions, Parts 9553.0010 to 9553.0080.

DECLARATION OF COUNSEL

I, Beverly Jones Heydinger, ~~Special~~ Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0881.

Beverly Jones Heydinger

~~Special~~ Assistant Attorney General

Dated: May 29, 1987

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO PERMANENT
RULES GOVERNING THE DETERMINATION
OF PAYMENT RATES FOR INTERMEDIATE
CARE FACILITIES FOR PERSONS WITH
MENTAL RETARDATION OR A RELATED
CONDITION, PART 9553.0010 TO 9553.0080

FISCAL NOTE

1. Part 9553.0050, subpart 1. Establishment of allowable historical operating cost per diem.

   The additional cost of removing the historical operating cost limit on administrative costs and only subjecting these costs to the administrative cost group limits is approximately $473,000 annually. The Department's estimate of $473,000 was determined by modifying the computerized rate setting formula and comparing the simulated cost to the current actual cost. No adjustment for inflation was made since inflation has been less than one percent.

2. Part 9553.0060, subpart 5. Capital debt reduction allowance.

   The change in the capital debt reduction allowance to provide a greater reward for an increase in the amount of facility equity will have an additional annual cost of $76,000. The Department's estimate of $76,000 was determined by modifying the computerized rate setting formula and comparing the simulated cost to the current actual cost. No adjustment for inflation is necessary since this allowance is not subject to an inflation adjustment.

3. Part 9553.0061. Life Safety Code Adjustment.

   The cost of complying with the 1985 Life Safety Code was anticipated when the budget projections for fiscal years 1988 and 1989 were developed. An additional $600,000 of one-time costs were included for each year to cover the cost of both the one-time adjustment for program changes and the life safety code adjustment for physical plant modifications and the addition of new depreciable equipment. The Department does not anticipate any costs beyond what was included in the budget projections.

COST BREAKDOWN

In calculating the fiscal impact of the proposed amendments, the timing difference between the provider's rate year (e.g. October, 1987 to September 30, 1988) and the state's fiscal year, and the fact that payments are made a month after services are provided must be taken into consideration. Given these factors the fiscal impact of the changes can be summarized as follows:

	MEDICAL ASSISTANCE COSTS (000's)			
	TOTAL	FEDERAL	STATE	COUNTY
1. Elimination of historical operating cost limitation				
F.Y. 1988	315.3	169.8	31.0	14.5
F.Y. 1989	473.0	255.3	195.9	21.8
2. Increase in the capital debt reduction allowance				
F.Y. 1988	50.7	27.3	21.1	2.3
F.Y. 1989	76.0	41.0	31.5	3.5
Total Impact for the 88/89 Biennium	915.0	493.4	379.5	42.1

The federal, state and county shares were determined using the following figures.

	Federal Share	State Share	County Share
Fiscal Year 1988	53.84%	41.55%	4.61%
Fiscal Year 1989	53.98%	41.42%	4.60%

#5A

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES RELATING TO DETERMINATION OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS MINNESOTA RULES, PARTS 9553.0010, TO 9553.0080

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 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 8th day of April, 1987.

Nancy Storele

#5B

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES RELATING TO DETERMINATION OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS, MINNESOTA RULES, PARTS 9553.0010 TO 9553.0080

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 8th day of April, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing 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 parties:

.The 87 Minnesota County Human Services Agencies
.The Advisory Committee
.ICF/MR's
.Accountants
.Other Interested Parties

Nancy Storelee

Subscribed and sworn to before me

this 8 day of April, 1987

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

Department of Human Services
In The Matter Of The Proposed
Adoption Of Permanent Rules
Governing The Determination
Of Payment Rates For Intermediate
Care Facilities For Persons With
Mental Retardation Or Related
Conditions, Parts 9553.0010
To 9553.0080.

Notice of Intent
To Adopt A Rule Without
A Public Hearing

Notice is hereby given that the state Department of Human Services intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on Wednesday, May 13, 1987 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing or the agency withdraws the rule. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Beverly Gausman
Department of Human Services
Appeals and Regulations Division
Third Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

The proposed amendments result in the following changes in the rule parts:

Part 9553.0050
1. the all urban consumer price index (CPI/U) used in the calculation of payments rates has been changed from the January index to the December index; and
2. the historical operating cost limit for administrative operating costs has been eliminated for rate years beginning on or after October 1, 1987, except for the purpose of calculating the efficiency incentive.

Part 9553.0060
1. the amount of the capital debt reduction allowance which must be applied to reduce capital debt has been decreased for facilities with 40 percent equity or less; and
2. the total capital debt reduction allowance has been increased for facilities with over 40 percent equity.

Part 9553.0061 (new part)
A new part has been added to provide for adjustments to the special operating cost payment rate for actions taken to comply with the 1985 Life Safety Code. This provision applies to facilities with sixteen or fewer beds.

Part 9553.0075
Technical changes to update references to other parts of the rule have been made and the reference to the CPI/U has been changed from January to December.

The Department is proposing these changes to:

1. correct the index cited;
2. eliminate a cost limitation which is no longer seen as necessary;
3. increase provider flexibility with regard to the capital debt reduction allowance;
4. increase the amount of capital debt reduction allowance for facilities with over 40 percent equity; and
5. provide an accelerated means of reimbursing facilities for the cost of complying with the 1985 Life Safety Code.

A free copy of the rule amendments is available upon request from Beverly Gausman at the address given above. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Beverly Gausman at the address given above.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Beverly Gausman, Department of Human Services.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Beverly Gausman.

Date:

Vicki Sleeper for
SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

RECEIVED
ATTORNEY GENERAL'S OFFICE
MAY 29 1987
204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
444 LAFAYETTE ROAD
ST. PAUL, MINNESOTA 55101

TO: Rita Desmond
Legal Assistant
Attorney General's Office, Administrative Division

FROM: Jane Delage
Acting Assistant Director
Appeals and Regulations Division

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Rules Relating to the Determination of Payment Rates for Intermediate Care Facilities for persons with Mental Retardation or Related Conditions, Parts 9553.0010 to 9553.0080.

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. The notice of submission of the rule to the attorney general, if applicable. (Please note that no one requested submission notice)

12. The affidavit of mailing notice of submission of the rule to the attorney general, if applicable.

If you have any questions on this submitted material, please call me at 297-1488.

Notice of Intent - dc

Authority
256.501 (Notice of Intent)
256.50 Repealed, 1973
256B.501 (Statement of Need + Reasonableness - dk

Finding of Fact + Order
Vicki Sleeper will call back w/ the date the order was signed.

Comments
No request for hearing.

Rule
See proposed - not "all new material"

proposed p5 lines 20-24 } Com. is being given a
p5 lines 29-35 } lot of authority.