

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST 0874

File No. 1453
DATE RECEIVED 2/22/88
REVIEW DATE 3/2/88
DUE DATE 3/7/88

APPROVED 3/2/88
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.T810
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED X
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)
✓ Notice to Solicit Outside Information/Opinion
11/2/87 Date published in State Register
— Comments
— Petition for Adoption of a Rule
— Board's Authorizing Resolution
✓ Proposed rule
✓ Revisor's Certificate
✓ Notice of Intent to Adopt Rule
256B.501(2)+(10) Statutory Authority
— Small Business Statement
✓ Expenditure of public money statement
✓ Signature
✓ Statement of Need and Reasonableness
— Small Business Statement
— Fees - § 16A.128
✓ Affidavit of Mailing Notice of Intent to Adopt Rule
1/13/88 Date (30)/25 days before adoption
✓ Publication in State Register
1/18/88 Date (30)/25 days before adoption
— Resolution Adopting
✓ Findings of Fact, Conclusions & Order Adopting
2/22/88 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

pdl

ATTORNEY GENERAL

March 2, 1988

DAN LIPSCHULTZ
Rules Division
Department of Human Services

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Payment Rates for ICF/MR's

The above-referenced rule has been approved as to its legality by the Attorney General on March 2, 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

AG COPY

Department of Human Services

Adopted Permanent Rules Relating to Payment Rates For ICF/MR's

Rules as Adopted

9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. **Required cost reports.** No later than April 30 of each year, the provider shall submit an annual cost report on forms supplied by the commissioner in order to receive medical assistance payments. The reports must cover the reporting year ending December 31, except that for reporting years ending on or after December 31, 1987, a provider operating a facility that is attached to a nursing home that is reimbursed under parts 9549.0010 to 9549.0080 may elect to report the facility's costs and statistical information for the period covered by the nursing home's reporting year. If a certified audit has been prepared, it must be submitted with the cost report. In addition, a provider or provider group which has 48 or more licensed beds shall submit an annual certified audit of its financial records obtained from an independent certified public accountant or licensed public accountant. The examination must be conducted in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants and generally accepted accounting principles. A government owned facility may comply with these auditing requirements by submitting the audit report prepared by the state auditor.

Subp. 2. to 16. [Unchanged.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

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

facility's allowable historical operating cost per diem shall be established according to items A to F.

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

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

(a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the

maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f).

(3) [Unchanged.]

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

(a) to (c) [Unchanged.]

For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E.

(5) [Unchanged.]

B. to F. [Unchanged.]

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

A. For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the

standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f).

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the facility by the number of days in the facility's reporting year. For rate years beginning on or after October 1, 1988, a facility that has reduced its licensed bed capacity after January 1, 1988, may, for the purpose of computing the property-related payment rate under this subpart, establish its capacity days for each rate year following the licensure reduction based on the number of beds licensed on the previous August 1, provided that the commissioner is notified of the change by August 4. The notification must include a copy of the delicensure request that has been submitted to the commissioner of health.

B. and C. [Unchanged.]

Subp. 5. to 7. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 2 – 1988

Joan Anderson Growe
Secretary of State

2:30 pm

APPROVED AS TO FORM AND LEGALITY

March 2 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

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.

Minnesota Environmental Quality Board

Power Plant Siting Program

Notice of Annual Hearing

The Minnesota Environmental Quality Board will hold the annual public hearing on the Power Plant Siting and Transmission Line Routing Program, as required by the Power Plant Siting Act, *Minnesota Statutes* § 116.58 and *Minnesota Rules*, Part 4400.4300, at 9:00 a.m., Saturday, November 21, 1987, in Conference Room 301 of the Centennial Office Building, in St. Paul, Minnesota. Parking is available in the ramp East of the building. Please use the East entrance between the ramp and the building.

The annual hearing is intended to afford interested persons an opportunity to be heard regarding any aspects of the Board's activities, duties, or policies pursuant to the Power Plant Siting Act.

All persons will be afforded the opportunity to be heard through the presentation of oral or written statements. Written statements marked for the annual hearing record may also be submitted for inclusion in the annual hearing by delivery to the Board's offices at 300 Centennial Office Building by the close of business December 4, 1987.

Direct all inquiries to:

George Durfee
Power Plant Siting Program
Minnesota Environmental Quality Board
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155
(612) 296-2878

Department of Human Services

Long Term Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Medical Assistance 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 amendment of the rules governing medical assistance payment rates for intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR). The rules affected are part 9553.0050, subparts 1 and 2, relating to the appropriate inflation index to be used in annually adjusting the allowable historical operating cost per diem and the administrative operating cost limit; part 9553.0050, subpart 1, relating to the maintenance operating cost limit; part 9553.0050, subpart 2, relating to the efficiency incentive computation; part 9553.0060, subpart 4, relating to the recognition of changes in the licensed capacity of ICFs/MR beyond the reporting year; and part 9553.0041, subpart 1, relating to allowing ICFs/MR attached to nursing

homes to report costs over the same time period as the nursing home. The adoption of the rules is authorized by *Minnesota Statutes*, section 256B.501, subdivisions 1 to 3, which permits 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 State Department of Human Services requests information and opinions concerning the subject matter of the rule. 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:

Charles Osell
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55105

Oral statements will be received during regular business hours over the telephone at (612) 297-3463 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.

Office of the Secretary of State

Correction to Membership Listing for Council on Disability

The membership data on the Council on Disability published in the Compilation Issue of the *State Register*, October 26, 1987, Volume 12, Number 17 was incorrect. The correct information on this agency is listed below.

CURRENT MEMBERS	Appt. Date	Term Ends	Cty.	Leg. Dist.	Sex	Political Party	Race	Phone	Address
*Ehrlichmann, Michael	8603	8801	27	57B	M	D	C	612-348-3086	433 S 7th St Suite 2001 Mpls 55415
*Gangeness, Earl	8412	8801	04	04A	M	D	C	218-751-2160	130 Pinecrest Ct NW Bemidji 56601
*Holtackers, Thomas	8412	8801	55	33A	M		C	507-288-8242	2204 Valleyhigh Dr NW Rochester 55901
*Nelson, Linda	8501	8801	27	43B	F		C	612-221-2731	640 Jackson St St Paul 55101
*Ormasa, Jan	8412	8801	62	65A	F	D	O	612-227-5106	801 Laurel Ave St Paul 55104
*Shaw, Thomas	8412	8801	62	64B	M	D	C	612-698-3069	2044 Morgan St Paul 55116
*Sindt, Clarence Jr	8412	8801	19	37A	M	D	C	612-463-2024	5630 W 177th St Farmington 55024
Aamold, Susan	8601	8901	57	10B	F		C	218-739-7213	1501 College Way #103 Fergus Fls 56537
Asher, Gregg	8701	9101	07	23	M		C	507-389-6917	313 Bells Ave Mankato 56001
Chong, Peggy	8701	9101	27		F		C	612-332-5414	3530 Dupont N Mpls 55412
Graig, Charles	8701	9001	69	08	M	D	C	218-984-3002	Rt 2 Box 29 Embarrass 55732
Hirschenberger, Richard	8701	9101	18	13	M	D	C	218-828-2250	4321 Cedardale Ln Baxter 56401
Koep, Lester	8601	8901	34	22B	M	D	C	612-796-5505	Rt 1 Box 43 Spicer 56288
Krogstad, Dianna	8601	8901	62	64	F	D	O	612-729-7381	851 Goodrich Ave St Paul 55105
Mc Carthy, Joanne	8601	8901	69	06A	F	N	C	218-744-5423	1151 W Long Lake Rd Eveleth 55734
Moon, Steven	8601	8901	62	64	M	D	C	612-222-5863	1540 Ashland Ave #21 St Paul 55104
O'Hara-Anderson, Mary	8701	9101	27	61	F	D	C	612-646-8342	2121 S 9th St Mpls 55404
Ortis, Anita	8701	9101	69	05A		N	H	218-263-3036	414 E 21st St Hibbing 55746
Sams, Rev David	8601	8901	17		M	N	C	507-831-5074	509 17th St Windom 56101
Steidl, Suzanne	8701	9101	57	01B	F	D	C	218-681-2700	705 S Crocker Thief River Falls 56701
Wingen, Kathleen	8601	8901	73	17B	F	D	C	612-251-1612	847 Driftwood Dr #5 St Cloud 56301
Webster, John	8709	8901	27	60B	M	D	B	612-822-7904	3754 Portland Ave., S., Mpls 55407

Department of Human Services

Proposed Permanent Rules Relating to Payment Rates For ICF/MR's

Rules as Proposed

9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. **Required cost reports.** No later than April 30 of each year, the provider shall submit an annual cost report on forms supplied by the commissioner in order to receive medical assistance payments. The reports must cover the reporting year ending December 31, except that for reporting years ending on or after December 31, 1987, a provider operating a facility that is attached to a nursing home that is reimbursed under parts 9549.0010 to 9549.0080 may elect to report the facility's costs and statistical information for the period covered by the nursing home's reporting year. If a certified audit has been prepared, it must be submitted with the cost report. In addition, a provider or provider group which has 48 or more licensed beds shall submit an annual certified audit of its financial records obtained from an independent certified public accountant or licensed public accountant. The examination must be conducted in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants and generally accepted accounting principles. A government owned facility may comply with these auditing requirements by submitting the audit report prepared by the state auditor.

Subp. 2. to 16. [Unchanged.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

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

Approved by Revisor

facility's allowable historical operating cost per diem shall be established according to items A to F.

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

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

(a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the ~~percentage change in the all urban consumer price index (CPI U) for Minneapolis Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period~~ percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated

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resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f).

(3) [Unchanged.]

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

(a) to (c) [Unchanged.]

For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E.

(5) [Unchanged.]

B. to F. [Unchanged.]

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

A. For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be

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adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f).

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and

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(4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the facility by the number of days in the facility's reporting year. For rate years beginning on or after October 1, 1988, a facility that has reduced its licensed bed capacity after January 1, 1988, may, for the purpose of computing the property-related payment rate under this subpart, establish its capacity days for each rate year following the licensure reduction based on the number of beds licensed on the previous August 1, provided that the commissioner is notified of the change by August 4. The notification must include a copy of the delicensure request that has been submitted to the commissioner of health.

B. and C. [Unchanged.]

Subp. 5. to 7. [Unchanged.]

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Payment Rates For ICF/MR's

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9553

INCORPORATION BY REFERENCE:

Rule Number:	Material Incorporated:
9553.0050, subpart 1	Health Care Costs, published by Data Resources, Inc.

The attached rules are approved for publication in the State Register

Lorna M. Breiter

Lorna M. Breiter
Assistant Deputy Revisor

Department of Human Services

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition, parts 9553.0041, 9553.0050 and 9553.0060

NOTICE OF INTENT TO ADOPT AMENDMENTS TO A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 2 and 10. 1

All persons have 30 days or until 4:30 p.m. on February 17, 1988 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. 2 3

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. 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. 4 6 7

Comments or written requests for a public hearing must be submitted to: 5

Chuck Osell
Minnesota Department of Human Services
Long Term Care Management
444 Lafayette Road
St. Paul, MN 55155
(612) 297-3463

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

The proposed rule amendments govern the reimbursement rates for ICF/MR facilities. The amendments affect the facilities as well as the state and counties who share in the cost of reimbursement.

The amendment to part 9553.0041, subpart 1, permits ICF/MR facilities that are attached to nursing homes to substitute ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under part 9553.0041.

The amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f) changes the source used to determine the inflation index for use in calculating the group administrative cost per licensed bed limit. Currently the rule identifies the historical consumer price index for Minneapolis/St. Paul as the source of the inflation index. The amendment replaces the historical index with the forecasted index published by Data Resources, Inc.

The amendment to part 9553.0050, subpart 1, item A, subitem (2) establishes new limits for the maintenance operating cost category. The new limits permit costs in the maintenance cost category to exceed the current limit by 25 percent for the portion of the rate year beginning January 1, 1988 and ending September 30, 1988. The maintenance operating cost category limit will be indexed by the forecasted index published by Data Resources, Inc. annually each rate year thereafter.

The amendment to 9553.0050, subpart 1, item A, subitem (4) specifies how program payment rates made during the reporting year are to be used in computing the efficiency incentive for rate years beginning on or after October 1, 1988.

The amendment to part 9553.0050, subpart 2, item A, provides for the establishment of the total operating cost payment rate using an annualization of the inflation index forecasts.

The amendment to part 9553.0050, subpart 2, item E, provides that the computation of the current efficiency incentive be based on "allowable" operating costs after desk audit and limits for rate years beginning on or after January 1, 1988.

The amendment to part 9553.0060, subpart 4, item A, makes it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1).

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

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

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: 12

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Adoption of these rules will result in additional spending by local public bodies in excess of $100,000 in the second year 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 attached. 13

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to: 7

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Date: 1-6-55

SANDRA S. GARDEBRING
Commissioner

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

FISCAL NOTE

The Department has proposed several changes to Minnesota Rules, parts 9553.0010 to 9553.0080 (Rule 53). The following is a brief summary of the changes that are being proposed.

- o Change the inflation index from the Consumer Price Index (CPI-U for Minneapolis/St. Paul) to the Average Hourly Earnings in Nursing and Personal Care Facilities Index (a wage driven index).

- o Adjustment to increase the program operating cost base for increased staffing needs due to changes in standards.

- o Increase the historical maintenance cost limitation to provide a corridor for cost variations.

- o Refined the efficiency incentive computation to reward efficient providers.

- o Changed the computation of capacity days for property costs so that reductions in actual capacity days due to de-licensure more closely relate to the facility's rate year.

Since most of the changes affect costs of the Medical Assistance Program through alterations in the rate-setting formula, the Department incorporated the proposed changes into its computerized rate-setting system to estimate the fiscal impact. Also, because a number of facilities were not included in the computerized rate-setting program as they are on interim/settle-up rate status due primarily to negotiated closure agreements, the Department separately estimated the budgetary impact of agreements with those facilities.

In calculating the overall fiscal impact of these proposed amendments the following factors must be considered: the timing difference between the provider's rate year, and the State's fiscal year; the fact that for the first rate year the changes in

the reimbursement formula will be in effect for 9 months of the rate year; and that payments are made a month after services are provided. Given these factors the additional fiscal impact of the changes can be summarized as follows:

Medical Assistance Costs (ooo's)

	Total	Federal	State	County
FY 1988	$ 900.0	$ 484.6	$ 374.0	$ 41.4
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Total Impact for the 88/89 Biennium	$6,150.0	$3,318.6	$2,548.6	$282.9

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

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

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

STATEMENT OF NEED AND REASONABLENESS

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 (ICFs/MR) 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 were developed to implement Minnesota Statutes, section 256B.501, subdivisions 1 to 3, and were effective on December 16, 1985.

The rule parts were promulgated in accordance with section 1902(a)(13)(A) of the Social Security Act, codified as United States Code, title 42, section 1396(a)(13)(A) and the Code of Federal Regulations, title 42, part 447.

This Statement of Need and Reasonableness is prepared in compliance with the Administrative Procedure Act, Minnesota Statutes, sections 14.131 and 14.23.

Legislative Hist

Minnesota Statutes, section 256B.501, subdivisions 1 to 3 require the Commissioner of Human Services to establish, by rule, procedures for determining rates for care of residents of ICFs/MR. Subdivision 3 provides that the rates should cover only "...costs that must be incurred for the care of residents in efficiently and economically operated facilities", and:

> "In developing the procedures, the commissioner shall include:
>
> (a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy;
> (b) limits on the amounts of reimbursement for property, general and administration, and new facilities;
> (c) requirements to ensure that the accounting practices of the facilities conform to generally accepted accounting principles;
> (d) incentives to reward accumulation of equity; and

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

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

A public hearing on the permanent rule was held on August 21, 22, and 23, 1985 and the rule was approved by the Office of Administrative Hearings. Rule 53 was published in its final form in the State Register on December 9, 1985, and was effective on December 16, 1985, for payment rates established on or after January 1, 1986. Permanent Rule 53 has since been amended and the amendments were published in their final form in the State Register on June 29, 1987, and were effective on July 6, 1987.

Amendment Process

The Department published a "Notice of Solicitation of Outside Information or Opinions" in the State Register on November 2, 1987 (12 S.R. 961). Advisory Committee meetings were held November 3, November 12, November 19, and December 15, 1987. The Department's and the industry's experience with Minnesota Rules, parts 9553.0010 to 9553.0080 led to the identification of several issues that needed to be addressed to improve the providers' ability to manage their facilities. The proposed amendments address those issues to ensure that quality care be provided in a cost-effective manner. Several modifications were made to the proposed amendments based on the input received from the advisory committee members. The changes considered by the advisory committee are:

a. Review the appropriateness of the Consumer Price Index for use as an inflation factor.

b. Consider adjusting the program operating cost base to provide additional resources to meet increased Federal and state requirements.

c. Consider modifications to the maintenance cost limitation.

d. Consider changes in the method used to calculate the efficiency incentive.

e. Consider modifying the computation of capacity days for facilities which reduce their number of licensed beds after the end of the reporting year.

f. Review the requirement that all facilities report costs on a calendar year basis.

A list of the advisory committee members is contained in Exhibit A.

The Need and Reasonableness of Specific Rule Provisions

Following are discussions of the need for and reasonableness of each rule part to be amended.

1. Part 9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. **Required cost reports.**

The change proposed in this subpart relates to the annual cost reports that must be filed under Rule 53. Currently, all ICF/MR providers annually must file a cost report on a calendar year basis. In addition to being certified under the Medical Assistance Program as ICFs/MR, two facilities are also certified as nursing homes. Under Minnesota Rules, parts 9549.0010 to 9549.0080, these nursing homes are required to file annual cost reports, with the reporting year ending September 30. The result is a duplication of administrative and accounting costs in each year for these dual certified facilities to comply with both reimbursement rules. Additional costs are incurred to separately account for, allocate, and report costs twice each year. It is necessary to relieve this unnecessary administrative burden to promote administrative efficiency.

The proposed amendment permits ICF/MR facilities that are attached to a nursing home to substitute the costs identified as ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under this part. It is reasonable to use the information on ICF/MR costs determined at the time the nursing home's costs are identified

so that duplication of effort is eliminated and the possibility of some costs being paid both through the nursing home reimbursement rule and through Rule 53 is avoided.

The ICF/MR costs identified on September 30 are merely being substituted for those costs which otherwise would have been provided. The other provisions of Rule 53 are applied to those costs without change.

2. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.**

Item A, subitem (1), unit (f).

The purpose of unit (f) is to provide for the annual inflation indexing of the group administrative cost per licensed bed limits established in unit (e) for the rate year beginning October 1, 1987. The group administrative cost per licensed bed limit was established for the entire rate year beginning October 1, 1987. For all subsequent rate years beginning on or after October 1, 1988, this limit is to be indexed. The current index required by the rule is the consumer price index (CPI-U) for Minneapolis/St. Paul for the reporting year. After review by the advisorycommittee and the Department, it was determined that, under a prospective reimbursement system, the use of a historical index on variable costs (operating costs) could result in an inflation factor that may not always adequately reflect the costs that will be incurred during the rate year. Since the rate year lags the reporting year by nine months, a forecasted index is believed to be more appropriate, fair and reasonable.

A forecasted inde . rovides an adjustment for anti .ated economic conditions for the period in which the costs will be incurred. In addition, since the ICF/MR industry's payroll-related costs account for more than 60 percent of its operating costs, a wage-driven index is more appropriate. Of the various indices reviewed by the advisory committee, it was determined the average hourly earnings in nursing and personal care facilities index (SIC 805) most closely represents cost changes in ICFs/MR.

It is reasonable to use the percentage moving average index for the fourth quarter of the rate year because that represents the forecasted percentage change in the rate year over the previous fiscal year. It is necessary and reasonable to state that the forecasted index is to be determined from the second quarter of the calendar year following the reporting year to fix a point in time i which the index is to be established and to provide adequate time for the Department to obtain the index before the date (September 1) that the payment rates must be determined.

The Department intends to use the SIC 805 index forecast by Data Resources, Inc. (DRI). DRI is a nationally recognized econometric firm which forecasts a variety of indices for many users such as Federal, state, and local governments, and private industry. It is necessary for the Department to rely upon DRI for the forecasting of SIC 805, since the reputation, expertise, and knowledge of DRI can not be duplicated by Department staff. It is reasonable to use DRI since the Department currently purchases the forecasting service provided by DRI for many other purposes such as budgeting and the updating of projected costs of its

various programs and services. It is also necessary and reasonable to state where the historical portion of the forecasted index can be found so that the accuracy of the forecasted index can be independently verified.

The initial base period for the forecasted index was the second quarter of 1987. For purposes of forecasting this index, Data Resources, Inc. will from time to time reestablish the base period in conjunction with their quarterly updates of the forecasted index (SIC 805).

3. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.**

Item A, subitem (2).

These provisions establish limits for the maintenance operating cost category. The current limit is specific to each facility and is based on the facility's revenues paid in the maintenance cost category during the reporting year. The Department and the advisory committee have concluded that the current limit is too restrictive given the significant potential variability of several cost items included in this cost category. Those line item costs subject to the greatest variability include repairs and maintenance, utility expenses, and food costs. To accommodate this variability, it is necessary to establish a corridor which will permit costs in the maintenance cost category to exceed the current limit by up to 25 percent for the portion of the rate year beginning January 1, 1988, and ending September 30, 1988. The new maintenance limit provides the needed flexibility for facilities to cope with much of the expenditure

variations. It is reasonable to establish the new maintenance limit at 25 percent above the current limit because the variability in these costs can be managed by an efficient and economical provider within the proposed limit. It is necessary and reasonable to continue some limitation on maintenance costs to remain in compliance with the enabling legislation, Minnesota Statutes, section 256B.501, subd. 3(a).

To avoid the potential for exponential growth in the maintenance operating cost category, it is necessary to index the new maintenance limit for future rate years by the same inflation index used in subitem (1) unit (f). It is reasonable to use the same index to avoid confusion and to be consistent with the index applied to the administrative cost limit (see the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f)).

It is necessary to make the change effective January 1, 1988, so that facilities may obtain the maximum benefits of this change within the constraints of the State's Medical Assistance budget for ICFs/MR, and so that the amendments to the state plan can be made on a timely basis for the state to receive full Federal financial participation. To receive Federal financial participation, the amendments must be effective in the same quarter that the state plan changes are filed with the Health Care Financing Administration of the United States Department of Health and Human Services.

4. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.**

Item A, subitem (4).

The purpose of this addition to subitem (4) is to fill a void in item A

with respect to ... the program payments made du_g the reporting year are to be used in the computation of the efficiency incentive for rate years beginning on or after October 1, 1988. Since the current provisions of item A do not address this issue, it is necessary for the Department to clarify the rule. The proposed computation represents the method used for rate years beginning October 1, 1986, and October 1, 1987. The computation establishes the program revenues paid by the Department during the facility's report year. In subpart 2, item E, this amount is compared to program expenditures during the year. The rule does not place maximum limits on program costs. However, subpart 2, item E does require that program costs not be decreased, thus establishing a minimum limitation. It is reasonable to compute the minimum program cost limit in the same way as was done previously, since the sole purpose remains the determination of a facility's eligibility for the efficiency incentive.

5. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 2. **Establishment of total operating cost payment rate.**

Item A.

Subpart 2 provides for the establishment of the total operating cost payment rate. The subpart establishes the necessary intermediate steps for the transition from a facility's allowable historical operating costs per diem in each of the three categories (program, maintenance, administrative) to a prospective operating cost payment rate.

Item A specifies that a facility's allowable historical operating cost per diem be indexed. It is necessary to specify that the CPI-U index will continue to be used for operating cost payment rates established for time

periods prior to uary 1, 1988, to make it clea nat the amendment refers only to time periods after January 1, 1988. This is reasonable for the reasons concerning the MA budget and Federal financial participation given in the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (2).

The index to be used after January 1, 1988, is the same index required by subpart 1, item A, subitem (1), unit (f), except that that index must be annualized to account for the time lag between the reporting year and the rate year. For the rationale for the particular index used, see the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f).

In addition to the application of the annualized inflation factor, the program allowable historical operating cost per diem is to be further adjusted by a factor of 2.46 for the period January 1, 1988, through September 30, 1988. It is necessary to increase the annualized inflation factor by 2.46 to compensate providers for additional program costs associated with recent increased staffing requirements caused by new Federal and state regulatory and staffing standards, as well as the for the additional staff that may be required to serve newly admitted residents from state regional treatment centers. While part 9553.0050, subpart 3 (one-time adjustment to program operating costs) and Minnesota Rules, parts 9510.1020 to 9510.1140 (Rule 186) provide the necessary financial resources for substantial changes in a facility's program or for significant individual needs of some resident's, other less significant required changes that may not be included under the provisions in these rules may

not be adequately or timely reimbursed. This adjustment is a reasonable way to account for such increased costs in lieu of the client-based reimbursement system, now being developed.

6. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 2. Establishment of total operating cost payment rate.

Item E.

Item E provides an efficiency incentive on total operating costs excluding those costs included in the special operating cost category. The amendment provides that the computation of the current efficiency incentive be based on "allowable" operating costs for rate periods beginning on or after January 1, 1988. This change, in conjunction with the change in part 9553.0050, subpart 1, item A, subitem (2), will permit a greater number of facilities to be eligible for an efficiency incentive. The requirements that the facility's total operating cost excluding special operating costs be below the sum of its historical operating cost limits, and that the facility's program allowable historical operating costs not be below the respective limit on those costs, is not affected by the amendment. Without the latter constraint, a facility could generate efficiency dollars by eliminating program employees.

This amendment is consistent with a similar methodology used in the nursing home reimbursement rule (rule 50). The proposed change is both necessary and reasonable to reward economically efficient providers who operate below the computed historical operating cost limits. The maximum amount of the efficiency incentive of $2 per resident per day remains the same and must be limited for cost containment purposes.

In addition, it is reasonable to place a limit on the efficiency incentive so as not to encourage providers to reduce necessary costs in areas that support the ongoing programs of the facility.

7. Part 9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 4. **Computation of property related payment rate.**

Item A.

Item A in subpart 4 provides the method of computing the facility's capacity days that are used in determining the property-related payment rate. Currently, the facility's number of licensed beds during the reporting year were multiplied by the number of days in the reporting year. With the state's emphasis on providing services in alternate, less restrictive service settings, a number of facilities are reducing the number of licensed and certified ICF/MR beds. The proposed amendment is necessary to make it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1). The use of a later date is reasonable because it allows the facility's actual capacity to be more closely related to that of the rate year while retaining the integrity of a prospective reimbursement system. The use of licensure reductions that have occurred before August 1 and that are reported to the Department by August 4 is necessary and reasonable to

allow for the timely audit of the information and computation of payment rates before the deadline of September 1 provided by the rule. If a hearing is held, the Department does not expect to present the testimony of any expert witnesses.

CONCLUSION

The foregoing discussion establishes the need for and the reasonableness of the proposed amendments to parts 9553.0041, 9553.0050, and 9553.0060. 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.

1-9-95
DATE

/s/ SANDRA S. GARDEBRING
Commissioner

EXHIBIT A

RULE 53 ADVISORY COMMITTEE

Sue Abderholden
Association for Retarded
Citizens (ARC)-Minnesota
Minneapolis

Walter Baldus
Woodvale Inc.
Austin

Georgine Busch
Our House of Minnesota, Inc.
St. Paul

Patti Cullen
Minnesota Association of Health
Care Facilities
Minneapolis

Judy Douglas
Care Providers of Minnesota
Minneapolis

Roy Harley
Vasa Lutheran Children's Home
Red Wing

Eileen Harris
Valor Resources
Minneapolis

Dennis Johnson
Wadena County
Wadena

Dan Kastrul
Chez Nous, Inc.
Minneapolis

Dave Kiely
ARRM
St. Paul

Tim Madden
Dungarvin, Inc.
St. Paul

Mary Jo Mulloy
Dakota's Children, Inc.
West St. Paul

Kathleen Pine
Dakota's Children, Inc.
West St. Paul

Jean Searles
Resa, Inc.
Hopkins

Pam Voss
Phoenix Residence
St. Paul

Donald Wallaker
Lutheran Social Service of
Minnesota
Minneapolis

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS GOVERNING THE DETERMINATION OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION

AFFIDAVIT OF MAILING

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

That on the 13th day of January, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Amendments to a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy Bishop

Subscribed and sworn to before me

this 13 day of January, 1988

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 Amendments to the Rule of the State Department of Human Services Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition, parts 9553.0041, 9553.0050 and 9553.0060

NOTICE OF INTENT TO ADOPT AMENDMENTS TO A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 2 and 10.

All persons have 30 days or until 4:30 p.m. on February 17, 1988 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Chuck Osell
Minnesota Department of Human Services
Long Term Care Management
444 Lafayette Road
St. Paul, MN 55155
(612) 297-3463

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

The proposed rule amendments govern the reimbursement rates for ICF/MR facilities. The amendments affect the facilities as well as the state and counties who share in the cost of reimbursement.

The amendment to part 9553.0041, subpart 1, permits ICF/MR facilities that are attached to nursing homes to substitute ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under part 9553.0041.

The amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f) changes the source used to determine the inflation index for use in calculating the group administrative cost per licensed bed limit. Currently the rule identifies the historical consumer price index for Minneapolis/St. Paul as the source of the inflation index. The amendment replaces the historical index with the forecasted index published by Data Resources, Inc.

The amendment to part 9553.0050, subpart 1, item A, subitem (2) establishes new limits for the maintenance operating cost category. The new limits permit costs in the maintenance cost category to exceed the current limit by 25 percent for the portion of the rate year beginning January 1, 1988 and ending September 30, 1988. The maintenance operating cost category limit will be indexed by the forecasted index published by Data Resources, Inc. annually each rate year thereafter.

The amendment to 9553.0050, subpart 1, item A, subitem (4) specifies how program payment rates made during the reporting year are to be used in computing the efficiency incentive for rate years beginning on or after October 1, 1988.

The amendment to part 9553.0050, subpart 2, item A, provides for the establishment of the total operating cost payment rate using an annualization of the inflation index forecasts.

The amendment to part 9553.0050, subpart 2, item E, provides that the computation of the current efficiency incentive be based on "allowable" operating costs after desk audit and limits for rate years beginning on or after January 1, 1988.

The amendment to part 9553.0060, subpart 4, item A, makes it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1).

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

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

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 Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Adoption of these rules will result in additional spending by local public bodies in excess of $100,000 in the second year 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 attached.

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Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Date: 1-6-88

SANDRA S. GARDEBRING
Commissioner

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO PERMANENT
RULES GOVERNING THE DETERMINATION
OF PAYMENT RATES FOR INTERMEDIATE
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FISCAL NOTE

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING
THE DETERMINATION OF PAYMENT RATES
FOR INTERMEDIATE CARE FACILITIES
FOR PERSONS WITH MENTAL RETARDATION
OR A RELATED CONDITION

AFFIDAVIT OF ADDITIONAL
MAILING

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

That on the 13th day of January, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Amendments to a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

.The 87 Minnesota County Human Services Agencies

Nancy Bishop

Subscribed and sworn to before me
this 13 day of January, 1988

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 Amendments to the Rule of the State Department of Human Services Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition, parts 9553.0041, 9553.0050 and 9553.0060

NOTICE OF INTENT TO ADOPT AMENDMENTS TO A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 2 and 10.

All persons have 30 days or until 4:30 p.m. on February 17, 1988 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Chuck Osell
Minnesota Department of Human Services
Long Term Care Management
444 Lafayette Road
St. Paul, MN 55155
(612) 297-3463

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

The proposed rule amendments govern the reimbursement rates for ICF/MR facilities. The amendments affect the facilities as well as the state and counties who share in the cost of reimbursement.

The amendment to part 9553.0041, subpart 1, permits ICF/MR facilities that are attached to nursing homes to substitute ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under part 9553.0041.

The amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f) changes the source used to determine the inflation index for use in calculating the group administrative cost per licensed bed limit. Currently the rule identifies the historical consumer price index for Minneapolis/St. Paul as the source of the inflation index. The amendment replaces the historical index with the forecasted index published by Data Resources, Inc.

The amendment to part 9553.0050, subpart 1, item A, subitem (2) establishes new limits for the maintenance operating cost category. The new limits permit costs in the maintenance cost category to exceed the current limit by 25 percent for the portion of the rate year beginning January 1, 1988 and ending September 30, 1988. The maintenance operating cost category limit will be indexed by the forecasted index published by Data Resources, Inc. annually each rate year thereafter.

The amendment to 9553.0050, subpart 1, item A, subitem (4) specifies how program payment rates made during the reporting year are to be used in computing the efficiency incentive for rate years beginning on or after October 1, 1988.

The amendment to part 9553.0050, subpart 2, item A, provides for the establishment of the total operating cost payment rate using an annualization of the inflation index forecasts.

The amendment to part 9553.0050, subpart 2, item E, provides that the computation of the current efficiency incentive be based on "allowable" operating costs after desk audit and limits for rate years beginning on or after January 1, 1988.

The amendment to part 9553.0060, subpart 4, item A, makes it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1).

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

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

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 Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Adoption of these rules will result in additional spending by local public bodies in excess of $100,000 in the second year 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 attached.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Date: 1-6-88

by SANDRA S. GARDEBRING
Commissioner

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

FISCAL NOTE

The Department has proposed several changes to Minnesota Rules, parts 9553.0010 to 9553.0080 (Rule 53). The following is a brief summary of the changes that are being proposed.

- o Change the inflation index from the Consumer Price Index (CPI-U for Minneapolis/St. Paul) to the Average Hourly Earnings in Nursing and Personal Care Facilities Index (a wage driven index).

- o Adjustment to increase the program operating cost base for increased staffing needs due to changes in standards.

- o Increase the historical maintenance cost limitation to provide a corridor for cost variations.

- o Refined the efficiency incentive computation to reward efficient providers.

- o Changed the computation of capacity days for property costs so that reductions in actual capacity days due to de-licensure more closely relate to the facility's rate year.

Since most of the changes affect costs of the Medical Assistance Program through alterations in the rate-setting formula, the Department incorporated the proposed changes into its computerized rate-setting system to estimate the fiscal impact. Also, because a number of facilities were not included in the computerized rate-setting program as they are on interim/settle-up rate status due primarily to negotiated closure agreements, the Department separately estimated the budgetary impact of agreements with those facilities.

In calculating the overall fiscal impact of these proposed amendments the following factors must be considered: the timing difference between the provider's rate year, and the State's fiscal year; the fact that for the first rate year the changes in

the reimbursement formula will be in effect for 9 months of the rate year; and that payments are made a month after services are provided. Given these factors the additional fiscal impact of the changes can be summarized as follows:

Medical Assistance Costs (ooo's)

	Total	Federal	State	County
FY 1988	$ 900.0	$ 484.6	$ 374.0	$ 41.4
FY 1989	$5,250.0	$2,834.0	$2,174.6	$241.5
Total Impact for the 88/89 Biennium	$6,150.0	$3,318.6	$2,548.6	$282.9

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

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

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 Payment Rates For ICF/MR's

Notice of Intent to Adopt Amendments to a Rule Without a Public Hearing

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.501, subdivisions 2 and 10.

All persons have 30 days or until 4:30 p.m. on February 17, 1988 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.

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Chuck Osell
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Long Term Care Management
444 Lafayette Road
St. Paul, MN 55155
(612) 297-3463

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

The proposed rule amendments govern the reimbursement rates for ICF/MR facilities. The amendments affect the facilities as well as the state and counties who share in the cost of reimbursement.

The amendment to part 9553.0041, subpart 1, permits ICF/MR facilities that are attached to nursing homes to substitute ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under part 9553.0041.

The amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f) changes the source used to determine the inflation index for use in calculating the group administrative cost per licensed bed limit. Currently the rule identifies the historical consumer price index for Minneapolis/St. Paul as the source of the inflation index. The amendment replaces the historical index with the forecasted index published by Data Resources, Inc.

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.

The amendment to part 9553.0050, subpart 1, item A, subitem (2) establishes new limits for the maintenance operating cost category. The new limits permit costs in the maintenance cost category to exceed the current limit by 25 percent for the portion of the rate year beginning January 1, 1988 and ending September 30, 1988. The maintenance operating cost category limit will be indexed by the forecasted index published by Data Resources, Inc. annually each rate year thereafter.

The amendment to 9553.0050, subpart 1, item A, subitem (4) specifies how program payment rates made during the reporting year are to be used in computing the efficiency incentive for rate years beginning on or after October 1, 1988.

The amendment to part 9553.0050, subpart 2, item A, provides for the establishment of the total operating cost payment rate using an annualization of the inflation index forecasts.

The amendment to part 9553.0050, subpart 2, item E, provides that the computation of the current efficiency incentive be based on "allowable" operating costs after desk audit and limits for rate years beginning on or after January 1, 1988.

The amendment to part 9553.0060, subpart 4, item A, makes it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1).

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

Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
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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 Storelee
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Rules Division
444 Lafayette Road
St. Paul, MN 55155
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Adoption of these rules will result in additional spending by local public bodies in excess of $100,000 in the second year 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 attached.

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Nancy Storelee
Minnesota Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155
(612) 296-2854

Dated: 6 January 1988

Sandra S. Gardebring
Commissioner

Fiscal Note

The Department has proposed several changes to *Minnesota Rules*, parts 9553.0010 to 9553.0080 (Rule 53). The following is a brief summary of the changes that are being proposed.

- Change the inflation index from the Consumer Price Index (CPI-U for Minneapolis/St. Paul) to the Average Hourly Earnings in Nursing and Personal Care Facilities Index (a wage driven index).

- Adjustment to increase the program operating cost base for increased staffing needs due to changes in standards.
- Increase the historical maintenance cost limitation to provide a corridor for cost variations.
- Refined the efficiency incentive computation to reward efficient providers.
- Changed the computation of capacity days for property costs so that reductions in actual capacity days due to de-licensure more closely relate to the facility's rate year.

Since most of the changes affect costs of the Medical Assistance Program through alterations in the rate-setting formula, the Department incorporated the proposed changes into its computerized rate-setting system to estimate the fiscal impact. Also, because a number of facilities were not included in the computerized rate-setting program as they are on interim/settle-up rate status due primarily to negotiated closure agreements, the Department separately estimated the budgetary impact of agreements with those facilities.

In calculating the overall fiscal impact of these proposed amendments the following factors must be considered: the timing difference between the provider's rate year, and the State's fiscal year; the fact that for the first rate year the changes in the reimbursement formula will be in effect for 9 months of the rate year; and that payments are made a month after services are provided. Given these factors the additional fiscal impact of the changes can be summarized as follows:

Medical Assistance Costs (000's)

	Total	Federal	State	County
FY 1988	$ 900.0	$ 484.6	$ 374.0	$ 41.4
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The federal, state, and county shares were determined using the following figures:

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

Rules as Proposed

9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. **Required cost reports.** No later than April 30 of each year, the provider shall submit an annual cost report on forms supplied by the commissioner in order to receive medical assistance payments. The reports must cover the reporting year ending December 31, except that for reporting years ending on or after December 31, 1987, a provider operating a facility that is attached to a nursing home that is reimbursed under parts 9549.0010 to 9549.0080 may elect to report the facility's costs and statistical information for the period covered by the nursing home's reporting year. If a certified audit has been prepared, it must be submitted with the cost report. In addition, a provider or provider group which has 48 or more licensed beds shall submit an annual certified audit of its financial records obtained from an independent certified public accountant or licensed public accountant. The examination must be conducted in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants and generally accepted accounting principles. A government owned facility may comply with these auditing requirements by submitting the audit report prepared by the state auditor.

Subp. 2. to 16. [Unchanged.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

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

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

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

(a) to (e) [Unchanged.]

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the ~~percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period~~ percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) [Unchanged.]

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f).

(3) [Unchanged.]

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

(a) to (c) [Unchanged.]

For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E.

(5) [Unchanged.]

B. to F. [Unchanged.]

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

A. For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f).

B. to D. [Unchanged.]

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding

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

F. [Unchanged.]

Subp. 3. [Unchanged.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the facility by the number of days in the facility's reporting year. For rate years beginning on or after October 1, 1988, a facility that has reduced its licensed bed capacity after January 1, 1988, may, for the purpose of computing the property-related payment rate under this subpart, establish its capacity days for each rate year following the licensure reduction based on the number of beds licensed on the previous August 1, provided that the commissioner is notified of the change by August 4. The notification must include a copy of the delicensure request that has been submitted to the commissioner of health.

B. and C. [Unchanged.]

Subp. 5. to 7. [Unchanged.]

Department of Natural Resources

Proposed Permanent Rules Relating to Metallic Mineral Leasing

Notice of Intent to Amend Rules Without a Public Hearing

Notice is hereby given that the State Department of Natural Resources intends to adopt amendments to the above-entitled rules 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 amendments to the rules is set forth in *Minnesota Statutes*, sections 93.08 to 93.12 and 93.25.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed amendments or any part or subpart of the amendments. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, the reason for the request and any change proposed. If a public hearing is required, the agency will proceed to *Minnesota Statutes*, sections 14.121 to 14.20.

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

William C. Brice
Director, Division of Minerals
Minnesota Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4045
Phone: (612) 296-4807

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.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition, parts 9553.0041, 9553.0050 and 9553.0060

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

Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on January 18, 1988 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 January 13, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt the rules 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 rules for 30 days after notice of proposed rulemaking. The agency did not receive requests for a public hearing from 25 or more persons.

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

1. The only comments received by the department during the public comment period were from Mary Martin & Associates in a letter dated February 17, 1988.

2. In its first comment, Mary Martin & Associates recommends defining the terms "percent moving average" and "annualized percent moving average." These terms are used in part 9553.0050, subpart 1, item A, subitem (1), unit (f), and subpart 2, item A.

   Percent moving average (PMI) refers to a specific percentage listed in the Data Resources Inc. (DRI) publication that the proposed rule incorporates by reference. Therefore, this term is not ambiguous and needs no definition. Annualization of the percent moving average (PMI) is achieved by dividing the PMI by 12 and multiplying the quotient by 21. This annualization calculation has been used for 2 years and is commonly understood by those affected by the rule. Therefore, no definition is needed.

3. Comment 2 of Mary Martin & Associates cites part 9553.0041, subpart 1(2). The correct cite for the language referenced in this comment is part 9553.0050, subpart 1, Item A, subitem (2).

The first part of this comment asks whether the last sentence in subitem (2) suggests that the 10/1/88 rates will be based on nine months of historical cost rather than twelve. The answer is no. Subitem (1), units (a) to (g), and the definition of historical operating costs in part 9553.0020, subpart 24 make clear that the historical cost used to calculate rates for a "rate year" is based on the preceding 12 month "reporting year."

The nine month period referred to in this amendment is not a reporting year. Instead it is part of the rate year beginning January 1987 and is the first period in which rates are determined by applying 125% of the applicable (i.e. 1986) 12 month historical cost. When read in context, the last sentence of the proposed amendment simply says that the same historical cost figure used to determine rates for the previous nine month period must, with increases for inflation, be applied to rate years beginning on or after October 1, 1988. Again, the historical cost figure is 125% of the historical costs for 1986.

The second part of comment 2 asks whether the first sentence of the proposed amendment allows a rate change during the current rate year, or a change in the base for the next year. When read in context, this sentence simply says that the historical operating cost used to determine the rates for January 1 to September 30 is permitted to exceed of the historical operating cost rate in effect for reporting year (1986) by 25%. The proposed amendment is sufficiently clear when read in conjunction with the rest of the adopted rule. No changes in the proposed language are needed.

The final part of comment 2 asks what base year will be used to determine rates for rate year 1989. The comment also recommends that this be clarified in the rule. The base year for the 10/1/89 rate year is the lesser of the facility's allowable historical maintenance operating costs and the maintenance operating cost limit. The maintenance operating cost limit is 125% of the limit for 1986 increased by two years of inflation in 1987 and 1988. This is clear when the proposed amendments are read in conjuntion with existing rule language. Indeed, the amendments were understood and approved by members of the rule advisory committee which was composed of a cross-section of those who will be affected by the amendments. Therefore, no additional language is needed.

4. In its third and fourth comments, Mary Martin & Associates recommends changes to rule parts that were not the subject of the department's proposed amendments. The rule parts were not referenced in the department's notice of intent to adopt and no amendments to these parts were proposed by the department. Therefore, adoption of the comment's suggestions would violate the statutory notice requirements in Minnesota Statutes, section 14.22.

5. No changes in the rules as proposed are necessary.

CONCLUSIONS

I hereby conclude that:

1. The above-captioned rules are necessary and reasonable.

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

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

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

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retrdation or a Related Condition, parts 9553.0041, 9553.0050 and 9553.0060 are adopted this 22nd day of February, 1988, pursuant to authority vested in me by Minnesota Statutes, section 256B.501, subdivision 2 and 10.

SANDRA S. GARDEBRING
Commissioner

In the Matter of the Adoption
of Rules of the State Department
of Human Services Governing the
Determination of Payment Rates
for Intermediate Care Facilities
for Persons with Mental Retardation
or a Related Condition, parts 9553.0041,
9553.0050 and 9553.0060.

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 7810.

Julie K Harris

Special Assistant
Attorney General

Dated: 2/22/88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING
THE DETERMINATION OF PAYMENT RATES
FOR INTERMEDIATE CARE FACILITIES
FOR PERSONS WITH MENTAL RETARDATION
OR A RELATED CONDITION

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 13th day of January, 1988.

Nancy Bishop

Rec'd
2/22/88

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

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

FROM: Dan Lipschultz
Rules Division
Department of Human Services
444 Lafayette Rd.
St. Paul, MN 55155

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Permanent Rules Relating to Payment Rates for ICF/MR's, parts 9553.0041, 9553.0050 and 9553.0060.

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

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

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

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

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

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

11. The notice of submission of the rule to the attorney general, if applicable. (not applicable).

12. The affidavit of mailing notice of submission of the rule to the attorney general, if applicable. (not applicable).

If you have any questions on this submitted material, please call me at 297-4302