

Minnesota Attorney General: Administrative Rules Proceedings

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ATTORNEY GENERAL

June 13, 1988

ELEANOR WEBER
Department of Human Services
444 Lafayette Road, St. Paul MN 55155-3816

MARTHA J. CASSERLY
Special Assistant Attorney General
515 Transportation Building

6-6839

In the Matter of the Adopted Permanent Rules Relating to Nursing Home Property Reimbursement Rate
RR#1488

The above-referenced rule has been approved as to its legality by the Attorney General on June 10, 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 establish 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:bbl

Enclosures

cc: Maryanne Hruby
Duane Harves

MJC

RULE REVIEW CHECKLIST

0881

File No. 1491

Docket No. 05-0009-~~AT34~~

DATE RECEIVED 5-31-88

ADOPTED W/O HEARING X

REVIEW DATE 6-9-88

EMERGENCY RULE

DUE DATE 6-14-88

REVISOR APPROVED

APPROVED 6.13.88 mjc

REVISOR DISAPPROVED

DISAPPROVED

FIELD W/SEC.STATE

WITHDRAWN

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

11/30/87 Date published in State Register

None Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule

Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

256B.431 subd 3a Statutory Authority

N/A Small Business Statement

Yes Expenditure of public money statement

Yes Signature

✓ Statement of Need and Reasonableness

NO Small Business Statement

No Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

2/5/88 Date 30/25 days before adoption

✓ Publication in State Register

2/8/88 Date 30/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting

5/25/88 Date

✓ Written requests, submissions or comments (1)

✓ Declaration of attorney

Julie Harris Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

Department of Human Services

Adopted Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Rules as Adopted

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within three working days of receipt of a written request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

APPROVED AS TO FORM AND LEGALITY

June 13 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 14 1988

Joan Anderson Growe 2:58
Secretary of State P. M.

Rec'd 5-31-88

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38 16

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

FROM: Eleanor Weber Eleanor Weber

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Amendments to Rules of the State Department of Human Services Governing Nursing Home Property Reimbursement Rate, Parts 9549.0059 and 9549.0060

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

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

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

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

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

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

11. No requests to be notified of submittal of the rule to the Attorney General.

If you have any questions on this submitted material, please call me at 297 4301.

In the Matter of the Adoption
of Amendments to the Rule of the
State Department of Human Services
Governing Nursing Home Property
Reimbursement Rate, Minnesota Rules,
Parts 9549.0059 and 9549.0060

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 ~~2134.~~ 0881

Julie K. Harris
Special Assistant
Attorney General

Dated: May 27, 1988

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Governing Nursing Home Property Reimbursement Rate, Minnesota Rules, Parts 9549.0059 and 9549.0060

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

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 8, 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 February 5, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received within the time period stated in the notice published in the State Register. Therefore the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the attorney general were received by the agency.

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

Part 9549.0060, subpart 9.

Part 9549.0060, subpart 9, item C governs the building capital allowance for nursing homes with operating leases. It provides that the building capital allowance for such a nursing home must be the lesser of the operating lease expense divided by 96 percent of capacity days, or the allowable appraised value multiplied by the rental factor and then divided by 96 percent of capacity days. This allowance enters into the calculation of a nursing home's building capital allowance. The building capital allowance per resident day is a component of the nursing home's property-related payment rate. As discussed in the Statement of Need and Reasonableness, "this section of the rule was designed for lease payments which approximate the value of the assets leased and does not anticipate leases for a nominal ammount." However, the department has found that a

provider that leases its facility at a nominal amount will be adversely affected by this subpart unless the rule is modified to exclude a nominal lease from the phrase "operating lease."

The department received two comments about the proposed amendment of this subpart. One comment was received timely; the second, that of Care Providers of Minnesota, was received the day after the close of the comment period.

The timely commenter, Mr. Robert J. Salmon, Administrator, Canby Community Health Services, supported the rule amendment in his letter of February 22, 1988. He stated his opinion that unless nominal leases are excluded from the term "operating leases", which the rule amendment will do, the lessor which is leasing Canby Community Hospital District No. 1 will incur an approximate loss in reimbursement of $122,000 per year. Mr. Salmon also noted that the proposal does not adversely affect the nursing home provider. No rule amendment is made as a result of Mr. Salmon's comments.

The late commenter, Care Providers of Minnesota, wrote that "(t)he Notice of Intent to Adopt a Rule Without a Public Hearing described the amendment of Minnesota Rules, Part 9549.0060, subpart 9 as an effort 'to clarify the treatment of nominal leases in determining a nursing home's property tax rate....'(emphasis added). A nursing home's property tax rate is certainly not equivalent to its property payment rate which is the real subject area of this amendment. While this may be merely a clerical error, it raises questions as to whether the public has been adequately notified as to the substance and impact of these proposed amendments. A public hearing would help settle those questions."

Although there was a wording error in part of the Notice of Intent to Adopt a Rule Without a Public Hearing, the remainder of the Notice clearly identified and described the proper rule provision. The title of the Notice accurately identified the subject matter of the proposed rule amendment. The rule citation was also accurate. Moreover, the text of the proposed rule amendment was attached with each Notice mailed out by the Department. (See the Affidavit of Mailing.) The correct subject matter and purpose of the proposed rule amendment were thus made very clear by the Notice taken as a whole. Copies of the Notice with the rule amendments attached were sent individually to all certified nursing homes and boarding care homes participating in the medical assistance program. There are more than 400 such homes. Thus, the notice could have generated a sufficient number of written requests to require a public hearing without difficulty. Additionally, the Notice published in the State Register was also accompanied by the text of the rule amendment. Therefore, the Commissioner finds that the department has given proper notice as the Notice of Intent to Adopt a Rule Without a Public Hearing clearly identified the proper rule provision and the rule amendments were attached with each Notice mailed.

The above captioned rule is needed and reasonable.

CONCLUSIONS

I hereby conclude that:

1. 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.

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

3. 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 rule identified as Relating to Nursing Home Property Reimbursement Rate is adopted this 25 day of May, 1988, pursuant to authority vested in me by Minnesota Statutes, section 256B.431, subd. 3a.

SANDRA S. GARDEBRING
Commissioner

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO
PERMANENT RULES GOVERNING THE
DETERMINATION OF PAYMENT RATES
FOR NURSING HOMES PARTICIPATING
IN THE MEDICAL ASSISTANCE PROGRAM
PARTS 9549.0010 TO 9549.0080

STATEMENT OF NEED AND
REASONABLENESS

AUTHORITY

Minnesota Rules, parts 9549.0010 to 9549.0080, govern the rates for nursing homes licensed under Minnesota Statutes, chapter 144A.04 and boarding care homes licensed under Minnesota Statutes, section 144.50. The permanent rules were developed to implement Minnesota Statutes, sections 256B.41 to 256B.502 and were promulgated according to the requirements of federal statutes 42 USC 1396 a(a)(13)(A) and federal regulations 42 CFR Part 447. They became effective on June 14, 1985 for rate years beginning on or after July 1, 1985. These permanent rules now include case mix rules (parts 9549.0050 to 9549.0059). In addition, the permanent rules were amended on May 4, 1987, for rate years beginning on or after July 1, 1987.

LEGISLATIVE HISTORY

In 1983, the Legislature stated in Minnesota Statutes, section 144A.071

> that Medical Assistance expenditures are increasing at a much faster rate than the state's ability to pay. . .; that reimbursement for nursing home care and ancillary services comprises over one-half of Medical Assistance costs and, therefore, controlling expenditures for nursing home care is essential to prudent management of the state's budget. . .

Minnesota Statutes, section 256B.41 required the Commissioner of Human Services to "establish by rule, procedures for determining rates for cost of residents at nursing homes which qualify as vendors of Medical Assistance."

RULEMAKING HISTORY

A temporary rule, 12 MCAR §§ 2.05001 - 2.05016 [Temporary], was adopted in 1983 and the development of permanent rules began immediately thereafter. An advisory committee was formed including representatives of the nursing home industry, consumer groups, and those knowledgeable about nursing home finances. The Department engaged a consultant, the firm of Deloitte, Haskins & Sells, to conduct a study of property reimbursement methodology. The Department, in cooperation with the Interagency Board for Quality Assurance, contracted with Lewin & Associates for a study of a case mix system to reimburse operating costs.

In 1984, the Legislature directed the Commissioner to adopt temporary rules necessary for the implementation of operating costs payment rates as provided by Laws of Minnesota 1984, chapter 641. In effect, nursing

home payment rules were divided into two parts: (1) the provisions governing the determination of allowable costs, setting reporting requirements, establishing appeals procedures, and determining the property-related payment and payment for real estate taxes and special assessments (parts 9549.0010 to 9549.0080); and (2) the provisions establishing a case mix methodology for payment of operating costs (parts 9549.0050 to 9549.0059 [Temporary]).

The Legislature established special requirements for the development of the temporary case mix rules in Laws of Minnesota 1984, chapter 641. The temporary rule process was governed by the Administrative Procedures Act (Minnesota Statutes, section 14.29 to 14.36) which was in effect on March 1, 1984. Under Minnesota Statutes, section 256B.431, subdivision 6, the adopted temporary rules were to "have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule." The proposed temporary rules, parts 9549.0050 to 9549.0059 [Temporary] were published in the State Register on April 8, 1985, and became effective on June 14, 1985, for the rate year beginning on or after July 1, 1985.

In 1986, Under Laws of Minnesota 1986, chapter 316, the effective period for the temporary rules governing the case mix system was extended for one year to give the Departments of Health and Human Services more time to develop permanent rules. Following the adoption of the legislation extending the temporary rules, the temporary rules were amended to clarify the operating cost rate determination process to be used to determine

rates for fiscal year 1987 and to update the resident classification system used in determining operating cost payment rates. The temporary rules as amended became effective on June 14, 1986. The permanent rules establishing the case mix classification system were published in their final form in the State Register on April 27, 1987, and became effective on May 4, 1987 for rate years beginning on or after July 1, 1987. At the same time, several modifications and non-controversial amendments, including those required to ensure consistency with Laws of Minnesota 1987, chapter 403, were made to the existing permanent rule (parts 9549.0010 to 9549.0080. The amendments also were published in the State Register on April 27, 1987, and became effective on May 4, 1987.

PURPOSE OF AMENDMENTS

The Department's and the industry's experience with parts 9549.0010 to 9549.0080 since their adoption has identifed a number of issues that need clarification. The amendments proposed herein address those issues. The proposed amendments do not make substantive changes in the rate determination process, but rather merely clarify existing policies.

AMENDMENT PROCESS

The Department published a "Notice of Intent to Solicit Outside Opinion" in the State Register on Monday, November 30, 1987.

STATEMENT OF NEED AND REASONABLENESS FOR SPECIFIC RULE PROVISIONS

The specific provisions of parts 9540.0010 to 9540.0080 which are to be amended are affirmatively presented by the Department in the following narrative as required by the Minnesota Administrative Procedures Act, Minnesota Statutes, section 14.05.

TREATMENT OF NURSING HOMES WITH NOMINAL LEASES

1. Part 9549.0060, subpart 9, item E. New Rule Language.

Page 44, after item D, insert new item E as follows:

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions shall be considered a nominal lease:

(1) The annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually one dollar per year;

(2) The length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) The lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) The lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) The lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item shall be effective for rate years beginning on or after July 1, 1988.

This section of the rule deals with a building capital allowance for nursing homes with operating leases and states that the building capital allowance must be the lesser of the operating lease expense divided by 96 percent of capacity days, or the allowable appraised value multiplied by the rental factor and then divided by 96 percent of capacity days.

This section of the rule was designed for lease payments which approximate the value of the assets leased and does not anticipate leases for a nominal amount ($1.00). However, a number of providers lease their facilities from municipalities at a nominal rental, usually for $1.00 per year, with the lease generally covering the useful life of the facility. Under most lease arrangements, the lessee maintains the property and pays the cost of any improvement or addition to the facility. When such an improvement or addition is made, the lessee may properly amortize its cost and include the amortization allowance as an allowable cost. It is the general practice of the provider to include in its costs an amount to cover depreciation on the leased facilities. Therefore, most third parties who reimburse providers on the basis of cost allow depreciation (but not interest) on facilities that have been leased for a nominal rental.

Part 9549.0060, subpart 9E excludes a nominal lease from the phrase operating lease. It is necessary to add subpart 9E since the concept of a nominal lease is a reality in the nursing home industry and therefore, for purposes of clarity, the rule should be modified to indicate how those leases should be treated in determining a nursing home's property rate. It is not reasonable to use a nominal value such as $1.00 in the calculation of the nursing home's building capital allowance because treating a nominal lease like an operating lease may result in a building capital allowance per diem of zero. Also, for purposes of consistency, it

is reasonable to use as a guideline the definition of nominal lease as defined in Sections 112 and 112.1 of the Medicare Provider Reimbursement Manual, HCFA Publication 15-1, as published by the U.S. Department of Health and Human Services, Health Care Financing Administration (see attached).

RESIDENT ACCESS TO ASSESSMENTS AND DOCUMENTATION

2. Part 9549.0059, subpart 9.D. Amendment to existing language.

Page 57, item D lines 4 and 5, change "one working day" to "three working days" and change "written or verbal request" to "written request." The revised item D should read as follows:

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within three working days of receipt of a written request from the resident or the resident's authorized representative.

Minnesota Rules, part 9549.0059, subpart 9, deals with resident access to assessments and documentation. During the 1987 legislative session, Minnesota Statutes, section 144.0722, dealing with "Resident Reimbursement Classifications; Procedures for Reconsideration," was amended in the following manner:

Subdivision 3a. Access to Information. "Upon written request, the nursing home or boarding care home must give the resident or the resident's representative a copy of the assessment form and the other documentation that was given to the department to support the assessment findings. A copy of any requested material must be provided within three working days of receipt of a written request for the information. If a facility fails to provide the material within this time, it is subject to the issuance of a correction order and penalty assessment under sections 144.653 and 144A.10."

It is necessary and reasonable to amend subpart 9 of the rule so that the rule is consistent with the cited statutes.

Expert Witnesses

If this rule should go to public hearing because of 25 public requests for hearing, the Department does not plan to have an expert witness testify on its behalf at the hearing.

1-22-87

DATE

SANDRA S. GARDEBRING

Commissioner

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within ~~one~~ three working ~~day~~ days of receipt of a written ~~or verbal~~ request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

Approved by Revisor KMT

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

Approved by Revisor KMT

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9549

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant 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 Nursing Home Property Reimbursement Rate, Minnesota Rules, Parts 9549.0059 and 9549.0060

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule 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.431, subd. 3a.

All persons have 30 days or until 4:30 p.m. on March 9, 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:

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

The proposed rule amendments 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.

A copy of the proposed amendments is attached. The amendments are necessary to be consistent with statutory changes (9549.0059, subpart 9) and to clarify the treatment of nominal leases in determining a nursing home's property tax rate (part 9549.0060, subpart 9.)

Eleanor Weber
S3

A copy of the proposed amendments 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 not result in any additional spending by local public bodies for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

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
Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155.

Date:

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one three working day days of receipt of a written or verbal request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

Approved by Revisor KMT

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

Approved by Revisor KMT

Canby Community Health Services

A Subsidiary of Sioux Valley Hospital

112 St. Olaf Avenue South
Canby, Minnesota 56220
(507) 223-7277

February 22, 1988

Mr. Charles Osell
Minnesota Department of Human Services
Long-Term Care Management
444 Lafayette Road
St. Paul, MN 55155

Re: Comment on Proposed Amendment to Minnesota Rules 9549.0060

Dear Mr. Osell:

We would like to officially express our support for the Department's proposed amendment to Minnesota Rule 9549.0060, Subpart 9, which governs the building capital allowance.

Effective July 1, 1987, Canby Community Hospital District No. 1 of Canby, Minnesota entered into a Lease Agreement with Sioux Valley Service Corporation of Sioux Falls, South Dakota, whereby the Hospital District leased its Hospital and attached Nursing Home to Sioux Valley Service Corporation for a nominal amount of $1.00 per year.

The hospital and nursing home in question are integrated to such an extent that it would be economically impractical to separate them for purposes of operation and management. Thus, both facilities are leased under the Lease Agreement.

The nursing home facility is a certified provider under both Medicare and Medicaid. The Lease Agreement creates no problem as it pertains to reimbursement for capital costs under the Medicare program because the federal Medicare Program recognizes a nominal lease and permits reimbursement for the facilities' historical capital costs rather than on the basis of the nominal lease payment of $1.00 per year. Section 112 of the Medicare Provider Reimbursement Manual, HCFA Publication 15-1, as published by the U.S. Department of Human Services, Health Care Financing Administration, is enclosed which discusses this matter.

Under the current Minnesota Rule 9549.0060, Subpart 9.C. under Medicaid, provides that the building capital allowance for nursing homes with operating leases must be the lesser of the operating lease expense divided by 96 percent of capacity days, or the allowable appraised value multiplied by the rental factor and then divided by 96 percent of capacity days.

Under the current rule, the facilities' capital cost payment rate would be $4.46 per resident day, when the appraised value/rental concept is fully implemented. However, subsequent to the lease, the facilities' capital cost reimbursement would be $1.00 per year unless the proposed Rule Amendment is adopted. This would represent an approximate loss in reimbursement of $122,000 per year.

This proposal does not result in increased state outlays nor does it adversely affect any nursing home provider. We strongly support adoption of the proposed Rule Amendment.

Sincerely,

ROBERT J. SALMON, ADMINISTRATOR
CANBY COMMUNITY HEALTH SERVICES
112 ST. OLAF AVENUE SOUTH
CANBY, MINNESOTA 56220

RJS/kv

Enclosure

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

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

Department of Human Services

Long Term Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rules Governing the Determination of Payment Rates for Nursing Homes Participating in the Medical Assistance Program, Minnesota Rules, parts 9549.0010 to 9549.0080

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing the determination of payment rates for nursing homes participating in the medical assistance program. The first rule affected is *Minnesota Rules*, part 9549.0060, subpart 9, under which the building capital allowance for nursing homes with operating leases is determined. The building capital allowance is a component of the property-related payment rate. The proposed change will exempt nominal leases from treatment as operating leases. A nominal lease is one with a nominal rental amount, typically $1.00. The second rule affected is *Minnesota Rules*, part 9549.0059, subpart 9, item D, which requires nursing homes to provide residents with their assessment documentation within one day of a written or verbal requests. Recent legislation, codified in *Minnesota Statutes*, section 144.0722, subdivision 3a, alters that requirement, requiring a revision of the rule. The adoption of the amendments is authorized by *Minnesota Statutes*, sections 256B.41 to 256B.502, which authorizes the agency to establish procedures for determining rates and to determine prospective payment rates for care of residents of nursing homes which qualify as vendors of medical assistance.

The State Department of Human Services requests information and opinions concerning 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.

Labor and Industry

Division of Labor Standards

Notice of Certified Prevailing Wages

On December 1, 1987 the commissioner will certify prevailing wage rates for commercial construction projects in the following Minnesota counties: Anoka, Benton, Big Stone, Carver, Chippewa, Chisago, Dakota, Douglas, Grant, Hennepin, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Morrison, Pine, Pope, Ramsey, Scott, Sherburne, Stearns, Stevens, Swift, Todd, Traverse, Washington, and Wright.

A copy of the determined wage rates for Minnesota counties may be obtained by contacting the Minnesota Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING NURSING HOME PROPERTY REIMBURSEMENT RATES, MINNESOTA RULES, PARTS 9549.0059 AND 9549.0060

AFFIDAVIT OF MAILING

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

That on the 5th day of February, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy Bishop

Subscribed and sworn to before me

this 5 day of February, 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 Nursing Home Property Reimbursement Rate, Minnesota Rules, Parts 9549.0059 and 9549.0060

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule 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.431, subd. 3a.

All persons have 30 days or until 4:30 p.m. on March 9, 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:

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

The proposed rule amendments 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.

A copy of the proposed amendments is attached. The amendments are necessary to be consistent with statutory changes (9549.0059, subpart 9) and to clarify the treatment of nominal leases in determining a nursing home's property tax rate (part 9549.0060, subpart 9.)

A copy of the proposed amendments 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 not result in any additional spending by local public bodies for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

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
Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155.

Date:

SANDRA S. GARDEBRING
Commissioner

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one three working day days of receipt of a written ~~or verbal~~ request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

Approved by Revisor KMT

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

Approved by Revisor KMT

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING NURSING HOME PROPERTY REIMBURSEMENT RATES, MINNESOTA RULES, PARTS 9549.0059 AND 9549.0060

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 5th day of February, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

.The 87 Minnesota County Human Services Agencies

.Certified nursing homes and boarding care homes

.Cost report preparers, attorneys, associations and other interested parties

Nancy Bishop

Subscribed and sworn to before me

this 5 day of February, 19 88

Louise J. Breidel



Department of Human Services

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Governing Nursing Home Property Reimbursement Rate, Minnesota Rules, Parts 9549.0059 and 9549.0060

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule 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.431, subd. 3a.

All persons have 30 days or until 4:30 p.m. on March 9, 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:

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

The proposed rule amendments 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.

A copy of the proposed amendments is attached. The amendments are necessary to be consistent with statutory changes (9549.0059, subpart 9) and to clarify the treatment of nominal leases in determining a nursing home's property tax rate (part 9549.0060, subpart 9.)

A copy of the proposed amendments 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 not result in any additional spending by local public bodies for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

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
Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155.

Date:

SANDRA S. GARDEBRING
Commissioner

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one three working day days of receipt of a written ~~or verbal~~ request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

Approved by Revisor KMT

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

Approved by Revisor KMT

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING NURSING HOME PROPERTY REIMBURSEMENT RATES, MINNESOTA RULES, PARTS 9549.0059 AND 9549.0060

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 5th day of February, 1988.

Nancy Bishop

Department of Human Services

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Governing Nursing Home Property Reimbursement Rate, Minnesota Rules, Parts 9549.0059 and 9549.0060

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule 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.431, subd. 3a.

All persons have 30 days or until 4:30 p.m. on March 9, 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:

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

The proposed rule amendments 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.

A copy of the proposed amendments is attached. The amendments are necessary to be consistent with statutory changes (9549.0059, subpart 9) and to clarify the treatment of nominal leases in determining a nursing home's property tax rate (part 9549.0060, subpart 9.)

A copy of the proposed amendments 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 not result in any additional spending by local public bodies for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

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
Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155.

Date:

Sandra Gardebring
SANDRA S. GARDEBRING
Commissioner

the ~~usual~~ ~~500~~ ~~hours~~ ~~of~~ ~~recent~~ ~~occupational~~ ~~experience~~ need for the recency of 500 hours in the total of 2,000 hours of required paid employment. The independent study must be completed within the two years immediately before the date the license is issued.

(3) to (6) [Unchanged.]

C. Occupational experience:

(1) The applicant must have 2,000 hours of occupational experience as specified in parts 3517.4000 to 3517.4200 within emphasis areas or related areas included in parts 3517.0200 to 3517.1440 and 3517.1800 to 3517.2140. The directed independent study course specified in item B, subitem (2) replaces the ~~recent~~ ~~500~~ ~~hours~~ ~~of~~ ~~occupational~~ ~~experience~~ need for the recency of 500 hours in the total of 2,000 hours of required paid employment.

(2) [Unchanged.]

3517.1600 SECONDARY VOCATIONAL EVALUATOR.

An applicant for an entrance license to serve as a vocational evaluator in a secondary school must meet the following requirements:

A. and B. [Unchanged.]

C. Occupational experience:

(1) The applicant must have 2,000 hours of occupational experience as specified in parts 3517.4000 to 3517.4200 within emphasis or related areas included in parts 3517.0200 to 3517.1440 and 3517.1800 to 3517.2140. The internship specified in item B, subitem (3) replaces the ~~recent~~ ~~500~~ ~~hours~~ ~~of~~ ~~occupational~~ ~~experience~~ need for the recency of 500 hours in the total of 2,000 hours of required paid employment.

(2) [Unchanged.]

3517.3450 EQUIVALENCY FOR COURSES OUTSIDE TEACHER EDUCATION CORE.

When an applicant has completed coursework that is not included in part 3517.3150, subpart 2, to meet a licensure requirement and when the personnel licensing section cannot determine course equivalency on the basis of similar course titles or content, in consultation with the appropriate secondary vocational specialist, the following procedure applies:

A. to E. [Unchanged.]

F. Exception: Two years of active participation as an advisor in the appropriate vocational student organization substitutes for the two required credits in integrating the appropriate vocational student organization into the curriculum. The participation must be verified by the state program specialist responsible for the appropriate vocational student organization and must be within the five years just before the date the license is issued.

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Property Reimbursement Rate

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule 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.431, subd. 3a.

All persons have 30 days or until 4:30 p.m. on March 9, 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

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.

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:

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

The proposed rule amendments 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.

A copy of the proposed amendments is attached. The amendments are necessary to be consistent with statutory changes (*Minnesota Rules* 9549.0059, subpart 9) and to clarify the treatment of nominal leases in determining a nursing home's property tax rate (*Minnesota Rules* part 9549.0060, subpart 9.)

A copy of the proposed amendments 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 not result in any additional spending by local public bodies for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

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
Department of Human Services
Rules Division
444 Lafayette Road
St. Paul, MN 55155.

Dated: 22 January 1988

Sandra R. Gardebring
Commissioner

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Resident access to assessments and documentation.** The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. to C. [Unchanged.]

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within ~~one~~ three working ~~day~~ days of receipt of a written ~~or verbal~~ request from the resident or the resident's authorized representative.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Building capital allowance for nursing homes with operating leases.** Except as provided in subpart 14, for rate years beginning after June 30, 1985, the building capital allowance for nursing homes with operating lease costs incurred for buildings must be paid as determined by items A to C.

A. to D. [Unchanged.]

E. The phrase "operating lease" does not include a nominal lease. For purposes of this subpart, a lease that meets the following conditions is considered a nominal lease:

(1) the annual lease payment in comparison to the rental value of the physical plant and depreciable equipment is a nominal amount, usually $1 per year;

(2) the length of the lease, including renewal provisions, reflects the intent of the lessor and lessee to lease the physical plant and depreciable equipment for the remainder of their useful lives;

(3) the lease agreement imposes a duty upon the lessee to make necessary improvements and to properly maintain the nursing home;

(4) the lease agreement has no restrictions on the free use of the nursing home by the lessee other than it must be used as a licensed nursing home; and

(5) the lease agreement must not require the furnishing of any indirect benefits to the lessor.

A nursing home leased with a nominal lease shall have its building capital allowance computed as in subpart 8. This item is effective for rate years beginning on or after July 1, 1988.

Subp. 10. to 14. [Unchanged.]

Department of Public Service

Proposed Permanent Rules Relating to Cost-Share Maxi-Audit Grants for Public and Private Nonprofit Institutions

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Department of Public Service 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 contained in *Minnesota Statutes* section 216C.02, Subdivision 3.

All persons have 30 days 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 changes 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.

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.

STATEMENT OF CARE PROVIDERS OF MINNESOTA

MAR 1988
RECEIVED
Long Term Care
Management Division

TO: Charles Osell, Minnesota Department of Human Services

RE: Care Providers of Minnesota Comments on Proposed Rules Concerning the Treatment of Nominal Leases in Determining a Nursing Home's Property Payment Rate

For Further Information Contact:

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Care Providers Of Minnesota

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March 8, 1988

The following are comments submitted by Care Providers of Minnesota to the Department of Human Services regarding the proposed amendments to the rules relating to the treatment of nominal leases in determining a nursing home's property payment rate (Minnesota Rules Part 9549.0060, subpart 9).

Care Providers of Minnesota is a trade association representing over 255 long-term care facilities in the state. Our members are non-profit, proprietary, and governmentally owned nursing homes, boarding care facilities are residences for the mentally and physically handicapped. In addition to providing services to more than 26,000 people in these facilities, our members also provide home health care, adult day care, respite, waivered, and hospice services.

Care Providers of Minnesota requests that the Department of Human Services hold a public hearing with regard to the proposed amendments to the rule relating to the treatment of nomimal leases in determining a nursing homes property payment rate, because the Notice of Intent to Adopt a Rule Without a Public Hearing was unclear, and there are portions of the proposed amendment of the rules to which Care Providers nursing home members take objection.

I.

The Notice of Intent to Adopt a Rule Without a Public Hearing described the amendment to Minnesota Rules, Part 9549.0060, subpart 9 as an effort "to

clarify the treatment of nominal leases in determining a nursing home's property tax rate..." (emphasis added). A nursing home's property tax rate is certainly not equivalent to its property payment rate which is the real subject area of this amendment. (In fact, generally speaking the former has continued to become more onerous while the latter has continued to become more inadequate.) While this may be merely a clerical error, it raises questions as to whether the public has been adequately notified as to the substance and impact of these proposed amendments. A public hearing would help settle those questions.

II.

The exception granted by the proposed amendment to Part 9549.0060, subpart 9, provides that nursing homes leased with a nominal lease would have their building capital allowance determined under the same procedure as that used for owner-operated nursing homes or nursing homes with capital leases. This exception should be allowed for all nursing homes with operating leases.