

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

0881

File No. 1443 — Docket No. 05.0009. ~~F810~~

DATE RECEIVED 1/14/88 — ADOPTED W/O HEARING X

REVIEW DATE 1/23/88 — EMERGENCY RULE

DUE DATE 1/28/88

REVISOR APPROVED ✓

APPROVED 1/25/88 GH2 — REVISOR DISAPPROVED

DISAPPROVED — FIELD W/SEC.STATE

WITHDRAWN — RETURNED TO AGENCY

✓ Rule as adopted (4 copies) ~~Withdrawn~~

✓ Notice to Solicit Outside Information/Opinion

6/15/87 & 9/28/87 Date published in State Register

Yes Comments

— Petition for Adoption of a Rule

— Board's Authorizing Resolution

✓ Proposed rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

256B.501(1)-(3) AC Statutory Authority

No Small Business Statement

Yes Expenditure of public money statement

Yes Signature

✓ Statement of Need and Reasonableness

No Small Business Statement

No Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

11/25/87 Date (30)/25 days before adoption

✓ Publication in State Register

11/30/87 Date 30/25 days before adoption

— Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

1/14/88 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney

Julie Harris Name of SAAG representing agency

— Notice of Submission to Attorney General

— Affidavit of Mailing Notice to Attorney General

ATTORNEY GENERAL

January 27, 1988

JANE DELAGE
Policy Coordination Division
Human Services Division

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation

The above-referenced rule has been approved as to its legality by the Attorney General on January 25, 1988.

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, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

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

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

MJC;nah
Enclosures

cc: Maryanne Hruby
Duane Harves

AR Copy

Department of Human Services

Adopted Permanent Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

Rules as Adopted

9553.0020 DEFINITIONS.

Subpart 1. to 46. [Unchanged.]

Subp. 46a. **Training and habilitation services costs.** Training and habilitation services costs means the costs charged by a vendor licensed under parts 9525.1500 to 9525.1690 for services provided to residents of an ICF/MR as specified in the residents' individual service plans and in a manner consistent with Minnesota Statutes, sections 252.40 to 252.47.

Subp. 47. to 50. [Unchanged.]

9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Central, affiliated, or corporate office costs.** Cost allocation for central, affiliated, or corporate offices shall be governed by items A to F.

A. to E. [Unchanged.]

F. A governmental or nonprofit organization that has a federally approved cost allocation plan may allocate management fees or central office costs to a related organization based on the governmental or nonprofit organization's federal cost allocation plan. The provider must document that the allocation plan has been approved by the federal government.

Subp. 5. and 6. [Unchanged.]

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

Subpart 1. to 15. [Unchanged.]

Subp. 16. **Pass-through of training and habilitation services costs.** Training and habilitation services costs shall

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be paid as a pass-through payment at the lowest rate paid to the training and habilitation services vendor by the county for comparable services at that site under Minnesota Statutes, sections 252.40 to 252.47. The pass-through payments for training and habilitation services are paid separately by the commissioner and are not included in the computation of the total payment rate.

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Special operating costs.** The facility costs listed in this subpart are included in the special operating cost category:

A. special assessments and real estate taxes;

B. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;

C. real estate insurance;

D. professional liability insurance; and

E. the portion of preopening costs amortized as in part 9553.0035, subpart 12, item B;

F. training and habilitation services costs; and

G. physical plant modifications or additional depreciable equipment costs allowed under part 9553.0061.

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **One-time adjustment to program operating cost payment rate.** For the purposes of this subpart, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one-time adjustment shall be determined according to items A to H.

A. A facility is eligible for a one-time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The commissioner or the commissioner of

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health has issued a correction order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900.

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442, as amended through October 1, 1986, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145.

(4) The commissioner has approved, under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

B. To qualify for a one-time adjustment the facility must document that:

(1) the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

(2) the deficiency or need cannot be corrected or met through a special needs rate exception as provided in parts 9510.1020 to 9510.1140; and

(3) the provisions in items C to H are met.

C. The facility must submit to the commissioner a written request for the one-time adjustment to the program

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operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate as provided in parts 9510.1020 to 9510.1140;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions during the rate year covering the date of the deficiency order or need determination, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident habilitation plans under payment rates established by current or prior reimbursement rules.

D. The commissioner shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one-time adjustment to the program operating cost payment rate in accordance with subitems (1) to (4).

(1) ~~Only~~ The necessary and reasonable ~~cost~~ costs of units (a) to (f) shall be determined by the commissioner:

(a) the salary and related fringe benefits and payroll taxes for required additional program staff ~~shall be allowed unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the commissioner shall allow the reasonable costs of:~~;

~~(a)~~ (b) program supplies;

~~(b)~~ (c) up to $1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the $1,500 equipment limit if the commissioner

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determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The commissioner's determination shall be final;

~~(c)~~ (d) program consultants;

~~(d)~~ (e) repairs to property damaged by the residents; and

~~(e)~~ (f) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item C shall be subtracted from the amount computed in subitem (2).

(4) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

E. If the amount in item D, is greater than zero, the commissioner shall allow a one-time adjustment to the facility's total payment rate equal to that amount. The one-time adjustment shall be effective on the first day of the month following the commissioner's determination unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the one-time adjustment shall be effective on the first day of the month in which any person identified in the plan approved by the commissioner is admitted to the facility.

F. The one-time adjustment to the facility's total payment rate shall remain in effect for a 12-month period. At the end of the 12-month period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either

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subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item C, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13 and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item C, subitem (4) and the actual costs incurred during the 12-month period are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item C, subitem (4) incurred during the 12-month period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one-time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional costs identified in item D, subitem (1), shall be

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allowable.

H. The commissioner shall authorize payments under this subpart only once in a three-year period for a facility.

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 60 percent of 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

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settle-up.

Subp. 2. to 4. [Unchanged.]

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 27 1988

Joan Anderson Growe
Secretary of State

9:49 A.M.

APPROVED AS TO FORM AND LEGALITY

January 25 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Julie A. Seppink
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Human Services

Proposed Permanent Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

Rules as Proposed

9553.0020 DEFINITIONS.

Subpart 1. to 46. [Unchanged.]

Subp. 46a. **Training and habilitation services costs.** Training and habilitation services costs means the costs charged by a vendor licensed under parts 9525.1500 to 9525.1690 for services provided to residents of an ICF/MR as specified in the residents' individual service plans and in a manner consistent with Minnesota Statutes, sections 252.40 to 252.47.

Subp. 47. to 50. [Unchanged.]

9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Central, affiliated, or corporate office costs.** Cost allocation for central, affiliated, or corporate offices shall be governed by items A to ~~E~~ F.

A. to E. [Unchanged.]

F. A governmental or nonprofit organization that has a federally approved cost allocation plan may allocate management fees or central office costs to a related organization based on the governmental or nonprofit organization's federal cost allocation plan. The provider must document that the allocation plan has been approved by the federal government.

Subp. 5. and 6. [Unchanged.]

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

Subpart 1. to 15. [Unchanged.]

Subp. 16. **Pass-through of training and habilitation services costs.** Training and habilitation services costs shall

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be paid as a pass-through payment at the lowest rate paid to the training and habilitation services vendor by the county for comparable services at that site under Minnesota Statutes, sections 252.40 to 252.47. The pass-through payments for training and habilitation services are paid separately by the commissioner and are not included in the computation of the total payment rate.

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Special operating costs.** The facility costs listed in this subpart are included in the special operating cost category:

A. special assessments and real estate taxes;

B. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;

C. real estate insurance;

D. professional liability insurance; and

E. the portion of preopening costs amortized as in part 9553.0035, subpart 12, item B;

F. training and habilitation services costs; and

G. physical plant modifications or additional depreciable equipment costs allowed under part 9553.0061.

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **One-time adjustment to program operating cost payment rate.** For the purposes of this subpart, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one-time adjustment shall be determined according to items A to ~~G~~ H.

A. ~~The commissioner shall allow a one-time adjustment to a facility's program operating cost payment rate when the commissioner or the commissioner of health has issued an order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900 or when the federal government has issued a~~

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~~deficiency order under Code of Federal Regulations, title 42, section 442 requiring the facility to correct a deficiency in the number or type of program staff necessary to implement individual resident habilitation plans or when the commissioner has determined a need exists based on a need redetermination plan approved pursuant to Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145 {Emergency} provided that~~ A facility is eligible for a one-time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The commissioner or the commissioner of health has issued a correction order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900.

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442, as amended through October 1, 1986, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145.

(4) The commissioner has approved, under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

B. To qualify for a one-time adjustment the facility

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must document that:

(1) ~~the facility's program staff complement on the date of the finding of the deficiency or need is equal to or exceeds the program staff complements included in the facility's total payment rates during the rate year covering the date of the finding and during the immediately prior rate year;~~

~~(2)~~ the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

~~(3)~~ (2) the deficiency or need cannot be corrected or met through a special needs rate exception as provided in parts 9510.1020 to 9510.1140; and

~~(4)~~ (3) the provisions in items ~~B~~ C to ~~G~~ H are met.

~~B.~~ C. The facility must submit to the commissioner a written request for the one-time adjustment to the program operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate as provided in parts 9510.1020 to 9510.1140;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions during the rate year covering the date of the deficiency order or need determination ~~and the immediately prior rate year~~, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident habilitation plans under payment rates

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established by current or prior reimbursement rules.

~~C.~~ D. The commissioner shall evaluate the documents submitted in item B C using the criteria in ~~item~~ items A and B. If the request meets the criteria in ~~item~~ items A and B, the commissioner shall compute the one-time adjustment to the program operating cost payment rate in accordance with subitems (1) to (4).

(1) Only the reasonable cost of the salary and related fringe benefits and payroll taxes for required additional program staff shall be allowed unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the commissioner shall allow the reasonable costs of:

(a) program supplies;

(b) up to $1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the $1,500 equipment limit if the commissioner determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The commissioner's determination shall be final;

(c) program consultants;

(d) repairs to property damaged by the residents; and

(e) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item B C shall be subtracted from the amount computed in subitem (2).

(4) Any further reduction which would be possible

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by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

~~D.~~ E. If the amount in item ~~E~~ D, is greater than zero, the commissioner shall allow a one-time adjustment to the facility's total payment rate equal to that amount. The one-time adjustment shall be effective on the first day of the month following the commissioner's determination unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the one-time adjustment shall be effective on the first day of the month in which any person identified in the plan approved by the commissioner is admitted to the facility.

~~E.~~ F. The one-time adjustment to the facility's total payment rate shall remain in effect for a 12-month period. At the end of the 12-month period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item ~~B~~ C, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13 and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item ~~B~~ C, subitem (4) and the actual costs incurred during the 12-month period are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item ~~B~~ C, subitem (4) incurred during the 12-month

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period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one-time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

~~F.~~ G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item ~~B~~ C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item ~~D~~ F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional ~~program-staff-salaries-and-related-fringe benefits-and-payroll-taxes-shall-be-allowable~~ costs identified in item D, subitem (1), shall be allowable.

~~G.~~ H. The commissioner shall authorize payments under this subpart only once in a three-year period for a facility.

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

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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~~ 60 percent of 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. to 4. [Unchanged.]

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9553

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Department of Human Services

In the Matter of the Proposed Adoption of the Amendments to Permanent Rules of the Department of Human Services 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.

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 the above-entitled rule amendments 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 256B.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on December 30, 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 may be held unless a sufficient number withdraw their request in writing. 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 requests for a public hearing must be submitted in writing to:

Nancy Bishop
Rules Division
Department of Human Services
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 purpose of these rule parts is to establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or a related condition participating in the medical assistance program, except intermediate care facilities in state owned regional centers.

These amendments result in the following changes to the current rules.

1. A definition of training and habilitation services costs has been added to part 9553.0020.

2. A provision allowing the use of a federally approved cost allocation plan for the allocation of management fees of central office costs has been added to part 9553.0030.

3. A provision allowing training and habilitation costs as a pass-through for the ICF/MR has been added to part 9553.0035, subpart 16.

4. Two items have been added to part 9553.0040, subpart 6 to explain where on the cost report training and habilitation services costs and costs related to the life safety code adjustment should be reported.

5. Part 9553.0050, subdivision 3 as been changed to allow facilities to apply for a one-time rate adjustment in order to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability and to clarify the other eligibility factors.

6. The effective date for an interim rate found in part 9553.0075, subpart 1 has been changed from the date on which all the converted beds are occupied to the date 60% of the converted beds are occupied.

The Department is making these changes in the statewide methods and standards for setting Medical Assistance rates for ICFs/MR in order to:

1. comply with federal regulations regarding payment of training and habilitation services costs;

2. simplify accounting procedures for facilities with federally approved cost allocation plans; and

3. make the system more responsive to problems encountered by providers when trying to serve more severely handicapped persons.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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 Nancy Bishop.

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 that 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 Nancy Bishop.

Date: 11/16/87

SANDRA S. GARDEBRING
Commissioner

Department of Human Services

In the Matter of the Proposed Adoption of the Amendments to Permanent Rules of the Department of Human Services 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.

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 the above-entitled rule amendments 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 256B.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on December 30, 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 may be held unless a sufficient number withdraw their request in writing. 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 requests for a public hearing must be submitted in writing to:

Nancy Bishop
Rules Division
Department of Human Services
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 purpose of these rule parts is to establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or a related condition participating in the medical assistance program, except intermediate care facilities in state owned regional centers.

These amendments result in the following changes to the current rules.

1. A definition of training and habilitation services costs has been added to part 9553.0020.

2. A provision allowing the use of a federally approved cost allocation plan for the allocation of management fees of central office costs has been added to part 9553.0030.

3. A provision allowing training and habilitation costs as a pass-through for the ICF/MR has been added to part 9553.0035, subpart 16.

4. Two items have been added to part 9553.0040, subpart 6 to explain where on the cost report training and habilitation services costs and costs related to the life safety code adjustment should be reported.

5. Part 9553.0050, subdivision 3 as been changed to allow facilities to apply for a one-time rate adjustment in order to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability and to clarify the other eligibility factors.

6. The effective date for an interim rate found in part 9553.0075, subpart 1 has been changed from the date on which all the converted beds are occupied to the date 60% of the converted beds are occupied.

The Department is making these changes in the statewide methods and standards for setting Medical Assistance rates for ICFs/MR in order to:

1. comply with federal regulations regarding payment of training and habilitation services costs;

2. simplify accounting procedures for facilities with federally approved cost allocation plans; and

3. make the system more responsive to problems encountered by providers when trying to serve more severely handicapped persons.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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:

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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 Nancy Bishop.

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 that 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 Nancy Bishop.

Date: 11/16/87

SANDRA S. GARDEBRING
Commissioner

IN THE MATTER OF THE PROPOSED ADOPTADOPTION 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

Legislative Authority

Minnesota Rules, parts 9553.0010 to 9553.0080 (Rule 53) 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.

Background Information

A. Amendments related to training and habilitation services.

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. When parts 9553.0010 to 9553.0080 were originally promulgated, the costs of training and habilitation services were not included as part of the procedure for determining rates for care of residents of ICF/MRs because Developmental Achievement Centers (DACs) were billing Medicaid directly at that time.

Between October 1, 1984, and October 1, 1985, the Health Care Financing Agency (HCFA) conducted a review of Minnesota's training and habilitation agencies to determine if the State administered the Medicaid portion of this program in accordance with the federal regulations outlined in the Code of Federal Regulations. As a result of this review, HCFA required that Developmental Achievement Centers (DACs) stop billing Medicaid directly for services provided to residents of intermediate care facilities for persons with mental retardation (ICFs/MR). HCFA pointed out that the Medical Assistance (MA) program does not recognize training and habilitation agencies as Medicaid providers independent from ICF/MR providers. Accordingly, training and habilitation services provided to ICF/MR residents are MA reimburseable only when the ICF/MR provides the service or contracts with a licensed agency to provide the service (42 CFR 442.417). In both cases the ICF/MR is the Medicaid provider and must bill and be reimbursed for the training and habilitation services.

In written recommendations resulting from the review which were issued by HCFA in June of 1985, it was recommended that, "the state cease treating DACs as independent Title XIX providers and leave the billing to ICFs/MR." However, Minnesota's philosophy of service delivery insists on separate

payment to and legal identification of residential and day service providers, thereby preventing the state from channeling funds for training and habilitation services to the ICF/MR providers who would then pay the day service provider.

To address HCFA's concerns and yet maintain separate payment for training and habilitation services, a system was developed whereby the ICF/MR completes an Assignment of Payment Form to sign the DAC portion of the ICF/MR payment over to the state agency. Federal regulations allow ICFs/MR to complete an Assignment of Payment Form under 42 CFR 447.10(e). The state agency reassigns the DAC portion of the ICF/MR payment to the DAC directly for services authorized and contracted for by the ICF/MR but provided by the DAC. The ICF/MR must, therefore, authorize all training and habilitation services provided to residents before direct payment to the DAC can take place. Authorization of costs by the ICF/MR is also required in part 9525.1290, subpart 1, item E.

The vendor of training and habilitation services and the ICF/MR service provider also sign a Two Party Agreement in which both parties agree to comply with the requirements of the Code of Federal Regulations 42 CFR 442.417, 442,463, 442.464, 42 CFR, part 440 and 42 CFR, part 447 regarding the provision of and billing for training and habilitation services to ICF/MR residents. The Assignment of Payment in combination with the Two Party Agreement is necessary to insure that Minnesota's model of service delivery meets the requirements for federal reimbursement. The fact that ICFs/MR verify the accuracy and legitimacy of charges on bills submitted to the Department for MA reimbursement of training and habilitation services to the ICF/MR residents is a result of the state's laws and procedures which require the legal separation of those services and payment mechanisms, and the federal requirements obliging ICFs/MR to provide both in order to remain certified. It is the logical outcome of applying federal regulations to Minnesota's service system. Requiring a sign-off allows federal financial participation for training and habilitation services but in no way changes the responsibility of the ICF/MR to ensure these services are provided in accordance with the Individual Service Plan.

After HCFA-Baltimore reviewed Minnesota's use of the Two Party Agreement and Assignment of Payment Mechanism, HCFA stated in a letter to Commissioner Levine dated February 5, 1986, that direct payment to DACs of Title XIX dollars could occur but that DACs could not bill Medicaid directly for the training and habilitation services they furnish to ICF/MR residents. HCFA also stated that while direct payment to DACs is legal in accordance with 42 CFR 447.10, it did not relieve the ICFs/MR from ensuring that the DACs are providing the required services.

Since training and habilitation service costs are a component of the ICF/MR payment rate, the proposed amendments add procedures for reimbursement of training and habilitation services to the rules governing the determination of payment rates for ICF's/MR. These amendments also incorporate changes which reflect the intent of Minnesota Statutes, sections 252.40 to 252.47, the 1987 legislation pertaining to the provision of training and habilitation services.

B. Other Proposed Amendments

1. Part 9553.0030

A number of non-profit ICF/MR providers depend on large amounts of federal monies to fund other programs besides ICF/MR operations. One of the stipulations of receiving such federal monies is that they must allocate central office costs according to a federally approved cost allocation plan. In cases where the non-profit organization operates both ICF/MRs and other federal programs, they must allocate costs in accordance with two different cost allocation methods. This has resulted in increased administrative costs and in some cases, costs being unreimburseable due to gaps in the two allocation methods. Input from non-profit providers concerning this issue has resulted in a proposed amendment to part 9553.0030 to allow the federally approved cost allocation plan to be used by the state's Medical Assistance Program and the federal government.

2. Part 9553.0040

Compliance with the 1985 Life Safety Code frequently requires modifications to the facility's physical plant or the purchase of additional depreciable equipment. A new part (9553.0061) was previously added to Rule 53 to provide for adjustments to the special operating cost payment rate for actions taken to comply with the 1985 Life Safety Code. In order to properly instruct providers on where to classify and record these costs on their annual cost reports, the Department proposes to amend part 9553.0040 to properly categorize costs incurred from these Life Safety compliance actions and to insure uniform cost reporting. Hence, the special operating cost category (part 9553.0040, subpart 6) has been expanded to accommodate the cost of Life Safety Code adjustments.

3. Part 9553.0050

The Department must reduce the number of persons with developmental disabilities in the regional treatment centers to meet the requirements of the Negotiated Settlement under Welsch vs Gardebring and to meet the Department's F.Y. 88-89 budget objectives as approved by the 1987 legislature. Because the persons with developmental disabilities who reside in Regional Treatment Centers typically have more severe handicaps than persons served in the community, a major strategy planned by the Department to achieve the Regional Treatment Center population reductions is to convert existing community ICFs/MR so that the facilities can serve persons with more severe handicaps.

Historically, Minnesota and other states moved the most capable people back to their home communities first, leaving people with more severe handicaps in inappropriate settings far from their homes.

While it has been well documented that virtually all persons with developmental disabilities, even those with high levels of physical or behavioral disabilities, can be served in ordinary homes if given adequate supports, it is equally true that an extensive network of ICFs/MR has developed in Minnesota. Until the resources are available to do individualized residential placements for all persons with developmental

disabilities, with size of residence not determined by existing buildings, the Department will work with counties and community ICFs/MR to assist with physical plant and/or staffing modifications so that small ICFs/MR can assist with meeting the needs of all persons, even those with more severe disabilities, so these persons can live in settings that are more normal than those in which they currently reside.

To achieve the required reductions, more programs are needed to serve persons with physical handicaps and/or severe behavior disorders. Serving these persons in the community requires specialized staff training, program consultation, special equipment, and some modifications to the facilities. Although these persons may be ambulatory and not need accessible, barrier-free facilities (that is class B facilities), they are usually not capable of evacuating a facility in an emergency situation due to their unwillingness or inability to respond to alarms or other emergency detection equipment. Community facilities that serve these persons must be either licensed as a Class B facility or as a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42 section 442.508, as amended through October 1, 1986. These amendments allow a facility to change both its life safety code status and its program to serve persons who require special programs, but do not require barrier-free facilities.

4. Part 9553.0075

Rule 53 provides for an interim payment rate for facilities converting more than 50 percent of its licensed beds from Class A beds to Class B beds (part 9553.0075, subpart 1). Such conversions facilitate the legally mandated movement of residents out of state hospitals and into the community under the Negotiated Settlement in Welsch vs Gardebring. One of the provisions of subpart 1 establishes the effective date for the new interim payment rate as the date the converted beds are occupied by the new residents.

As a result of input from providers, it is evident that there are sometimes problems encountered in the movement of residents who require the Class B beds which are beyond the control of the provider. As a result, an amendment to the rule has been proposed which would make the effective date of interim payment rates less restrictive.

Amendment Process

The Department published a "Notice of Intent to Solicit Outside Opinion" in the State Register, on June 15, 1987, and another on September 28, 1987. Advisory committee meetings were held on July 20, 1987, and October 2, 1987, to review the proposed amendments. A list of the advisory committee members is contained in Exhibit A.

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 9553.0020, subp. 46a

This subpart defines training and habilitation costs. This definition is necessary to establish the meaning of this term which is used in the proposed amendment to part 9553.0035, subp. 16. It is reasonable to specify that only the costs for training and habilitation services which are offered by vendors who meet state licensing standards, which are necessary as specified in the client's individual service plan, and which are consistent with state law be considered costs for purposes of Medical Assistance reimbursement because these are the mechanisms the state has developed to monitor quality and insure appropriate service provision in order to fulfill the state's responsibility to protect the health, safety and well being of its citizens with mental retardation.

Part 9553.0030, subp. 4, item F

This subpart deals with the allocation of central, affiliated, or corporate office costs to individual ICF/MR facilities. Item F is a new provision which gives governmental or non-profit organizations that have a federally approved cost allocation plan the option of allocating central office costs to their facilities based on their federal cost allocation plan.

A number of ICF/MR facilities depend on large amounts of federal dollars to run their operations. These facilities are required to have a cost allocation plan in place which has been approved by a federal agency. It is necessary to make this addition to the rule to allow facilities to allocate Rule 53 costs based on their federal cost allocation plan. This will eliminate the increased administrative costs involved in maintaining two cost allocation systems and help to prevent the possibility of some costs being unrecoverable due to the use of multiple cost allocation methods.

It is reasonable to exclude for-profit facilities from this provision since these organizations may have unrelated business operations which involve federally approved cost allocation plans.

Part 9553.0035, subp. 16

This subpart establishes a procedure for paying training and habilitation services costs as a pass-through for the ICF/MR. It stipulates that medical assistance shall not pay more than the county pays for comparable training and habilitation services provided at that site and funded primarily with county funds.

It is necessary to make this addition to the rule to reflect the federal requirement that training and habilitation services costs be paid through the ICF/MR as outlined in the Background Information section of this Statement of Need and Reasonableness. This amendment also complies with the federal requirements (42 CFR 447.253(g)) of statewide uniformity in procedures for rate setting for the ICF/MR.

It is reasonable to stipulate that medical assistance will not pay more than the county for comparable services because Minnesota Statutes, section 256B.501 mandates that the medical assistance rate paid should cover only "costs that must be incurred in the care of residents in efficiently and economically operated facilities". If a service can be provided at a given rate for clients receiving county funds, then comparable services can also be provided at the same rate for clients receiving medical assistance. The rate paid for the "comparable service" would be a site specific rate for vendors who differentiate their rates by site. In response to public comments received on the proposed amendment, the phrase, "at each site" was added to make it clear that "comparable services" was meant to apply to services provided at the same service site.

It is reasonable to stipulate that the county funded rate be set in accordance with Minnesota Statutes 252.40 to 252.47 because these are the statutes that specify the procedures the county is to follow in setting training and habilitation services rates.

The pass-through for training and habilitation services is paid separately to the vendor of training and habilitation services by the commissioner in accordance with the Two Party Agreement authorized in Code of Federal Regulations, title 42, section 442.417 and in accordance with the Assignment of Payment authorized by the Code of Federal Regulations title 42 section 447.10 (e). The Assignment of Payment is signed by the provider and the Two Party Agreement is signed by the provider and the vendor of training and habilitation services. Minnesota law insists on separate payment to and legal identification of residential and day service providers, thereby preventing the state from channeling funds for training and habilitation services to the ICF/MR providers who would then pay the day service provider. The Two Party Agreements in combination with the Assignment of Payment is necessary to insure that Minnesota's model of service delivery meets the requirements for federal reimbursement. The fact that ICFs/MR verify the accuracy and legitimacy of charges on bills submitted to the Department for MA reimbursement of training and habilitation services provided to the ICF/MR residents is a result of the state's laws which require the legal separation of those services and payment mechanisms, and of the federal requirement obliging ICFs/MR to provide both in order to remain certified. It is the logical outcome of applying federal regulations to Minnesota's service system.

It is necessary to specify that since the costs of training and habilitation services are to be paid separately, they should not be included in the computation of the total payment rate which is paid directly to the ICF/MR provider because inclusion of these costs in the computation of the total payment rate would result in double payment of training and habilitation services costs.

Part 9553.0040, subp 6, items F and G

Part 9553.0040 defines the cost categories to be used in the reporting of ICF/MR costs. Subpart 6 deals specifically with the special operating costs. These are costs which are typically incurred during the rate period itself as opposed to the cost report period used to determine the prospective rate. This amendment adds two new costs to the special operating cost category. They are (1) training and habilitation services costs and (2) physical plant modifications or additional depreciable equipment costs allowed under the Life Safety Code adjustment. Details concerning these costs are outlined in other provisions of the rule, specifically parts 9553.0035, subpart 16 and 9553.0061. It is necessary to specify a cost category for these costs so that they can be properly reported on the annual cost report. It is reasonable to include the costs related to the Life Safety Code adjustment in this subpart because these costs are to be specially reimbursed apart from costs of a similar nature. Therefore, including these costs in the special operating cost category seems appropriate.

Part 9553.0050, subp. 3

The amendments to this subpart are designed to clarify the one-time rate adjustment process. By adding a new provision, the amendments also will help the Department to reduce the number of persons with developmental disabilities in the regional treatment centers as required in the Negotiated Agreement under Welsch vs Gardebring and meet the Department's F.Y. 88-89 budget objectives as approved by the 1987 legislature. Because the persons with developmental disabilities who currently reside in Regional Treatment Centers typically have more severe handicaps than persons served in community facilities, a major strategy planned by the Department to achieve the Regional Treatment Center population reductions is to convert existing community ICFs/MR so that the facilities can serve persons with more severe handicaps. Although part 9553.0075 provides for conversion of community ICFs/MR from class A to class B, these conversions are limited in number due to the structural limitations of many facilities. Therefore, use of part 9553.0075 will not provide sufficient community placements to serve all of the persons with developmental disabilities from regional treatment centers who must be placed in the community during the biennium.

To achieve the required reductions, more community-based programs are needed to serve persons with physical handicaps and/or severe behavior disorders. Serving these persons requires specialized staff training, program consultation, special equipment and some modifications to the facilities. Although these persons may be ambulatory and do not need accessible, barrier-free facilities (that is class B facilities), they are usually not capable of evacuating a facility in an emergency situation due to their unwillingness or inability to respond to alarms or other emergency detection equipment. Community facilities that serve these persons must either be licensed as a Class B facility or as a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42 section 442.508, as amended through October 1, 1986.

These amendments allow a facility to change both its life safety code status and change its program to serve persons who require special programs, but do not require barrier-free facilities. The Department does have another rule, parts 9510.1020 to 9510.1140, which allows for increased reimbursement for persons with special needs on an individual basis. However, the rule does not provide reimbursement for a systematic change in the facility's population and program as a whole as allowed under this proposed amendment.

These amendments are reasonable because they provide a method for systematically changing a facility's program to serve more severely handicapped persons. It is reasonable to allow a facility to systematically change its program because changing the program is less costly than developing new ICFs/MR to serve persons with more severe handicaps. The costs allowed are reasonable because they are costs directly related to serving persons with more severe handicaps.

Items A and B. It is necessary to reformat item A and create a new item B to clarify the eligibility factors and to add a new provision specifying that a Class A facility planning to substantially modify its facility to serve more severely handicapped persons is eligible for a one-time payment rate adjustment if the facility can meet the requirements in item B. It is reasonable to allow a one-time adjustment for this purpose to encourage facilities to make the changes needed to serve these persons. It is reasonable to require that the facility be substantially modified in order to receive a one-time adjustment because the provider should be able to make minor modifications without a one-time adjustment, especially given the availability of the special needs rate exception payment under parts 9510.1020 to 9510.1140. In addition, it is reasonable to encourage substantial modifications because the Department needs more licensed beds that may be used to serve these persons.

The first method of qualifying for a one-time adjustment has been deleted because it was found to be too restrictive. Instead of looking at whether the facility's program staff complement is equal to or greater than the program staff complement included in the facility's total payment rates during the rate year covering the date of the finding and the immediately prior rate year to determine if the facility qualifies for a one-time rate adjustment, the Department has defined additional staff as the staff in excess of the number included in the facility's total payment rate covering the date of the finding of deficiency or need. This definition ensures that the facility cannot receive a one-time adjustment to cover the cost of staff already included in the rate but does not preclude them from receiving a one-time adjustment to cover the cost of the additional staff not previously included in the rate. It is reasonable to limit the one-time adjustment in this way, rather than to tie eligibility to the actual staff complement at the time of the finding, so that a facility is not disqualified from receiving a one-time rate adjustment due to a temporary decrease in staff. Limiting the comparison to only the rate year covering the date of the finding of deficiency or need is a reasonable way to simplify the determination of eligibility. In addition, eliminating reference to the immediately prior rate year removes the possibility that a facility could be negatively affected by past behavior undertaken under different circumstances. The other methods of qualifying for a one-time

adjustment (item A, subitems 2 and 3) have not been changed. They have simply been reformatted.

Item C (now D) first sentence. It is necessary to change this sentence because what once was item A is now two items. This change simply clarifies that both items apply. Other editing changes have also been made in the following items:

Item B (now C); Item C (now D); Item D (now E); Item E (now F); Item F (now G); and Item G (now H)

New item D, subitem 1. Because the facility modifications necessary to enable a provider to serve persons who require a facility that meets the standards for impractical evacuation capability result in costs not previously covered under the one-time adjustment it is necessary to amend subitem 1 to include the additional costs.

Units a to e. It is reasonable to allow the cost of these items because they are necessary costs of modifying a facility and program so that it may serve more severely handicapped persons. The costs allowed under this provision are similar to the costs allowed in part 9510.1090 (Establishing Special Needs Rate Exception Payment). Because this rule part essentially provides for a facility-wide adjustment similar to the individualized special needs rate exception payment it is reasonable to include similar costs in this provision. It is necessary to limit the costs allowable under the one-time adjustment to these costs so that the facility does not use the one-time adjustment to pay for costs that are either unallowable or more appropriately reimbursed under other rule provisions.

Limit on equipment costs. It is reasonable to limit the amount of equipment costs allowed under the one-time adjustment because the rule contains other provisions for the reimbursement of major equipment purchases. In addition, it is necessary to limit the costs allowed under a one-time adjustment so that the Department is able to stay within its budget. The one-time adjustment allows the facility to be reimbursed for certain costs more rapidly than is possible under other rule provisions. This exception is meant to assist facilities to handle costs that are in excess of the normal costs of running this type of facility and that are not included within their existing rates. It is not meant to replace the prospective reimbursement system set up in the other rule parts.

Exception to the limit on equipment costs. This provision was added to the amendments in response to comments received from the advisory committee at the October 2, 1987, meeting. The advisory committee members pointed out that in some cases the cost of the equipment necessary to modify the facility might exceed $1500 but might still be reasonable. They suggested that the commissioner be allowed to review the need for the equipment and determine if an exception should be made. The Department agrees that there may be times when it would be appropriate to approve equipment costs of over $1500 and therefore added this provision. It is reasonable for the Commissioner's determination to be final to avoid needless expenditure of time and public funds on a matter where the

Commissioner has the authority to make the final decision under Minnesota Statues section 256B.501.

Part 9553.0075, subp 1

This subpart deals with the determination of an interim payment rate for facilities converting more than 50 percent of its licensed beds from Class A to Class B beds. This amendment alters the criteria for determining the effective date of the interim payment rate from the date on which all of the converted beds are occupied to the date on which 60 percent of the converted beds are occupied.

The requirement that all converted beds be occupied has proven to be too restrictive. As a part of the process of moving residents, the ICF/MR providers must deal with both the counties and the Regional Treatment Centers. Problems have occurred which are beyond the control of the provider. It is not reasonable to expect the providers to shoulder the financial burden in these cases. Therefore, it is reasonable to require that only 60 percent as the transition point of the converted beds be occupied before the interim rate takes effect.

The Department wants the movement of residents to be a planned operation, but one which takes into account some unforeseen difficulties. It is reasonable to use 60 percent as the transition point because it shows that a substantial effort has been made in the movement of residents. It is important to have a rapid transition so that the Interim/Settle-up period reflects the cost base for future rate years.

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 responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

11/16/87
DATE

Julie Brunner
for SANDRA S. GARDEBRING
Commissioner

EXHIBIT

RULE 53 (PARTS 9553.0010 TO 9553.0080)

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES RELATING TO REIMBURSEMENT OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

AFFIDAVIT OF MAILING

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

That on the 25th day of November, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of 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 2 day of December, 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 the Amendments to Permanent Rules of the Department of Human Services 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.

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 the above-entitled rule amendments 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 256B.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on December 30, 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 may be held unless a sufficient number withdraw their request in writing. 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 requests for a public hearing must be submitted in writing to:

Nancy Bishop
Rules Division
Department of Human Services
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 purpose of these rule parts is to establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or a related condition participating in the medical assistance program, except intermediate care facilities in state owned regional centers.

These amendments result in the following changes to the current rules.

1. A definition of training and habilitation services costs has been added to part 9553.0020.

2. A provision allowing the use of a federally approved cost allocation plan for the allocation of management fees of central office costs has been added to part 9553.0030.

3. A provision allowing training and habilitation costs as a pass-through for the ICF/MR has been added to part 9553.0035, subpart 16.

4. Two items have been added to part 9553.0040, subpart 6 to explain where on the cost report training and habilitation services costs and costs related to the life safety code adjustment should be reported.

5. Part 9553.0050, subdivision 3 as been changed to allow facilities to apply for a one-time rate adjustment in order to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability and to clarify the other eligibility factors.

6. The effective date for an interim rate found in part 9553.0075, subpart 1 has been changed from the date on which all the converted beds are occupied to the date 60% of the converted beds are occupied.

The Department is making these changes in the statewide methods and standards for setting Medical Assistance rates for ICFs/MR in order to:

1. comply with federal regulations regarding payment of training and habilitation services costs;

2. simplify accounting procedures for facilities with federally approved cost allocation plans; and

3. make the system more responsive to problems encountered by providers when trying to serve more severely handicapped persons.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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 Nancy Bishop.

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 that 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 Nancy Bishop.

Date: 11/16/87

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES RELATING TO REIMBURSEMENT OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 25th day of November, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of 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
.ICF/MRs
.Accountants for ICF/MRs
.Training and Habilitation Services

Nancy Storelee

Subscribed and sworn to before me

this 14 day of January, 1988

Claudia A. Eliason

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

Department of Human Services

In the Matter of the Proposed Adoption of the Amendments to Permanent Rules of the Department of Human Services 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.

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 the above-entitled rule amendments 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 256B.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on December 30, 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 may be held unless a sufficient number withdraw their request in writing. 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 requests for a public hearing must be submitted in writing to:

Nancy Bishop
Rules Division
Department of Human Services
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 purpose of these rule parts is to establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or a related condition participating in the medical assistance program, except intermediate care facilities in state owned regional centers.

These amendments result in the following changes to the current rules.

1. A definition of training and habilitation services costs has been added to part 9553.0020.

2. A provision allowing the use of a federally approved cost allocation plan for the allocation of management fees of central office costs has been added to part 9553.0030.

3. A provision allowing training and habilitation costs as a pass-through for the ICF/MR has been added to part 9553.0035, subpart 16.

4. Two items have been added to part 9553.0040, subpart 6 to explain where on the cost report training and habilitation services costs and costs related to the life safety code adjustment should be reported.

5. Part 9553.0050, subdivision 3 as been changed to allow facilities to apply for a one-time rate adjustment in order to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability and to clarify the other eligibility factors.

6. The effective date for an interim rate found in part 9553.0075, subpart 1 has been changed from the date on which all the converted beds are occupied to the date 60% of the converted beds are occupied.

The Department is making these changes in the statewide methods and standards for setting Medical Assistance rates for ICFs/MR in order to:

1. comply with federal regulations regarding payment of training and habilitation services costs;

2. simplify accounting procedures for facilities with federally approved cost allocation plans; and

3. make the system more responsive to problems encountered by providers when trying to serve more severely handicapped persons.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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 Nancy Bishop.

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 that 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 Nancy Bishop.

Date: 11/16/87

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES RELATING TO REIMBURSEMENT OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

AFFIDAVIT OF ADDITIONAL MAILING

Jane Delage, being first duly sworn, deposes and says:

That on the 30th day of November, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of 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:

.Rule 53 Advisory Committee

Jane M Delage

Subscribed and sworn to before me

this 14 day of January 1988

Claudia A. Eliason

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

Department of Human Services
Long Term Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to the Rules Relating to the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

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 the amendments to the rules relating to the determination of payment rates for intermediate care facilities for persons with mental retardation or related conditions. The adoption of the amendments is authorized by Minnesota Statutes, section 256B.501, subdivisions 1 to 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 or related conditions.



The Department proposes to amend the following rule parts:

Part 9553.0030, subpart 4, Central, affiliated, or corporate office costs;

Part 9553.0035, new subpart—Habilitation service costs;

Part 9553.0040, subpart 6, Special operating costs; and

Part 9553.0075, subpart 1, Interim payment rate.

The State Department of Human Services requests information and opinions concerning the subject matter of these 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
Appeals and Regulations Division
444 Lafayette Road
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at 297-1488 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules without a Hearing is published in the *State Register*. 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.

State Board of Public Defense

Chief Administrator Applications Sought

Full-time administrative position under general direction of State Board of Public Defense, performing work of considerable difficulty in coordination, consolidation, direction and analysis of specific projects/programs. Requires extensive full-time administrative experience related to governmental, departmental and organizational operations and elected officials. Employee description and requirements are available at the Board of Public Defense, 95 Law Center, University of Minnesota, Minneapolis, Minnesota, 55455; (612) 625-5008. Letter of application and resume will be accepted at above address until 4:30 p.m., Monday, June 22, 1987.

Minnesota State Retirement System

Board of Directors, Regular Meeting

A meeting of the Board of Directors, Minnesota State Retirement System will be held on Friday, June 19, 1987 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Office of the Revisor of Statutes

Invitation to Suggest Changes in Minnesota Rules Drafting Manual

The Office of the Revisor of Statutes invites agencies and other interested persons to suggest ways to improve the *Minnesota Rules*

Jane Pelage
S3

Subd. 2. NOTICE. The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required. The notice must contain a statement that anyone wishing to oppose activation beyond 180 days for any particular class, must file a petition to intervene with the administrative law judge at least ten days before the hearing date. If no notice to intervene is filed for a class then the class is activated beyond the 180-day period without further action.

Subd. 3. CONTESTED CASE; REPORT. The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. DECISION. The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. WAIVER OR MODIFICATION. If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. CASE PRESENTATION. The department of commerce, upon request by small businesses as defined by section 14.115, subdivision 1, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

Department of Finance

Maximum Interest Rate for Municipal Obligations in September

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Acting Commissioner of Finance, Nellie Johnson, announced today that the maximum interest rate for municipal obligations in the month of September would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Dated: 1 September 1987

Peter Sausen, Assistant Commissioner
Cash and Debt Management

Department of Human Services

Long Term Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to the Rules Relating to the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

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 the amendments to the rules relating to the determination of payment rates for intermediate care facilities for persons with mental retardation or related conditions. The adoption of the amendments is authorized by *Minnesota Statutes*, section 256B.501, subdivisions 1 to 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 or related conditions.

The Department proposes to amend the following rule parts:

Part 9553.0030, subpart 4, Central, affiliated, or corporate office costs;

Part 9553.0035, new subpart—Habilitation service costs;

Part 9553.0040, subpart 6, Special operating costs;

Part 9553.0050, subpart 3, One-time adjustment to program operating cost payment rate; and

Part 9553.0075, subpart 1, Interim payment rate.

The State Department of Human Services requests information and opinions concerning the subject matter of these 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
Appeals and Regulations Division
444 LaFayette Road
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at 297-1488 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. 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.

Labor and Industry

Labor Standards Division

Notice of Certified Prevailing Wage Rates

On October 1, 1987 the commissioner will certify prevailing wage rates for highway/heavy and commercial construction projects in the following Minnesota counties: Blue Earth, Brown, Cottonwood, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Jackson, Lac Qui Parle, LeSueur, Lincoln, Lyon, Martin, Mower, Murray, Nicollet, Nobles, Olmsted, Pipestone, Redwood, Renville, Rice, Rock, Sibley, Steele, Wabasha, Waseca, Watonwan, Winona and Yellow Medicine.

A copy of the determined wage rates for Minnesota counties may be obtained by contacting the Minnesota Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. For all 87 counties the charge is $25.00. A sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Ray Bohn, Commissioner
Department of Labor and Industry

State Law Library

County Law Libraries: Joint Notice of Filing Fees; Additions and Corrections to List Published in 12 S.R. 171

Fillmore County assesses a $5.00 law library filing fee in conciliation court. **Kandiyohi** County does not assess the law library filing fee on defendants in conciliation court. **Wadena** County assesses a $10.00 law library filing fee in civil and probate cases. Wadena also assesses $10.00 on felonies and gross misdemeanors; $5.00 on misdemeanors and petty misdemeanors. **Washington** County assesses a $3.00 law library filing fee in conciliation court. Finally, note (b) pertains to the Criminal Convictions column.

Minnesota Legislature

Legislative Commission to Review Administrative Rules

Rules of Procedure of the Legislative Commission to Review Administrative Rules

The following Rules of Procedure were adopted by the Commission at its meeting on September 16, 1987.

Dated: 18 September 1987

Maryanne Hruby
Director, LCRAR

MARY MARTIN & ASSOCIATES
ATTORNEYS AT LAW
1551 LIVINGSTON AVENUE, SUITE 102
WEST ST. PAUL, MINNESOTA 55118
(612) 450-9892



October 14, 1987

Jane Delage
Appeals and Regulation Division
444 Lafayette Road
St. Paul, Minnesota 55155

Re: Solicitation of Outside Opinions on Proposed New Subpart Regarding Habilitation Costs in Rule 53, Minn. Rule 9553.0035

Dear Ms. Delage:

The comments below are submitted on behalf of the Minnesota Habilitation Coalition in response to your Notice of Intent to Solicit Outside Opinion as published in the State Register on September 15, 1987. The comments are based on a draft amendment which reads:

> Subp. 16. Pass-through of training and habilitation services costs. Training and habilitation services costs shall be paid as a pass-through payment at the lowest rate paid to the vendor by the county for the same or similar services under Minnesota Statutes sections 252.40 to 252.47. The pass-through payments for training and habilitation services are paid separately by the commissioner and are not included in the computation of total payment rate.

The use of the phrase "lowest rate paid to the vendor" could have unintended effects on vendors of training and habilitation services because:

1. Minn. Stat. 252.46 Subd 5, (attached) allows the county board to use an average rate if the provider has more than one service site, but does not require the county to do so. Thus, if the county chooses to pay separate rates at each site, the vendor would then be paid only the lowest rate, not the actual rate. Similarly, if a vendor negotiates contracts in more than one county, only the lowest rate would be paid.

2. The term "for the same or similar services" is not likely to be approved by an administrative law judge because neither the rule or the law contain standards that are

specific enough for a vendor or the Commissioner to determine what is a "similar" service. The law only divides services into full days, partial days, and a transportation component. Therefore, all full days are "similar" services as currently defined.

To correct the ambiguities, I suggest the following altternative language:

> Subp. 16. Pass-through of training and habilitation services costs. At the current rate or rates established pursuant to Minn. Stat. 252.40 to 252.47 for services delivered to residents of an ICF/MR. If the vendor has no such rate, the rate will be set using the standards in Minn. Stat. 252.46, subd. 12. The pass through payments for training and habilitation services are paid separately by the Commissioner directly to the vendor of habilitation services, and are not included in the computation of the rate.

This language clarifies that the rate paid is the rate set by the county according to the statute, and that payments are made to the vendor of habilitation services, and not a third party.

The term "vendor" is used elsewhere in Rule 53, and to avoid confusion, I suggest that the term "vendor of habilitation services" be used. A new subpart could be added to Minn. Rule 9553.0020 (definitions) to read as follows:

> Vendor of Habilitation Services. Vendor of Habilitation Services has the meaning given to it in Minn. Stat. 252.41, subd. 9.

Please contact me if you have questions on these comments.

Sincerely,

MARY MARTIN & ASSOCIATES

Mary K. Martin

MKM/cvf

cc: Mike Sarafolean

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 Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

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 the above-entitled rule amendments 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 256B.501, subdivisions 1 to 3.

All persons have 30 days or until 4:30 p.m. on December 30, 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 may be held unless a sufficient number withdraw their request in writing. 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 requests for a public hearing must be submitted in writing to:

Nancy Bishop
Rules Division
Department of Human Services
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 purpose of these rule parts is to establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or a related condition participating in the medical assistance program, except intermediate care facilities in state owned regional centers.

These amendments result in the following changes to the current rules.

1. A definition of training and habilitation services costs has been added to part 9553.0020.

2. A provision allowing the use of a federally approved cost allocation plan for the allocation of management fees of central office costs has been added to part 9553.0030.

3. A provision allowing training and habilitation costs as a pass-through for the ICF/MR has been added to part 9553.0035, subpart 16.

4. Two items have been added to part 9553.0040, subpart 6 to explain where on the cost report training and habilitation services costs and costs related to the life safety code adjustment should be reported.

5. Part 9553.0050, subdivision 3 has been changed to allow facilities to apply for a one-time rate adjustment in order to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability and to clarify the other eligibility factors.

6. The effective date for an interim rate found in part 9553.0075, subpart 1 has been changed from the date on which all the converted beds are occupied to the date 60% of the converted beds are occupied.

The Department is making these changes in the statewide methods and standards for setting Medical Assistance rates for ICFs/MR in order to:

1. comply with federal regulations regarding payment of training and habilitation services costs;

2. simplify accounting procedures for facilities with federally approved cost allocation plans; and

3. make the system more responsive to problems encountered by providers when trying to serve more severely handicapped persons.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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:

Nancy Bishop
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-1486

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 Nancy Bishop.

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 that 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 Nancy Bishop.

Dated: 16 November 1987

Sandra S. Gardebring
Commissioner

Rules as Proposed

9553.0020 DEFINITIONS.

Subpart 1. to 46. [Unchanged.]

Subp. 46a. **Training and habilitation services costs.** Training and habilitation services costs means the costs charged by a vendor licensed under parts 9525.1500 to 9525.1690 for services provided to residents of an ICF/MR as specified in the residents' individual service plans and in a manner consistent with Minnesota Statutes, sections 252.40 to 252.47.

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.

Subp. 47. to 50. [Unchanged.]

9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Central, affiliated, or corporate office costs.** Cost allocation for central, affiliated, or corporate offices shall be governed by items A to ~~E~~ F.

A. to E. [Unchanged.]

F. A governmental or nonprofit organization that has a federally approved cost allocation plan may allocate management fees or central office costs to a related organization based on the governmental or nonprofit organization's federal cost allocation plan. The provider must document that the allocation plan has been approved by the federal government.

Subp. 5. and 6. [Unchanged.]

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

Subpart 1. to 15. [Unchanged.]

Subp. 16. **Pass-through of training and habilitation services costs.** Training and habilitation services costs shall be paid as a pass-through payment at the lowest rate paid to the training and habilitation services vendor by the county for comparable services at that site under Minnesota Statutes, sections 252.40 to 252.47. The pass-through payments for training and habilitation services are paid separately by the commissioner and are not included in the computation of the total payment rate.

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Special operating costs.** The facility costs listed in this subpart are included in the special operating cost category:

A. special assessments and real estate taxes;

B. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;

C. real estate insurance;

D. professional liability insurance; and

E. the portion of preopening costs amortized as in part 9553.0035, subpart 12, item B;

F. training and habilitation services costs; and

G. physical plant modifications or additional depreciable equipment costs allowed under part 9553.0061.

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **One-time adjustment to program operating cost payment rate.** For the purposes of this subpart, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one-time adjustment shall be determined according to items A to ~~G~~ H.

A. ~~The commissioner shall allow a one-time adjustment to a facility's program operating cost payment rate when the commissioner or the commissioner of health has issued an order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900 or when the federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442 requiring the facility to correct a deficiency in the number or type of program staff necessary to implement individual resident habilitation plans or when the commissioner has determined a need exists based on a need redetermination plan approved pursuant to Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145 [Emergency] provided that~~ A facility is eligible for a one-time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The commissioner or the commissioner of health has issued a correction order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900.

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442, as amended through October 1, 1986, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145.

(4) The commissioner has approved, under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145, a

Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

B. To qualify for a one-time adjustment the facility must document that:

(1) ~~the facility's program staff complement on the date of the finding of the deficiency or need is equal to or exceeds the program staff complements included in the facility's total payment rates during the rate year covering the date of the finding and during the immediately prior rate year;~~

~~(2)~~ the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

~~(3)~~ (2) the deficiency or need cannot be corrected or met through a special needs rate exception as provided in parts 9510.1020 to 9510.1140; and

~~(4)~~ (3) the provisions in items ~~B~~ C to ~~G~~ H are met.

~~B.~~ C. The facility must submit to the commissioner a written request for the one-time adjustment to the program operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate as provided in parts 9510.1020 to 9510.1140;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions during the rate year covering the date of the deficiency order or need determination ~~and the immediately prior rate year~~, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident habilitation plans under payment rates established by current or prior reimbursement rules.

~~C.~~ D. The commissioner shall evaluate the documents submitted in item ~~B~~ C using the criteria in ~~item~~ items A and B. If the request meets the criteria in ~~item~~ items A and B, the commissioner shall compute the one-time adjustment to the program operating cost payment rate in accordance with subitems (1) to (4).

(1) Only the reasonable cost of the salary and related fringe benefits and payroll taxes for required additional program staff shall be allowed unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the commissioner shall allow the reasonable costs of:

(a) program supplies;

(b) up to $1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the $1,500 equipment limit if the commissioner determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The commissioner's determination shall be final;

(c) program consultants;

(d) repairs to property damaged by the residents; and

(e) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item ~~B~~ C shall be subtracted from the amount computed in subitem (2).

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(4) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

~~D.~~ E. If the amount in item ~~C~~ D, is greater than zero, the commissioner shall allow a one-time adjustment to the facility's total payment rate equal to that amount. The one-time adjustment shall be effective on the first day of the month following the commissioner's determination unless the facility is eligible for a one-time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the one-time adjustment shall be effective on the first day of the month in which any person identified in the plan approved by the commissioner is admitted to the facility.

~~E.~~ F. The one-time adjustment to the facility's total payment rate shall remain in effect for a 12-month period. At the end of the 12-month period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item ~~B~~ C, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13 and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item ~~B~~ C, subitem (4) and the actual costs incurred during the 12-month period are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item ~~B~~ C, subitem (4) incurred during the 12-month period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one-time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

~~F.~~ G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item ~~B~~ C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item ~~D~~ F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional ~~program staff salaries and related fringe benefits and payroll taxes shall be allowable~~ costs identified in item D, subitem (1), shall be allowable.

~~G.~~ H. The commissioner shall authorize payments under this subpart only once in a three-year period for a facility.

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~~ 60 percent of 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. to 4. [Unchanged.]

Pollution Control Agency

Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Municipal Project List and Corrective Action Grants Program

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Pollution Control Agency is proposing to adopt emergency rules for the creation of a corrective action grants program and to make several changes to the administration of the federal grants program and the independent state grants program for municipal wastewater treatment projects. The Agency is authorized by *Minnesota Law 1987*, Ch. 277, § 3 to adopt emergency rules for the administration of the corrective action grants program and by *Minnesota Statutes* § 116.16, Subdivision 5 to adopt emergency rules for the administration of the federal and independent state grants programs. The Agency, in adopting the rules, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes* § 14.29 to 14.36.

All persons have 25 days, specifically until 4:30 p.m. on December 28, 1987, to submit written comments to the Agency on the proposed emergency rules. Written comments should be sent to:

Jeff Freeman
Municipal Wastewater Treatment Section
Division of Water Quality
Minnesota Pollution Control Agency
520 Lafayette Road
Saint Paul, Minnesota 55155
Telephone: (612) 296-7312

If adopted, the proposed emergency rules will create a corrective action grants program, make changes to the deadline dates for submittal of technical documents prior to listing a municipality on the Municipal Project List, and make changes to the procedures for drafting the Municipal Project List.

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the Agency will become part of the record in this matter.

The proposed emergency rules, with any modifications adopted by the Agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period.

Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the Agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the Agency's intent to keep the rules in effect for a period of 180 days. The Agency may extend the effective period for up to an additional 180 days upon publication of a separate notice to such effect.

A free copy of the proposed emergency rules is available by contacting Mr. Freeman at the above address.

Gerald L. Willet
Commissioner

Rules as Proposed

7075.0409 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments and for which independent state grants will be awarded from current appropriations. The municipal project list shall also contain those projects for which state financial assistance will be available for combined sewer overflow abatement projects. The municipal project list shall also list any nonproject uses of the state's allotment of federal grant funds and of the appropriation of state grant funds, including but not limited to, training grants and costs of administration. The municipal project list may, but need not, list projects to be funded under the corrective action grants program authorized in Minnesota Statutes, section 116.181 and further described in parts 7075.1010 to 7075.1095 [Emergency].

Subp. 2. **Requirements for placement on list.** A municipality that requests project placement on the municipal project list shall meet the following requirements:

A. If the grant sought is a Step 1, 2, 2+3, or 3 grant, the municipality must be listed on the municipal needs list.

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B. If the grant sought is a Step 2 ~~or~~, 2 + 3, or 3 grant, the municipality shall submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7075.0200, subpart 9; and

(2) if the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, a facilities plan addendum in conformance with part 7075.0200, subpart 9.

C. If the grant sought is a Step 3 grant, the municipality shall submit the following items by ~~December~~ September 1 during the state fiscal year, and prior to the beginning of the federal fiscal year, for which the municipal project list is prepared~~:~~. If the municipality fails to submit the required items by September 1, the agency shall remove the municipality from the municipal project list.

(1) plans and specifications in conformance with part 7075.0200, subpart 18, and based on a facilities plan previously approved by the agency;

(2) if the city is proposing to change the selected treatment method or any other major element of previously approved plans and specifications, a plans and specifications addendum in conformance with part 7075.0200, subpart 18, and based on a previously approved facilities plan;

(3) a sewer service charge system comprised of a user charge system, including a proposed financial management system, and a system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement (O, M, and R) of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading.

The user class includes residential, commercial, industrial, institutional, and governmental classes.

The system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

(4) documentation of how the public has been informed of the proposed sewer service charge system; and

(5) a sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

D. The municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, make all necessary corrections to the documents in item B if the grant sought is a Step 2 ~~or~~, 2 + 3, or 3 grant, ~~or the documents in item C if the grant sought is a Step 3 grant,~~ so as to make them approvable. If the grant sought is a Step 3 grant, the municipality shall also submit a council resolution agreeing to submit, by the following September 1, the documents listed in item C and a schedule for construction.

E. If the grant sought is a Step 2 + 3 or 3 grant, the municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, indicate its preferred funding source, if it has one, in writing to the director.

F. A municipality seeking a Step 3 federal grant for combined sewer overflow abatement projects or state financial assistance for combined sewer overflow abatement projects shall not be subject to the conditions contained in items C and D. The municipality shall submit by June 1 prior to the beginning of the fiscal year for which the grant or financial assistance is sought, a list and schedule of construction projects to be initiated in the following fiscal year. If the municipality's NPDES/SDS permit provides a different date for submission of the list and schedule, the date in the permit shall take precedence.

Subp. 3. **Preparation of proposed municipal project list.** The agency shall prepare a municipal project list that lists in order of priority the municipalities that are eligible to apply for construction grants for their projects from funds allotted to the state for the current fiscal year by the federal government or appropriated into the fund for the current fiscal year.

In drafting the proposed municipal project list, the agency shall consider the following factors in the order given:

A. total dollars available for obligation from each funding source;

B. eligibility of projects and portions of projects according to these parts and applicable state and federal statutes;

C. restrictions on obligations mandated by these parts and applicable state and federal statutes, including but not limited to set asides for administration of certain types of projects, and the percentage of the cost of construction that will be paid by state and federal grants;

D. the municipalities' preference for funding sources; and

E. the amount of state financial assistance available for combined sewer overflow abatement projects.

Subp. 4. **Procedures for drafting list.** In drafting the proposed municipal project list, the agency shall list projects on the proposed list according to the following procedures:

A. The agency shall attempt to accommodate municipalities' preferences for funding sources in priority order until the costs of the projects being funded from one funding source reach the full allotment or appropriation of grant funds available from that source for the fiscal year. If a municipality expresses no preference, the agency shall determine from which source it will be funded.

B. The agency shall then list projects in priority order, funding those projects from the remaining funding source, until the costs of the projects reach the full allotment or appropriation of grant funds available for the fiscal year. Projects ineligible under the remaining funding source must be considered for placement on the following fiscal year's municipal project list.

C. The agency shall then list on the municipal project list in priority order those projects on the municipal needs list with priority rankings lower than those selected under items A and B, but which have been identified by the commissioner of energy and economic development by July 1 as being substantial economic development projects, and for which a portion of the appropriation for the fiscal year has been set aside for such projects.

D. The agency shall then list combined sewer overflow abatement projects for which state financial assistance will be awarded in the fiscal year from funds available for those kinds of projects.

E. The agency may list projects which will receive Step 1 and 2 grants and advances of allowance in such a manner as to permit funding to proceed in an orderly fashion to fully utilize all allocated and appropriated funds.

Subp. 5. **Reimbursement project list.** The agency shall prepare a reimbursement project list that lists those municipalities that are willing to proceed with projects and are willing to be reimbursed in a subsequent year conditioned upon appropriation of sufficient money for that year. No municipality may be listed on the reimbursement project list unless the municipality has requested placement on the list and has received approval of the documents listed in subpart 2, item C. ~~The total cost of these reimbursement projects may not exceed the amount newly appropriated to the independent state grant program.~~ Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list. A reimbursement project may appear on both the reimbursement project list and the reserve project list.

7075.0411 PROJECT ELIGIBILITY.

Subpart 1. **Steps eligible.** Federal grants and state matching grants shall be awarded only for Step 2+3 and Step 3 projects. Advances of allowance for Step 1 and 2 projects may also be provided from federal funds. Independent state grants may be awarded for Step 1, Step 2, Step 2+3, and Step 3 projects. Financial assistance for combined sewer overflow abatement shall be awarded only for design and construction work.

Subp. 2. **General eligibility.** No project is eligible for a federal grant or a state matching grant unless it is eligible for funding under the act and applicable federal regulations. No project is eligible for an independent state grant unless it is eligible under this chapter and applicable state statutes. No municipality is eligible for state financial assistance for combined sewer overflow abatement projects unless the municipality complies with the conditions of Minnesota Statutes, section 116.162, subdivision 7.

Subp. 3. **Initiation of construction.** ~~A municipality is not eligible for a federal grant or a state matching grant if construction on the project has been initiated prior to the award of the grant.~~

A municipality may ~~be eligible for~~ retain eligibility of construction costs incurred before the award of an independent state grant ~~after initiation of construction, provided that~~ only if:

A. the municipality was listed on a reimbursement project list when construction began;

B. the municipality submitted a complete grant application to the agency within 90 days after adoption or revision of the reimbursement project list; and

C. the municipality obtained written permission from the agency to advertise for bids and initiate construction before those steps were taken.

Subp. 4. **Cost-effectiveness.** A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

Subp. 5. **Eligible costs.** The following provisions govern eligible costs:

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A. The eligible cost of any project for which a grant or state financial assistance will be awarded shall be determined by the application of applicable state and federal statutes and rules.

B. In addition to other eligible costs established by state law for combined sewer overflow abatement projects, storm water conveyance facilities that are part of the most cost effective alternative for combined sewer overflow abatement shall be eligible for state financial assistance. Such facilities shall include those structures, pipes, and appurtenances from the point of entry at the catch basin to the outlet structure which are necessary to convey up to the five-year storm.

7075.0428 GRANT AMOUNTS.

Subpart 1. **State matching grants.**

A. For projects tendered on or after October 1, 1984, and before October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for up to an additional 30 percent of the eligible cost if construction of the treatment works would otherwise impose a significant financial hardship on the municipality.

B. For projects tendered, on or after October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subp. 2. **Independent state grants.** The agency may award independent state grants as follows:

A. The agency may award Step 1 and Step 2 independent state grants to municipalities in an amount determined according to the same procedures for calculating an allowance under Code of Federal Regulations, title 40, part 35, appendix B.

B. The agency may award Step 2 + 3 and Step 3 independent state grants to municipalities to pay for 50 percent ~~of the eligible cost of construction~~, or, if the ~~agency requires and the municipality is constructing advanced treatment, 65~~ population of the municipality is 25,000 or less, 80 percent of the eligible cost of construction. ~~If construction of a treatment works would otherwise impose a significant financial hardship on a municipality, the agency may award an independent state grant to pay for up to an additional 30 percent of the eligible cost of construction, or if the agency requires and the municipality is constructing advanced treatment, an additional 25 percent of the eligible cost of construction.~~

Subp. 2a. **State financial assistance for combined sewer overflow abatement projects.** The agency may award state financial assistance for combined sewer overflow abatement projects as follows:

A. The agency may award state financial assistance for design of combined sewer overflow abatement projects to municipalities in an amount determined according to the same procedures for calculating an allowance under Code of Federal Regulations, title 40, part 35, appendix B.

B. Each fiscal year, municipalities eligible for financial assistance for combined sewer overflow abatement projects shall be awarded a proportionate share of the appropriation available for such projects in that fiscal year. The proportionate share for each eligible municipality is as follows:

(1) Minneapolis, 24.2 percent;

(2) Saint Paul, 71.6 percent;

(3) South Saint Paul, 4.2 percent.

C. By no later than March 31 each year, beginning in 1987, the agency shall determine whether or not each municipality that is eligible for financial assistance under this program has submitted a complete financial assistance application and either the city council has adopted final orders for construction if the work is to be contracted out, or issued work proceed orders if the municipality will do the work with its own employees, for enough work to allow the municipality to utilize its total pro rata share for the present fiscal year. If the agency determines that a municipality has not submitted a complete financial assistance application and the city council has not adopted final orders for construction or the city has not issued work proceed orders, the agency shall distribute such unusable funds to other eligible municipalities that have submitted complete financial assistance applications to utilize such additional funds. For any municipality that is awarded additional funds , the city council shall adopt final orders for construction or the city shall issue work proceed orders to utilize such funds by May 31 of the present fiscal year in order to retain the funds.

Each fiscal year, beginning in 1988, allocations to a municipality that has received additional funds shall be reduced by one-third of the total amount of additional funds that have been awarded to the municipality in earlier years. These funds shall be awarded to the municipality that was initially entitled to them. In the event that, for the municipality entitled to the repayment funds, the city council still has not adopted final orders for construction or the city has not issued work proceed orders to utilize the funds in that fiscal year, the municipality awarded the additional funds is not required to make the repayment. The repayment procedure set forth in this item shall continue until the municipality has repaid all additional funds that it has been awarded or until the municipality has completed its combined sewer overflow abatement projects in their entirety.

Subp. 3. **Local share.** Except as provided in part 7075.0425, in no event may a municipality that obtains a state matching grant or independent state grant be responsible for less than ten percent of the eligible cost of the project.

Subp. 4. **Significant financial hardship.** The amount of a state matching grant awarded to a municipality which was awarded a federal grant after October 1, 1984, ~~and the amount of a supplemental independent state grant awarded to a municipality~~ and before October 1, 1987, depends on the extent to which construction of the treatment works imposes a significant financial hardship on the municipality. The determination of the financial hardship and the amount of the grant must be based on per connection capital cost, median household income, and per capita adjusted assessed valuation, in accordance with the following procedures:

A. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's per connection capital cost after bidding compared with the median per connection capital cost for all projects which accepted bids under the programs during the two years ending July 1 prior to adoption of the municipal project list on which the municipality appears. The percentage of the eligible cost to be paid for by the grant based on per connection capital cost is determined by the following table.

Municipality Per Connection Cost × 100 ÷ Median Per Connection Cost of Projects Bid During Previous Two Years	Percentage of Cost Funded
60 - 69	0.5
70 - 79	1.0
80 - 89	1.5
90 - 99	2.0
100 - 119	2.5
120 - 139	3.0
140 - 159	3.5
160 - 179	4.0
180 - 199	4.5
200 or more	5.0

B. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's median household income compared with the state median nonmetropolitan household income. Median household income must be determined from the latest federal census. The percentage of the eligible cost to be paid for by the grant based on median household income is determined by the following table.

Municipality Median Household Income × 100 ÷ State Median Nonmetropolitan Household Income	Percentage of Cost Funded
100 - 104	0.5
95 - 100	1.0
90 - 94	1.5
85 - 89	2.0
80 - 84	2.5
75 - 79	3.0
70 - 74	3.5
65 - 69	4.0
60 - 64	4.5
less than 60	5.0

C. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's per capita adjusted assessed valuation compared with the state median per capita adjusted assessed valuation. Per capita adjusted assessed valuation must be determined from the latest data available from the Department of Revenue at the time of the grant award. The percentage of the eligible cost to be paid for by the grant based on the per capita adjusted assessed valuation is determined by the following table.

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Municipality Per Capita Adjusted Assessed Valuation × 100 ÷ State Median Per Capita Adjusted Assessed Valuation	Percentage of Cost Funded
105 - 109	0.5
100 - 104	1.0
95 - 99	1.5
90 - 94	2.0
85 - 89	2.5
80 - 84	3.0
75 - 79	3.5
70 - 74	4.0
65 - 69	4.5
less than 65	5.0

Rules as Proposed (all new material)

CORRECTIVE ACTION GRANTS PROGRAM.

7075.1010 [Emergency] PURPOSE OF CORRECTIVE ACTION GRANTS PROGRAM.

Parts 7075.1010 to 7075.1095 [Emergency] provide for the administration of the corrective action grants program which makes grants available to municipalities with wastewater treatment facilities funded under the federal or independent state construction grants programs that are unable to meet performance standards.

7075.1020 [Emergency] DEFINITIONS FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Scope.** For the purpose of parts 7075.1010 to 7075.1095 [Emergency], the following terms have the meaning given them.

Subp. 2. **Performance standards.** "Performance standards" means the criteria established for a wastewater treatment facility under the federal construction grants program or the independent state construction grants program for the purpose of determining the project's satisfactory performance.

7075.1030 [Emergency] ELIGIBILITY FOR PARTICIPATION IN CORRECTIVE ACTION GRANTS PROGRAM.

To be eligible for participation in the corrective action grants program, a municipality shall meet the following requirements:

A. The municipality received a grant under the federal construction grants program or the independent state construction grants program.

B. The municipality executed a contract for construction of its wastewater treatment facility after December 31, 1981.

C. The population served by the wastewater treatment facility is 1,500 or less.

D. The municipality's wastewater treatment facility is unable to meet performance standards. The municipality shall notify the commissioner in writing of the wastewater treatment facility's failure before initiation of operation or no later than one year following initiation of operation.

E. The inability of the municipality's wastewater treatment facility to meet performance standards is not the result of the failure of innovative or alternative technology components.

F. The municipality has not received a grant under the corrective action grants program.

7075.1040 [Emergency] ELIGIBLE COSTS FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Construction costs.** Only construction costs that were eligible at the time of the original construction grant award are eligible. Construction costs incurred before a corrective action grant award are not eligible.

Subp. 2. **Administrative, engineering, and legal costs.** Fifty percent of the total administrative, engineering, and legal costs (collectively), directly attributed to the corrective action, are eligible up to a maximum of 20 percent of the construction costs approved in the corrective action report.

7075.1050 [Emergency] APPLICATION FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Notice.** The commissioner shall publish in the *State Register* a notice that applications for corrective action grants will be accepted. The notice will contain the deadline date for submittal of applications and will precede the deadline by at least 60 days.

Subp. 2. **Application.** The municipality shall apply for a corrective action grant on a form provided by the commissioner. The municipality shall also submit the following information for review and approval:

A. a corrective action report approved by the commissioner including:

(1) an analysis of the causes of the wastewater treatment facility's failure to meet performance standards;

(2) a selected alternative for corrective action including a preliminary design and cost estimate; and

(3) a schedule for undertaking the selected corrective action;

B. plans and specifications necessary to implement the approved corrective action;

C. a plan for the recovery of the costs of the proposed corrective action including a report on the current status of negotiations or litigation;

D. financial statements for the three most current fiscal years, if available; and

E. other information necessary to clarify the application.

Subp. 3. **Submittal date.** The application must be submitted to the commissioner or postmarked by the noticed closing date.

Subp. 4. **Incomplete applications.** Applications that do not meet the requirements of subpart 2 by the deadline date for submittal of applications are ineligible for funding for that application cycle.

7075.1060 [Emergency] RANKING OF APPLICATIONS FOR CORRECTIVE ACTION GRANTS PROGRAM.

The agency shall rank the applications based upon:

A. The municipality's lack of financial ability to pay for the corrective action based upon an evaluation of debt per capita, mill levy, adjusted assessed valuation, median income, current and proposed user charges, and any additional factors that the municipality may offer, such as percentage of population with a fixed income or population decline, that would support the municipality's inability to wholly finance the corrective action. A municipality's documented financial need shall positively affect its ranking.

B. The extent to which the proposed corrective action will make cost effective and efficient use of grant funds such that a municipality's effort in funding a portion of the corrective action or actively pursuing legal redress through the avenues available will have a significant positive impact on its ranking. The factors to be considered are:

(1) the municipality's prior and current efforts in correcting the performance failure including negotiation and litigation, local costs incurred, pursuit of other funding sources; and

(2) the municipality's proposed financial participation in the cost of the corrective action.

C. The potential for direct human contact with untreated or partially treated wastewater on the surface of the ground, or the potential for imminent contamination of a drinking water supply.

7075.1070 [Emergency] DETERMINATION OF GRANT AWARDS FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Selection of projects.** The agency shall select projects to be funded in priority order on the basis of rank established according to part 7075.1060 [Emergency]. The agency is not obligated to allocate the total amount of funds set aside for this program. The agency may deny funding to municipalities based on the criteria in part 7075.1060 [Emergency].

Subp. 2. **Public participation.** Items A to C govern public participation.

A. The commissioner shall prepare a corrective action grants funding proposal including the basis for grant awards and make it available to the public at least 45 days before adoption. The commissioner shall mail a free copy of the proposal to any interested person upon request.

B. The commissioner shall give affected municipalities at least 45 days notice of the agency board meeting at which the corrective action grants funding proposal will be acted upon.

C. Interested persons may present oral statements at the agency board meeting. The chair may place reasonable restrictions upon the time and manner in which oral comments are submitted. Written statements may be served on the agency board any time up to five days before the meeting.

Subp. 3. **Amount of award.** The amount of the award will be the amount requested by the municipality in the application, not to exceed the eligible costs approved in the corrective action report.

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.

Subp. 4. **Recovery of costs.** The municipality is required to pursue recovery of costs for the corrective action from responsible persons as a condition of the grant award.

Subp. 5. **Amendments to award.** The agency shall not amend the grant amount unless the grant amount exceeds the costs actually incurred by the municipality.

7075.1080 [Emergency] EMERGENCY PROVISIONS FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Eligibility for participation.** A municipality meeting the eligibility requirements in part 7075.1030 [Emergency] with an unfinished construction project seriously delayed due to major design or construction failures may apply for an emergency corrective action grant.

Subp. 2. **Eligible costs.** Costs that are eligible under part 7075.1040 [Emergency] are eligible under an emergency corrective action grant. Costs incurred before the award of an emergency corrective action grant are not eligible unless the municipality has requested and received from the commissioner written preservation of eligibility before costs are incurred. Written preservation of eligibility does not guarantee funding.

Subp. 3. **Application.** An eligible municipality may apply for an emergency corrective action grant at any time. The application must be made in accordance with part 7075.1050 [Emergency], subpart 2, and must also include a written discussion of the anticipated financial consequences if the municipality does not receive an emergency corrective action grant.

Subp. 4. **Evaluation of applications.** The commissioner shall evaluate and approve or deny applications based upon the following criteria:

A. the extent to which failure to take immediate corrective action will cause a significant increase in the total cost of the project;

B. the municipality's lack of financial ability to pay for the corrective action under part 7075.1060 [Emergency], item A; and

C. the potential for health impacts under part 7075.1060 [Emergency], item C.

Subp. 5. **Grant award.** Upon approval of an application, the commissioner may award a grant. The amount of the grant will be up to 80 percent of the total eligible costs as approved in the corrective action report. If a municipality's application for an emergency corrective action grant is denied, the municipality may then apply for a corrective action grant under part 7075.1050 [Emergency].

Subp. 6. **Report to agency board.** The commissioner shall report the award of a corrective action grant under this part to the agency board as soon as possible, but in any case within 60 days.

7075.1090 [Emergency] PAYMENTS FOR CORRECTIVE ACTION GRANTS PROGRAM.

The municipality shall make periodic payment requests for eligible costs as costs are incurred. The commissioner shall make payments based on the percentage established in the grant award. The commissioner shall withhold the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards as specified in the grant agreement, and has met the recovery of cost requirement specified in the grant agreement.

7075.1095 [Emergency] RECOVERY OF COSTS FOR CORRECTIVE ACTION GRANTS PROGRAM.

Subpart 1. **Repayment.** The municipality shall pay to the state the amount of any costs recovered, through litigation or negotiated settlement, from persons responsible for the failure of the wastewater treatment facility, proportionally to the state's monetary participation in the corrective action grant project. The amount of repayment will not exceed the amount of the grant.

Subp. 2. **Approval of negotiated settlement.** The municipality shall obtain written approval from the commissioner of a negotiated settlement before entering into the settlement.

Subp. 3. **Failure to pursue recovery.** The commissioner may stop payment on or require repayment of the corrective action grant if the municipality fails to pursue recovery of costs as specified in the grant agreement or if the municipality enters into a negotiated settlement without the commissioner's written approval.

Board of Optometry

Proposed Permanent Rules Relating to Fees

Second Notice of Intent to Adopt Rules Without a Public Hearing

In order to comply with the requirements of *Minnesota Statutes*, section 16A.128, subdivision 2a, the Minnesota Board of Optometry

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Amendments to the Rules Relating to Reimbursement of 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 November 30, 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 November 25, 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.

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

1. Mary Martin of Mary Martin & Associates and Nancy Gurney of the Minnesota Habilitation Coalition recommended revisions in Part 9553.0035, subpart 16. The commentators recommend substituting the word "same" for the phrase "at the lowest rate" and deleting the reference to "comparable services". The Department disagrees with the commentators' interpretation of the proposed language. The inclusion of the language "at the lowest rate paid to the training and habilitation services vendor by the county for comparable services at that site" is necessary to ensure that the medical assistance program is not used to subsidize the cost of services to persons who are not MA eligible. This language is necessary because Minnesota Statutes, section 256B.501 mandates that the medical assistance rate paid should cover only "costs that must be incurred". If the services could be provided at a lower rate this criteria would not have been met. Ms. Martin comments that the phrase "lowest rate paid to the vendor" prohibits the department from moving to a reimbursement system with hourly rates or rates which are based on client need. However, if the provision is read as a whole it is clear that the language would be

equally applicable to hourly rates or rates based on client need. In fact, the language regarding comparable services was specifically included to make sure the language would apply if the facility did not have a flat rate. It is necessary to refer to comparable services to enable the facility to charge different rates for different types or amounts of services. The term comparable is not specifically defined because it is used in a manner consistent with the common definition of the term. Because the language in subpart 16 as proposed does allow for rate differentials tied to services as recommended by Ms. Gurney, while ensuring that medical assistance dollars are appropriately spent, the department retains the language as proposed.

2. Carol Lee of Harry Meyering Center, Inc. recommended expanding part 9553.0050, subpart 3, item D, subitem 1 to include class B facilities that are making substantial alterations to serve persons with special needs. The department has reviewed this provision and has decided that the reasonable costs of units (a) to (e) should be allowed for all facilities that are eligible for a one-time adjustment. Therefore, the department has modified this provision.

3. D. Bill Olson of Habilitative Services, Inc. recommends that the department omit the phrase "once every three years" found in part 9553.0050, subpart 3, item H. This phrase establishes a time limit for the one-time rate adjustment. The department included this limit on the payment of a one-time rate adjustment because allowing facilities to adjust their rates at any time would seriously impair the department's ability to effectively administer the rate setting system. Eliminating the limit on how often a facility can apply for a one-time rate adjustment could result in a facility having more than one rate adjustment in effect at any given time. This would make it virtually impossible to determine whether planned objectives were met with the appropriate resources; whether the resources were properly spent for the designed purpose; and if these criteria are not met, which "one-time rate adjustment " should be decreased and by how much.

The department adopted this provision to address conditions that could not be addressed within the facility's current rates and did not intend for it to be used unless necessary. Limiting the one-time rate adjustment to once every three years also encourages facilities to consider whether to apply for a rate adjustment for a small cost change or to wait until the need is substantial, thereby, increasing the likelihood that this provision will be used only when necessary.

The amendments proposed to this rule part were intended to enable facilities to make substantial modifications in order to serve more severely handicapped persons. The department does not anticipate that the time constraints will be problematic for these facilities because the implementation of such changes requires the careful identification of the clients to be served, the assessment of their needs, and the identification of appropriate staff resources, all of which take a significant amount of time.

Because the department believes that the proposed change would impair the department's ability to administer the program and would decrease the incentive for carefully planning the use of the one-time rate adjustment, the department retains the provision as proposed.

CONCLUSIONS

I hereby conclude that:

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

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

3. All modifications made to the proposed rule are not substantial changes.

4. The rules, as modified, are necessary and reasonable.

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

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

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

NOW, THEREFORE, IT IS ORDERED that the amendments identified as Amendments to Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, parts 9553.0010 to 9553.0080 (as modified) are adopted this 14th day of January, 1988, pursuant to authority vested in me by Minnesota Statutes, section 256B.501, subdivisions 1 to 3.

1/14/88

for SANDRA S. GARDEBRING
Commissioner

In the Matter of the Adoption
of Amendments to the Rules Relating
to Reimbursement of Intermediate
Care Facilities for Persons with Mental
Retardation or Related Conditions,
Parts 9553.0010 to 9553.0080

DECLARATION OF
COUNSEL

I, Julie Harris, 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 1810.

Julie K. Harris
Special Assistant
Attorney General

Dated: January 14, 1988

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to the Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, January 14, 1988 for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on November 30, 1987, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule is available upon request from Jane Delage.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts of subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Telephone Number: (612) 296-1288

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Jane Delage
Policy Coordination Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3818

Jane Delage

Dated: 1/14/92

Jane Delage
Director
Policy Coordination Division

In the Matter of the Proposed Adoption of Amendments to the Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Parts 9553.0010 to 9553.0080

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jane M Delage, being sworn, says:

That on the 14th day of January, 1988, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Jane M Delage
(Name)

Director, Policy Coordination
(Title)

Subscribed and sworn to before me this 14 day of January, 1988.

Claudia A. Eliason

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

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to the Rules Relating to Reimbursement of Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition

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The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts of subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

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Any written comments submitted to the Attorney General must be submitted simultaneously to:

Jane Delage
Policy Coordination Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3818

Jane Delage

Dated: 1/14/88

Jane Delage
Director
Policy Coordination Division

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES RELATING TO REIMBURSEMENT OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

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 25th day of November, 1987.

Nancy Stouble

Their Rule #53

TO: Rita Desmond
515 Transportation Building
St. Paul, MN 55155

FROM: Jane Delage
Policy Coordination Division

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Amendments to the Rules Relating to the Reimbursement of 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.

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

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