

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
MINNESOTA VETERANS HOMES BOARD

In the Matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Coat of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050.0010 to 9050.0900.

DECLARATION OF COUNSEL

I, Merwin Peterson, 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 0840.

Dated: October 23, 1989.

MERWIN PETERSON
Assistant Attorney General

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : October 20, 1989

TO : Mary Lou Dresbach
Minnesota Higher Education Coordinating Board
50 Cedar Street, Suite 400 (55101)

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Emergency Rule
Relating to Child Care Grants Program

The above-referenced emergency rule has been approved as to its legality by the Attorney General on October 19, 1989.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of tne notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Merwin Peterson, Asst. AG " "

Emergency Rule

RULE REVIEW CHECKLIST

File No. 1633

DATE RECEIVED 10-23-89

REVIEW DATE _____

DUE DATE 11-6-89

APPROVED 11-6-89 MJC

DISAPPROVED _____

WITHDRAWN _____

Docket No. 05-0009.0840

ADOPTED W/O HEARING _____

EMERGENCY RULE X

To Revisor: 10-27-89

REVISOR APPROVED ✓

REVISOR DISAPPROVED _____

FILED W/SEC. OF STATE 11/7/89

RETURNED TO AGENCY 11/7/89

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4 Rule as adopted (4 copies) no back from the Revisor

✓ Notice to Solicit Outside Information/Opinion (if applicable)
Nov 28, 1988 Date published in State Register
NA Comments

July 13, 1989 Petition for Adoption of a Rule (if applicable)

_____ Board's Authorizing Resolution
July 13, 1989 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule no caption
MN 198.003 Statutory Authority and amended Chapter 84 (Laws of 1989)
NA Small Business Statement
NA Expenditure of public money statement
✓ Signature no date of signature

NA Statement of Need and Reasonableness (if applicable)
N Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Sept 1, 1989 Date 30/(25) days before adoption
NO Notice attached indicates in notice rule is attached
NO Copy of rule or summary attached

✓ Publication in State Register
Sept 11, 1989 Date 30/(25) days before adoption exactly 25 - Counted Oct 6 as a day

✓ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules) approved May 9 but not manatory
_____ end of comment period (§ 14.26) (rules without hearing)
1166 days effective date of statutory authority (§ 14.29) (emergency rules) approved May 9

approved May 9 - Oct 23 (AG recieved them)

✓ Resolution Adopting
10-6-89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Oct 6, 1989 Date

✓ Written requests, submissions or comments affidavit of Comments also submitted Comments

_____ Declaration of attorney
Merwin Peterson Name of SAAG representing agency

10-20-89 Notice of Submission to Atty. Gen. (if applicable)

10-23-89 Aff. of Mailing Notice to Atty. Gen. (if applicable)

Let Patty know when or if rule is approved so she can call Rob Thelen so he can pick it up

Department of Veterans Affairs

Minnesota Veterans Homes Board

Adopted Emergency Rules Relating to Veterans Homes Admissions, Discharges, Cost of Care Calculations, and Maintenance Charges

Rules as Adopted

9050.0010 [Emergency] SCOPE.

The emergency rules in chapter 9050 apply to all veterans homes facilities presently owned or controlled by the state of Minnesota and operated by the Minnesota Veterans Homes Board, to all facilities that are or may be developed in the future for ownership or control by the state of Minnesota and operation by the Minnesota Veterans Homes Board, and to all individuals residing in or conducting activities in the facilities unless otherwise indicated.

9050.0020 [Emergency] APPLICABILITY.

Parts 9050.0010 to 9050.0900 [Emergency] govern the operation of the Minnesota veterans homes and establish the standards used to determine:

A. an applicant's eligibility and suitability for admission to a board-operated facility;

B. a resident's eligibility for participation in programs at a board-operated facility;

C. appropriateness of a resident's continued care in a board-operated facility;

D. services to be provided in connection with residence in a board-operated facility;

E. procedures to be used in effecting admissions and discharges;

F. standards of resident care and conduct; and

G. charges to be paid by or on behalf of a resident for care in the home.

Parts 9050.0010 to 9050.0900 [Emergency] must be interpreted to give effect to Minnesota Statutes, chapters 196,

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197, and 198.

9050.0030 [Emergency] COMPLIANCE WITH STATUTES, RULES, AND CODES.

The Minnesota Veterans Homes Board shall ensure compliance by the facility and staff with applicable statutes, with applicable rules of the Minnesota Department of Health and the Minnesota Department of Human Services, and with applicable health, safety, sanitation, building, zoning, and operations codes, including the following:

A. Minnesota Department of Health licensure and operations requirements in chapters 4655 and 4660 and Minnesota Statutes, sections 144.50 to 144.56 and 144A.02 to 144A.10;

B. chapter 4605 about communicable diseases;

C. chapter 4620 about clean indoor air;

D. chapter 4638 governing health care facilities generally;

E. chapter 4642 about medical records;

F. the fire code in chapter 7510 and Minnesota Statutes, section 299F.011;

G. the Department of Labor and Industry safety code in chapter 5205;

H. the building code in chapters 1300 to 1365 and Minnesota Statutes, section 16B.59;

I. the plumbing code in parts 4715.0100 to 4715.6000 and Minnesota Statutes, sections 326.37 to 326.45;

J. the vulnerable adults act in parts 9555.7100 to 9555.7700 and Minnesota Statutes, section 626.557;

K. the health care facilities grievance provisions in Minnesota Statutes, sections 144A.51 to 144A.53; and

L. the patient's bill of rights in Minnesota Statutes, section 144.651 and the complaint and resident's rights provisions of Minnesota Statutes, section 144A.13.

9050.0040 [Emergency] DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to parts 9050.0010 to 9050.0900 [Emergency].

Subp. 2. **Absence with notice; absence without notice.**

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"Absence with notice" or "absence without notice" means when a resident removes himself or herself from the particular area or level of care specified in the individual care plan with or without informing the Minnesota veterans home facility administration or staff of departure, intended destination, and anticipated return.

Subp. 3. **Administrator.** "Administrator" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 4.

Subp. 4. **Admission.** "Admission" means the act that allows an eligible applicant to officially enter a Minnesota veterans home facility as a resident.

Subp. 5. **Admissions agreement.** "Admissions agreement" means a written contract entered into by the resident or the resident's legal representative or spouse, if any, or both, and the board or its designated representative at the time of admission of the resident to a board-operated facility. The agreement must:

A. identify the service obligations of the facility with respect to the resident, as determined by the board according to licensure requirements and applicable statutes and rules, as specified in part 9050.0030 [Emergency];

B. identify the responsibilities of the resident with respect to the facility and other residents; and

C. if applicable, detail the amount to be paid as maintenance charge by or on behalf of a resident toward the cost of care, subject to a change in financial status of the person responsible for payment.

The agreement must be signed by the person responsible for paying any charges.

Subp. 6. **Against medical advice.** "Against medical advice" means a resident has left the particular area or level of care at the Minnesota veterans home facility or campus specified in the individual care plan, or has chosen to terminate resident status contrary to the recommendations of the attending physician.

Subp. 7. **Annual financial status review.** "Annual

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financial status review" means the annual verification and assessment of income, property, and expenses used to calculate the ability of a resident or the resident's legal representative or spouse acting on the resident's behalf, if any, to pay an amount toward the resident's cost of care.

Subp. 8. **Applicant.** "Applicant" means a person seeking admission to a board-operated facility.

Subp. 9. **Application.** "Application" means the applicant's written request for admission as provided in part 9050.0055 [Emergency].

Subp. 10. **Assessment.** "Assessment" means determination of an applicant's or resident's need for services by identifying the person's skills and behaviors and the environmental, physical, medical, and health factors that affect development or remediation of the person's skills and behavior.

Subp. 11. **Attending physician.** "Attending physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147 who is an applicant's or resident's primary treating or supervising physician. An attending physician may be a Minnesota veterans home facility staff physician.

Subp. 12. **Basic needs.** "Basic needs" means food, clothing, shelter, utilities, personal hygiene items, and other subsistence items.

Subp. 13. **Bed change.** "Bed change" means a resident is assigned to a different bed in the same room, to another room, or to another building at the same level of care.

Subp. 14. **Bed hold.** "Bed hold" means a particular bed occupied by a Minnesota veterans home resident, or a comparable bed, that is held open for the resident during the resident's absence from a board-operated facility for medically necessary treatment at another health care facility, for a rehabilitation program, or during the resident's absence, with notice, from a board-operated facility.

Subp. 15. **Board.** "Board" means the board of directors of the Minnesota veterans homes or its designee created by

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Minnesota Statutes, section 198.022, and defined in Minnesota Statutes, section 198.001, subdivision 6.

Subp. 16. **Boarding care.** "Boarding care" means board, room, laundry, personal services, supervision over medication that can be safely self-administered, and a program of activities and supervision required by persons who are not able to properly care for themselves. Boarding care is the state equivalent of domiciliary care as that term is used by the United States Department of Veterans Affairs.

Subp. 17. **Boarding care facility.** "Boarding care facility" means a facility or unit of a facility licensed by the commissioner of health under chapters 4655 and 4660 and under Minnesota Statutes, sections 144.50 to 144.56.

Subp. 18. **Board-operated facility.** "Board-operated facility" means a building located on a Minnesota veterans home campus in which nursing care or boarding care is provided.

Subp. 19. **Business expense.** "Business expense" means the cost of producing income from a business, excluding capital expenditures and depreciation.

Subp. 20. **Campus.** "Campus" means the property owned or controlled by the state of Minnesota on which a Minnesota veterans home facility is located.

Subp. 21. **Care plan review.** "Care plan review" means an assessment of a resident's physical and mental condition and treatment needs. Care plan review includes:

A. a review of the resident's reason for seeking admission and treatment;

B. a review of the resident's diagnoses and assessments;

C. a review of the resident's individual care plan;

D. a review of the appropriateness, duration, and outcome of treatment and care provided at the board-operated facility; and

E. a review of the treatment and care recommendations of the multidisciplinary staff.

Subp. 22. **Chemical.** "Chemical" means alcohol, solvents,

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and other mood altering substances including controlled substances as defined in Minnesota Statutes, chapter 152.

Subp. 23. **Chemical abuse.** "Chemical abuse" has the meaning given it in part 9530.4100, subpart 5.

Subp. 24. **Chemical dependency counselor.** "Chemical dependency counselor" means a staff person who meets the qualifications in part 9530.4270, subpart 4.

Subp. 25. **Chemical dependency treatment program.** "Chemical dependency treatment program" means an in-patient, residential treatment program operated in a licensed hospital or licensed facility under parts 9530.4100 to 9530.4450.

Subp. 26. **Chemically dependent; chemical dependency.** "Chemically dependent" or "chemical dependency" has the meaning given it in part 9530.4100, subpart 6.

Subp. 27. **Conservator.** "Conservator" has the meaning given it in Minnesota Statutes, section 525.539, subdivision 3.

Subp. 28. **Contract.** "Contract" means a legally enforceable agreement entered into by the board and an applicant, resident, or the resident's legal representative or spouse, if any, or a provider or by a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 29. **Cost effective.** "Cost effective" means a result that is economical in terms of the goods and services received for the money spent, given feasible alternatives or a result in which the cost is less than the value of the benefit received.

Subp. 30. **Cost of care.** "Cost of care" means the average daily per resident cost of providing care, calculated separately for a resident of a boarding care facility or nursing home facility. The cost must be calculated according to part 9050.0500 [Emergency].

Subp. 31. **Dependent.** "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota or United States income tax return. An individual may not be claimed as a full unallocated dependent by more than one person. When two or more persons are entitled to claim the

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dependent, the dependent must be allocated equally among the persons unless the persons choose another allocation.

Subp. 32. **Detoxification program.** "Detoxification program" has the meaning given it in Minnesota Statutes, section 254A.08, subdivision 2.

Subp. 33. **Diagnostic and Statistical Manual of Mental Disorders; DSM-MD.** "Diagnostic and Statistical Manual of Mental Disorders" or "DSM-MD" means the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-MD). This publication is incorporated by reference, is not subject to frequent change, and is available at the State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 34. **Dietician.** "Dietician" means a dietician registered with the National Commission on Dietetic Registration.

Subp. 35. **Direct cost.** "Direct cost" has the meaning given it in part 9050.0500 [Emergency], subpart 2, item A.

Subp. 36. **Discharge.** "Discharge" means a termination of residence in the nursing home or boarding care home that is documented in the discharge summary signed by the attending physician. For purposes of this definition, a discharge does not include:

A. transfer or bed change within a particular nursing or boarding care home;

B. a transfer from one licensure level to another at the same Minnesota veterans home campus; or

C. an absence from the nursing home or boarding care home for hospitalization, treatment purposes, or personal reasons when the resident is expected to return to the same nursing home or boarding care home and complies with the bed hold requirements of part 9050.0150 [Emergency].

Subp. 37. **Earned income.** "Earned income" means compensation from lawful employment or lawful self-employment, including salaries, wages, tips, gratuities, commissions, earnings from self-employment, earned income tax credits, incentive payments from work or training programs, payments made

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by an employer for regularly accrued vacation or sick leave, employee bonuses and profit sharing, jury duty pay, picket duty pay, and profit from other lawful activities earned by the individual's effort or labor. Earned income does not include returns from capital investment or benefits that accrue as compensation for lack of employment. Earned income must be determined according to parts 9050.0700 to 9050.0740 [Emergency].

Subp. 38. **Educational expenses.** "Educational expenses" means the amounts paid for a person's tuition, mandatory fees, transportation to and from school, supplies and equipment required for coursework, and child care while the person is in school or in transit.

Subp. 39. **Emergency.** "Emergency" means a life-threatening medical condition that if not immediately diagnosed and treated could cause a person serious physical or mental disability, continuation of severe pain, or death.

Subp. 40. **Equity.** "Equity" means the amount of equity in real or personal property owned by a person. Equity is determined by subtracting any outstanding encumbrances on fair market value.

Subp. 41. **Goal.** "Goal" means the desired behavioral outcome of an activity that can be observed and reliably measured by two or more independent observers.

Subp. 42. **Gross income.** "Gross income" means all earned and unearned income before any deduction, disregard, or exclusion.

Subp. 43. **Guardian.** "Guardian" has the meaning given it in Minnesota Statutes, section 525.539, subdivision 2.

Subp. 44. **Health care facility.** "Health care facility" means a hospital, nursing home, boarding care home, or supervised living facility licensed by the Minnesota Department of Health under Minnesota Statutes, sections 144.50 to 144.56 or 144A.01 to 144A.17.

Subp. 45. **Health care professional.** "Health care professional" means a licensed health professional as defined in Minnesota Statutes, section 144.4172, subdivision 7.

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Subp. 46. **Health care service.** "Health care service" means a diagnostic, preventive, or corrective procedure provided in a health care facility, or by or under the supervision of a health care professional, or by or under the auspices of a rehabilitation program as defined in subpart 103.

Subp. 47. **Home.** "Home" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 8.

Subp. 48. **Homestead.** "Homestead" means a dwelling owned and occupied by the applicant or resident, or that person's spouse, as a primary residence. Homestead includes the land upon which the dwelling is situated as specified in Minnesota Statutes, section 510.02.

Subp. 49. **Hospital.** "Hospital" means an acute care institution as defined in Minnesota Statutes, section 144.696, subdivision 3, and licensed under Minnesota Statutes, sections 144.50 to 144.58.

Subp. 50. **Hospital absence.** "Hospital absence" means an absence from a board-operated facility for medically necessary treatment in a hospital.

Subp. 51. **Household.** "Household" means the spouse of an applicant or resident and the applicant's or resident's dependent child or children living in the homestead.

Subp. 52. **Household income.** "Household income" means all income received by or on behalf of the applicant's or resident's spouse in a calendar year.

Subp. 53. **Inappropriate and harmful use.** "Inappropriate and harmful use" has the meaning given it in part 9530.4100, subpart 14.

Subp. 54. **Income.** "Income" means cash or in-kind benefits, whether earned or unearned, received by or available to an individual and not established as property under part 9050.0700 [Emergency], subpart 1.

Subp. 55. **Independent living; live independently.** "Independent living" or "live independently" means the situation of an individual living in his or her own dwelling and having the opportunity to control basic decisions about his or her own

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life to the fullest extent possible.

Subp. 56. **Independent physician.** "Independent physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147, who is not the applicant's or resident's attending physician. The independent physician may be a Minnesota veterans home staff physician of a board-operated facility other than the one in which the individual in question resides.

Subp. 57. **Indirect cost.** "Indirect cost" has the meaning given it in part 9050.0500 [Emergency], subpart 2, item B.

Subp. 58. **Individual care plan.** "Individual care plan" means a written plan developed under part 4655.6000 for implementing and coordinating a resident's care and treatment that is developed and maintained by the multidisciplinary staff on the basis of assessment results for each resident. The purpose of the individual care plan is to integrate care, identify and meet the service needs of the resident, set treatment goals and objectives for the resident, and identify responsibilities of the multidisciplinary staff for the resident's care and treatment.

Subp. 59. **International Classification of Diseases; ICD-9-CM.** "International Classification of Diseases" or "ICD-9-CM" means the current edition of the Clinical Manual of the International Classification of Diseases, as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Subp. 60. **Legal availability.** "Legal availability" means a person's right under the law to secure, possess, dispose of, or control income or property.

Subp. 61. **Legal representative.** "Legal representative" means an individual ~~acting-or-speaking-on-behalf-of-an-applicant or-resident-whose-authority-is-granted-or-recognized-by-statute and-the-nature-and-extent-of-that-authority-is-defined-by statute,-by-a-court-of-competent-jurisdiction,-by-other-legal~~

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~~action,-or-by-recognition-of-the-United-States-Department-of Veterans-Affairs-or-Social-Security-Administration-in-the-matter under-consideration.--Examples-are-a-guardian,-conservator, person-with-power-of-attorney,-custodian,-and-representative~~ payee who has the legal authority to take a particular action on behalf of an applicant or resident. The legal authority can be granted by statute, by a court, or by federal or state regulation.

Subp. 62. **Level of care.** "Level of care" means the licensure level of the board-operated facility in which a person lives or the case mix classification assigned to the person under parts 9549.0058, subpart 2, and 9549.0059.

Subp. 63. **Level of care change.** "Level of care change" means movement of a resident from one level of care to another within a board-operated facility or from one facility to another on the same campus.

Subp. 64. **Licensed consulting psychologist.** "Licensed consulting psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 4.

Subp. 65. **Licensed practical nurse.** "Licensed practical nurse" means a person licensed under Minnesota Statutes, sections 148.91 to 148.299.

Subp. 66. **Licensed psychologist.** "Licensed psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 5.

Subp. 67. **Life estate.** "Life estate" means an interest in real property with the right of use or enjoyment limited to the life or lives of one or more human beings that is not terminable at any fixed or computable period of time.

Subp. 68. **Lump sum.** "Lump sum" means nonrecurring income received at one time. Examples include windfalls, debt repayments, payments from the sale of property, tax refunds, payments of accrued benefits, gifts, and inheritances.

Subp. 69. **Maintenance charge.** "Maintenance charge" means the portion of the cost of care paid by or on behalf of a specific resident.

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Subp. 70. **Market rent.** "Market rent" means the rental income that a property would most probably command on the open market in an arm's length negotiation as shown by current rentals being paid for comparable space of comparable worth.

Subp. 71. **Market value.** "Market value" means the most probable price in terms of money that property should bring in a competitive open market under all conditions requisite to a fair sale. The value on the most recent property tax statement must be presumed to be the market value for purposes of calculating the maintenance charge unless the person or the board or its designated representative provides convincing evidence to overcome the presumption.

Subp. 72. **Medical condition.** "Medical condition" means the diagnosis or diagnoses listed in current editions of ICD-9-CM or DSM-MD, made by the applicant's or resident's attending physician.

Subp. 73. **Medical director.** "Medical director" means a physician licensed under Minnesota Statutes, chapter 147, and employed by or under contract to the board who is responsible for overall direction of medical practice in a facility and for liaison with independent physicians at the facility.

Subp. 74. **Medical treatment plan.** "Medical treatment plan" means the plan signed by the resident's attending physician that includes the resident's primary and secondary diagnoses, order for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential. The medical treatment plan is a component of the individual care plan.

Subp. 75. **Medically necessary; medical necessity.** "Medically necessary" or "medical necessity" means a health care service that is consistent with the resident's diagnosis or condition and is provided pursuant to the provider's authority under state law and within the scope of licensure, if any, and:

A. is recognized as the prevailing standard or current practice by the provider's peer group;

B. is rendered:

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(1) in response to a life-threatening condition or pain;

(2) to treat an injury, illness, or infection;

(3) to treat a condition that could result in physical or mental disability; or

(4) to achieve a level of physical or mental function consistent with prevailing community standards for the diagnosis or condition; or

C. is a preventive health care service.

Subp. 76. **Mental health practitioner.** "Mental health practitioner" means a person qualified under Minnesota Statutes, section 245.462, subdivision 17.

Subp. 77. **Mental health professional.** "Mental health professional" means a person qualified under Minnesota Statutes, section 245.462, subdivision 18.

Subp. 78. **Mental illness.** "Mental illness" has the meaning given it in Minnesota Statutes, section 245.462, subdivision 20, clause (a).

Subp. 79. **Month.** "Month" means a calendar month.

Subp. 80. **Multidisciplinary staff.** "Multidisciplinary staff" means the health care professionals and mental health practitioners or mental health professionals employed by or under contract to the board to provide clinical and evaluative services in the treatment of conditions of the residents.

Subp. 81. **Net income.** "Net income" means income remaining after allowable deductions and exclusions have been subtracted from gross income under parts 9050.0720 to 9050.0755 [Emergency].

Subp. 82. **Net worth.** "Net worth" means the total sum of property owned by an applicant, resident, or spouse of an applicant or resident or managed by a legal representative on behalf of an applicant, resident, or spouse of an applicant or resident less any encumbrances on the property.

Subp. 83. **Nursing care.** "Nursing care" has the meaning given it in part 4655.0100, subpart 8, item B, and Minnesota Statutes, section 144A.01, subdivision 6.

Subp. 84. **Nursing home.** "Nursing home" means a facility

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licensed by the commissioner of health under chapters 4655 and 4660 and Minnesota Statutes, chapter 144A.

Subp. 85. **Nursing staff.** "Nursing staff" has the meaning given it in part 4655.0100, subpart 9.

Subp. 86. **Objective.** "Objective" means a short-term treatment expectation and its accompanying measurable physical or behavioral criteria as specified in the individual care plan. An objective is set to facilitate achieving the goals in a resident's individual care plan.

Subp. 87. **Outcome.** "Outcome" means the measure of change or the degree of attainment of treatment goals and objectives in the resident's individual care plan that is achieved as a result of provision of service.

Subp. 88. **Pathological use.** "Pathological use" has the meaning given it in part 9530.4100, subpart 18.

Subp. 89. **Personal absence.** "Personal absence" means an absence from a board-operated facility for family visits, vacations, or other personal, nontreatment related reasons.

Subp. 90. **Personal fund account.** "Personal fund account" means the account maintained at a facility by a resident that is solely for use of that resident and managed according to parts 4655.4150 to 4655.4170.

Subp. 91. **Personal property.** "Personal property" means property other than real property.

Subp. 92. **Pharmacist.** "Pharmacist" means a person licensed under Minnesota Statutes, chapter 151.

Subp. 93. **Physical therapist.** "Physical therapist" means a person licensed under Minnesota Statutes, sections 148.65 to 148.78.

Subp. 94. **Preventive health care service.** "Preventive health care service" means a health care service that is provided to a resident to avoid or minimize the occurrence of illness, infection, disability, or other health condition.

Subp. 95. **Psychiatrist.** "Psychiatrist" means a physician licensed under Minnesota Statutes, chapter 147, who can give written documentation of having successfully completed a

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postgraduate psychiatry program of at least three years duration that is accredited by the American Board of Psychiatry and Neurology.

Subp. 96. **Rate year.** "Rate year" means the state fiscal year for which a payment rate is effective.

Subp. 97. **Real property.** "Real property" means land and all buildings, structures, and improvements or other fixtures on it, all rights and privileges belonging or appertaining to it, all manufactured homes attached to it on permanent foundations, and all trees, mines, minerals, quarries, and fossils on or under it.

Subp. 98. **Registered nurse.** "Registered nurse" means a nurse licensed under Minnesota Statutes, sections 148.171 to 148.285.

Subp. 99. **Rehabilitation program.** "Rehabilitation program" means a program of chemical dependency treatment or rehabilitation provided in a residential facility as defined in Minnesota Statutes, section 245.782, subdivision 6.

Subp. 100. **Reporting year.** "Reporting year" means the period from April 1 to March 31 immediately preceding the rate year, for which the nursing home or boarding care home calculates its costs, and which is the basis for the determination of the cost of care for the following rate year.

Subp. 101. **Representative payee.** "Representative payee" means an individual designated by the Social Security Administration to receive benefits on behalf of the applicant or resident.

Subp. 102. **Reserved bed.** "Reserved bed" has the meaning given it in part 9050.0150 [Emergency], subpart 6.

Subp. 103. **Resident.** "Resident" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 2.

Subp. 104. **Resident's financial information file.** "Resident's financial information file" means financial data collected to determine the ability of an applicant or resident to pay or have paid the amount indicated in the admissions agreement toward the resident's cost of care.

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Subp. 105. **Resource.** "Resource" means any property, income, or benefit that is available to pay for the cost of care of the resident.

Subp. 106. **Social worker.** "Social worker" means a person who is licensed under Minnesota Statutes, section 148B.21, who has met the minimum qualifications of a social worker under the Minnesota Merit System or a county civil service system in Minnesota.

Subp. 107. **Staff physician.** "Staff physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147, who is employed by or under contract to the board to provide services in a board-operated facility.

Subp. 108. **Staff psychiatrist.** "Staff psychiatrist" means a psychiatrist who is employed by or under contract to the board to provide psychiatric services in a board-operated facility.

Subp. 109. **Staff psychologist.** "Staff psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 4 or 5, who is employed by or under contract to the board to provide psychological services in a board-operated facility.

Subp. 110. **Transfer.** "Transfer" means:

A. movement of a resident to or from another health care facility for purposes of hospitalization or other health care services if a bed is held at the particular board-operated facility for the resident pending completion of medically necessary treatment and the resident's anticipated return to the same board-operated facility; or

B. movement to or from a nursing home to a boarding care facility or to or from a boarding care facility to a nursing home at a particular campus, when a bed hold is not required and a return to the resident's previous level of care is not anticipated.

Subp. 111. **Treatment.** "Treatment" means the use of medically necessary health care services to prevent, correct, or ameliorate disease or abnormalities detected by diagnostic or screening procedures.

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Subp. 112. **Treatment absence.** "Treatment absence" means an absence of a resident from a board-operated facility, with the expectation of the resident's return to the board-operated facility. The absence must be to be placed in a residential institutional setting, including a detoxification facility, a rehabilitation program, or health care facility other than a hospital.

Subp. 113. **Unearned income.** "Unearned income" means any form of gross income that does not meet the definition of earned income. Unearned income includes an annuity, retirement, or disability benefit, including veteran's or worker's compensation, social security disability, railroad retirement benefits, or unemployment compensation; benefits under a federally funded categorical assistance program including supplemental security income, or other assistance programs, gifts, rents, dividends, interest and royalties, support and maintenance payments, pension payments, return on capital investment, insurance payments or settlements, severance payments, employment benefits and rewards for past employment; and educational grants, deferred payment loans, and scholarships. Unearned income must be calculated according to part 9050.0710 [Emergency], subpart 5.

Subp. 114. **Unemployment compensation.** "Unemployment compensation" means the insurance benefits paid to an unemployed worker under Minnesota Statutes, sections 268.03 to 268.231.

Subp. 115. **Utilization review.** "Utilization review" means the activity or function within the board-operated facility responsible for the ongoing evaluation of the necessity for and the quality and timeliness of services provided in board-operated facilities, according to chapters 4655 and 4660, when the services are not under the responsibility of a professional standards review organization.

Subp. 116. **Verification.** "Verification" means the process the facility financial staff or social services staff must use to establish the accuracy or completeness of information from an applicant, a resident, a third party, or other source as that

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information relates to a person's eligibility for admission, suitability for admission, or calculation of maintenance charge.

Subp. 117. **Veteran.** "Veteran" has the meaning given it in Minnesota Statutes, section 197.447.

Subp. 118. **Volunteer.** "Volunteer" means a person who, without compensation, gives time and effort in supportive or person-to-person services.

Subp. 119. **Vulnerable adults act.** "Vulnerable adults act" has the meaning given it in Minnesota Statutes, section 626.557.

Subp. 120. **Working days.** "Working days" means Monday through Friday, excluding state recognized legal holidays.

9050.0050 [Emergency] PERSONS ELIGIBLE FOR ADMISSION.

Subpart 1. **General qualifications.** A person seeking admission to a board-operated facility must meet the admission requirements in Minnesota Statutes, sections 198.01, 198.02, and 198.03, and the criteria in part 9050.0070 [Emergency]. The person must also provide current evidence of medical need for admission and financial information as specified in parts 9050.0800 to 9050.0900 [Emergency].

~~For purposes of subparts 2 and 3, a person is a resident of the state if the person has been physically present in the state on a continuous basis for six months before the date of application for admission.~~

For purposes of subparts 2 to 4, an applicant or resident has adequate means of financial support if the applicant or resident is financially able to live independently. A person is financially able to live independently if the person has assets in excess of $3,000 or income sufficient to meet basic needs.

Subp. 2. **Veterans.** A person must meet the criteria in Minnesota Statutes, sections 197.447 and 198.022, paragraphs (1) and (2), to be eligible for admission to a board-operated facility as a veteran.

Subp. 3. **Nonveterans.** A person who is not a veteran must meet the criteria in Minnesota Statutes, section 198.022, paragraphs (1) and (3), to be eligible for admission to a

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board-operated facility.

Subp. 4. **Exceptions.** An applicant otherwise eligible for admission to a board-operated facility under subpart 2 or 3 who has adequate means of support may be admitted to a board-operated facility if the applicant complies with the requirements in Minnesota Statutes, section 198.03. An applicant seeking admission under Minnesota Statutes, section 198.03, and this subpart must not have past unpaid debts to the state for maintenance charges for prior residence in a board-operated facility. An applicant who has past unpaid debts to the state must make full payment of the past unpaid bills for maintenance charges or negotiate a reasonable repayment plan with the board before an application for admission will be placed on the active waiting list.

9050.0055 [Emergency] ADMISSIONS PROCESS, WAITING LIST, PRIORITY.

Subpart 1. **Process.** A person seeking admission to a board-operated facility may obtain an application form and information describing the required application procedures from the facility. The social services staff of the board-operated facility shall assist the person to complete the application form and process. When an application is requested, the social services staff shall provide a checklist of items requiring documentation, information, or verification to complete the application. An application is complete when the following information is received by the board-operated facility:

A. a completed, signed application form;

B. a copy of the person's military discharge papers;

C. a signed copy of the board-operated facility's admission policy statement; and

D. the following medical records:

(1) a discharge summary from all hospitals at which the person received treatment within the five years before application;

(2) a patient care information form from the current nursing home, if any;

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(3) if the person resides at home at the time of application, a patient care information form completed by the primary caregiver; and

(4) if the person resides at home at the time of application, a history and physical from the attending physician.

The social services staff of the board-operated facility shall keep a checklist on which to record the date of receipt of information for the person's application file. Upon completion of an application file, a determination must be made by the board-operated facility social services staff as to whether the applicant meets the general eligibility requirements in part 9050.0050 [Emergency]. If the requirements of part 9050.0050 [Emergency] are met, an applicant's name must be referred to the admissions committee or be placed on the waiting list for the particular facility as specified in subpart 3.

Subp. 2. **Timing of review by the admissions committee.** The admissions committee shall review an application for admission to determine the applicant's suitability for admission to a board-operated facility as determined by the criteria in part 9050.0070 [Emergency], subparts 3 and 4, according to items A and B.

A. If the board-operated facility to which a person has applied has no waiting list, the admissions committee shall review the application file within ten working days of its completion.

B. If the board-operated facility to which the person has applied has a waiting list, the admissions committee shall review the application file within ten working days from the time the applicant's name reaches the first place on the active waiting list and a bed becomes available.

Subp. 3. **Waiting lists.** Each board-operated facility shall maintain an active waiting list and an inactive waiting list to determine the admission priority of applicants. The active waiting list is for applicants desiring the first available bed at the level of care appropriate to the applicant's needs. The inactive waiting list is for those

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applicants who do not want to exercise their option for admission, but who want to be prepared to exercise that option and want to be kept informed of openings or of the length of the active waiting list at the board-operated facility.

If an eligible applicant cannot be considered for admission to a board-operated facility with an appropriate level of care due to unavailability of a bed, the applicant must be placed on either an active or inactive waiting list according to preference. An applicant shall indicate preference for the active or inactive waiting list on the application for admission. An applicant may request movement from one waiting list to another at any time, unless the request is precluded by subpart 5. An applicant requesting movement from one waiting list to another must be placed at the bottom of the waiting list to which movement was requested. The applicant's position on the waiting list is determined by the date on which the application file is complete.

Subp. 4. **Priority.** Current residents of board-operated facilities have priority for consideration for admission to other board-operated facilities at an appropriate level of care if they meet the criteria for that level of care and a bed is available. A person on the active waiting list must be considered for admission and, if approved by the admissions committee, offered a bed consistent with the person's position on the active waiting list and the person's case mix classification and level of care needs as determined by the admissions committee. A person offered admission has seven working days to consider the offer. If the person declines the offer of admission, the person's name must be put on the bottom of the active waiting list, unless the person requests removal from the active waiting list or transfer to the inactive waiting list. If the person fails to respond to the offer of admission within seven working days from the date the offer is made, the person's application file must be closed and the person's name removed from all waiting lists. A person whose name is removed from all waiting lists for failure to respond to an offer for

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admission must reapply.

Subp. 5. **Limitations on refusals to exercise option for admission from active waiting list.** Refusal or failure to exercise the option for admission from the active waiting list is limited as set forth in items A and B.

A. A person who is placed on the waiting list after the effective date of parts 9050.0010 to 9050.0900 [Emergency] and who twice refuses an opportunity for admission must be removed from the active waiting list and placed on the inactive waiting list. The person is not permitted to transfer to the active waiting list for one year from the date the person refused an opportunity for admission unless the person can verify by an attending physician a significant change in health status since the date of last refusal.

B. A person who is on the waiting list as of the effective date of parts 9050.0010 to 9050.0900 [Emergency] and who has previously refused one or more opportunities for admission must be allowed one additional opportunity for admission before being moved to the inactive waiting list.

Subp. 6. **Initial financial status review.** The facility financial staff shall evaluate the financial status of a person approved for admission. The purpose of the initial financial status review is to determine the person's ability to pay toward the cost of care and to calculate the person's maintenance charge. The financial status review must be conducted according to parts 9050.0800 to 9050.0900 [Emergency]. The maintenance charge calculation must be according to part 9050.0560 [Emergency].

9050.0060 [Emergency] ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.

Subpart 1. **Admissions committee appointed.** The administrator of a facility shall appoint an admissions committee for that facility to review and act on applications for admission to that facility.

Subp. 2. **Composition of admissions committee.** The

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admissions committee must consist of three or more of the following staff members of the board-operated facility: the administrator or a designee, a registered nurse, a social worker, a mental health professional or mental health practitioner, and a physical therapist. Additional admissions committee members may include any of the following staff members, as indicated by the diagnosis or diagnoses of the applicant to be reviewed: a chemical dependency counselor, a mental health professional or mental health practitioner, physical therapist, dietician, and clergy member.

Subp. 3. **Duties.** The admissions committee has the duties specified in items A and B.

A. The admissions committee shall review and act on all applications by conducting a screening as specified in subpart 4, and by reviewing the completed application and documentation in part 9050.0055 [Emergency]. The admissions committee shall determine whether or not to admit the applicant according to the facility's ability to meet the applicant's care needs, based on the admissions criteria in part 9050.0070 [Emergency], subparts 3 and 4.

B. The admissions committee shall record the minutes of each committee meeting. The minutes must reflect the date of the review, the applicant's name, the current living status of the applicant, the reason for the placement request, a brief description of the applicant's physical or mental status, and the rationale behind the committee decision. The minutes must be kept by the administrator for the time specified for retention of medical records in parts 4655.3200 to 4655.3600.

Subp. 4. **Screening.** To prepare for review of an application for admission, the admissions committee or its designated representatives shall conduct a preadmission screening similar to that prescribed in Minnesota Statutes, section 256B.091. The admissions committee or its designated representatives shall interview the applicant or the applicant's legal representative, if any, and the applicant's family members with the applicant's consent. The admissions committee shall

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also obtain the following information:

A. military service records or discharge information about the applicant or the applicant's spouse;

B. medical and psychiatric information from previous or current placements and current attending physicians and, as appropriate, psychologists or psychiatrists;

C. information from the applicant's previous or current placements about the applicant's compliance with the applicant's medical treatment plan or individual treatment or care plan;

D. Bureau of Criminal Apprehension reports or criminal background information or reports, as appropriate;

E. level of care information from previous and current placements; and

F. financial status for purposes of determining the applicant's ability to pay.

9050.0070 [Emergency] TYPES OF ADMISSIONS.

Subpart 1. **General criteria.** Admissions must be according to the requirements in parts 4655.0400, 4655.0500, 4655.0700, and 4655.1500.

Subp. 2. **Selection of residents.** Of those applicants eligible for admission under part 9050.0050 [Emergency] and Minnesota Statutes, sections 198.01, 198.022, and 198.03, the admissions committee of the board-operated facility, in consultation with the applicant's attending physician, shall determine whether an applicant is to be admitted by applying the criteria for each type of facility in subparts 3 and 4.

Subp. 3. **Criteria for admission to and continued stay in a boarding care facility.** The decision about admission to or continued stay in a board-operated facility licensed to provide boarding care must be based on the facility's ability to meet the care needs of the applicant or resident. A person whose care needs can be met by the board-operated facility must be admitted, placed on the waiting list, or retained as a resident if the admissions committee determines the person meets the

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criteria in items A to N. A person whose care needs cannot be met must be denied admission or continued stay if the admissions committee determines the person does not meet the criteria in items A to N.

A. The person must have or be assigned a case mix classification of A or B under the case mix system established by parts 9549.0058, subpart 2, and 9549.0059 and Minnesota Statutes, section 144.072.

B. The person must have a medical and, if appropriate, psychiatric diagnosis from the attending physician indicating placement in a boarding care facility is a medical necessity.

C. The person's attending physician must document the person's need for the services provided in a boarding care facility.

D. A person must be alert and oriented to person, place, and time, and able to function within a structure of daily monitoring by the nursing staff of the boarding care facility. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist.

E. A person must be able to recognize and appropriately react to hazards in the environment. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist. The case mix indicator, developed under Minnesota Statutes, section 144.072, for orientation and self-preservation skills must be used to determine whether the individual has the mental judgment or physical ability necessary to function in a changing environment and a potentially harmful situation.

F. The person must participate in establishing and comply with the person's individual care plan and comply with the medical treatment plan prescribed by the attending physician. Continuing compliance must be measured as specified in the compliance review process in part 9050.0300 [Emergency].

G. A person must be physically and mentally capable of providing personal care and hygiene including dressing,

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grooming, washing other than bathing, eating, and toileting. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist.

H. The person must be assessed by a staff registered nurse as independent in transferring and mobility.

I. The person must require no more than twice daily face-to-face monitoring by the nursing staff of the boarding care facility. For continued stay, face-to-face monitoring for special medical needs may exceed twice daily for up to five days with approval of the assistant director of nursing of the boarding care facility.

J. A staff psychiatrist or psychologist must document that the person with a history of violent or self-abusive behavior does not pose a threat of harm to self or others.

K. A person diagnosed by the attending physician as actively psychotic must require no more than twice daily face-to-face monitoring by facility nursing staff and no more than weekly face-to-face therapeutic contacts with a staff psychiatrist or psychologist.

L. A person with a history of chemical abuse or a diagnosis of chemical dependency must have successfully completed an in-patient residential chemical dependency treatment or rehabilitation program as defined in part 9050.0040 [Emergency], subparts 25 and 103, and must be chemically free. For purposes of this item, a person is chemically free if the person can document six months of nonuse or use with no symptoms of dependency prior to admission and demonstrates continued nonuse of chemicals during residence.

M. The person must be able to comply with Minnesota veterans homes rules in parts 9050.0010 to 9050.0900 [Emergency]. Ability to comply is demonstrated by a documented history of compliance in a prior placement, if any. Continuing compliance must be measured as specified in the compliance review process in part 9050.0300 [Emergency].

N. The person must be free from any reportable communicable disease or infection as defined in part 4605.7040

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that poses a threat to the health and safety of others.

Subp. 4. **Criteria for admission to and continued stay in a nursing home facility.** The decision about admission or continued stay in a board-operated facility licensed as a nursing home must be based on the facility's ability to meet the care needs of the person. A person whose care needs can be met by the facility must be admitted, placed on the waiting list, or retained as a resident if the admissions committee determines that the person meets all of the criteria in items A to F. A person whose care needs cannot be met must not be admitted or retained as a resident if the admissions committee determines the person fails to meet all of the criteria in items A to F.

A. The person must have or be assigned a case mix classification of A to K under the case mix system established by parts 9549.0058, subpart 2, and 9549.0059 and Minnesota Statutes, section 144.072.

B. The person must have a medical and, if appropriate, psychiatric diagnosis from the attending physician indicating placement in a nursing home is a medical necessity.

C. The person's attending physician must document the person's need for the services provided in a nursing home.

D. The person must demonstrate a history of compliance with an individual treatment or care plan or with the medical treatment plan prescribed by the attending physician. The person with a history of noncompliance must be assessed by a staff registered nurse as to the facility's ability to meet the person's care needs.

E. The person must be free from any reportable communicable disease or infection as defined in part 4605.7040 that poses a threat to the health and safety of others.

F. A staff psychiatrist or psychologist must document that the person with a history of violent or self-abusive behavior does not pose a threat of harm to self or others.

9050.0080 [Emergency] ADMISSION DECISION; NOTICE AND REVIEW.

Subpart 1. **Notice.** An applicant must be advised by the

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board, in writing, of the admissions committee's decision and the reasons for the decision. The notice must be sent to the applicant no later than three working days after the admissions committee's decision. The notice must include information about the applicant's right to request a review of a denial and about the review process as specified in subpart 2 or information regarding additional actions necessary to effect admission. Nothing in this subpart precludes concurrent or prior notification by telephone.

Subp. 2. **Review.** An applicant or the applicant's legal representative may request a review of a decision of the admissions committee to deny the applicant's admission. The applicant or applicant's legal representative desiring the review shall forward the request, in writing, to the administrator of the facility. The review must be completed within 30 days of receipt of the request. The administrator may request that the admissions committee reconsider its decision or the administrator may review the existing minutes to determine the basis for a negative decision. If a reconsideration is requested, it must be conducted at the next scheduled admissions committee meeting. The decision resulting from the reconsideration and the reasons for the decision must be forwarded to the administrator in writing. The administrator shall conduct a final review of the admissions committee's decision, based on the admissions criteria in part 9050.0070 [Emergency], subpart 3 or 4, and shall issue a final decision. The decision of the administrator shall constitute final agency action.

9050.0100 [Emergency] TRANSFER.

Subpart 1. **Generally.** A resident may be transferred from a board-operated facility to another health care facility or rehabilitation program or detoxification program if:

A. ordered or recommended by the attending physician or the utilization review committee as part of the resident's individual care plan;

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B. requested by the resident or the resident's legal representative, if any; or

C. an emergency situation exists.

A resident may be transferred only with the resident's consent or the consent of the legal representative, if any, except in an emergency when obtaining consent before transfer is not possible. A resident who refuses consent for transfer to another health care facility or rehabilitation program or detoxification program on recommendation of the attending physician or the utilization review committee, or both, may be subject to discharge for noncompliance with the resident's individual care plan. The utilization review committee's decision to recommend discharge of a resident for refusing consent for transfer is limited by the Patient's Bill of Rights established in Minnesota Statutes, section 144.651, and must be based on the facility's ability to meet the person's care needs as determined by the criteria in part 9050.0700 [Emergency], subparts 3 and 4. A resident transferred from another facility back to the board-operated facility does not need to reapply for admission.

Subp. 2. **Notice.** Unless a situation occurs that is outside the board-operated facility's control, such as a utilization review, the accommodation of newly admitted residents, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment of stay, a resident for whom the utilization review committee or the attending physician recommends a transfer must be notified of the recommendation at least:

A. 30 days before the anticipated transfer date, if to a non-board-operated facility or program, according to Minnesota Statutes, section 144.651, subdivision 29; and

B. seven days before the anticipated transfer to another bed or level of care within the same board-operated facility, or to another board-operated facility located at the same campus, according to Minnesota Statutes, section 144.651, subdivision 29.

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Subp. 3. **Mechanisms of effecting transfer.** A transfer must be effected in the manner applicable to a voluntary discharge in part 9050.0210 [Emergency]. The party recommending or requesting transfer shall arrange for transportation for the resident to the new facility or location.

Subp. 4. **Transfers to United States Department of Veterans Affairs Medical Center.** The board-operated facility must not guarantee access or admission to or treatment at the United States Department of Veterans Affairs Medical Center, nor does residence at a board-operated facility grant residents preference with regard to access, admissions, or treatment at the United States Department of Veterans Affairs Medical Center. If the United States Department of Veterans Affairs Medical Center agrees to accept the resident and has an available bed, the resident must be transferred to that facility. If the United States Department of Veterans Affairs Medical Center denies the resident treatment or admission, the resident must be transferred to a hospital or other health care facility that is able to provide the appropriate service. The Minnesota Veterans Homes Board, the Minnesota veterans home facility, the Minnesota Department of Veterans Affairs, or the state of Minnesota are not responsible for the costs of a resident's hospitalization or treatment at a facility that is not a board-operated facility.

Subp. 5. **Appeals.** A resident may appeal a transfer decision that is not based on an emergency. Appeal is to be taken in the same manner as appeal of discharge under part 9050.0220 [Emergency].

9050.0150 [Emergency] BED HOLD.

Subpart 1. **Generally.** A resident's bed or a comparable bed at an appropriate level of care must be held for the resident if the resident is absent from the board-operated facility for a circumstance specified in subparts 2 to 4 and continues payment as required in subpart 5 and part 9050.0540 [Emergency].

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Subp. 2. **Hospital absence.** A resident's bed must be held during a resident's hospital absence if the treatment in the hospital is on the order of the resident's attending physician or is a result of a medical emergency. A hospital absence in excess of 30 days must be periodically monitored by facility staff with regard to the resident's progress and likelihood the resident can be cared for on return to the board-operated facility as determined by the criteria in part 9050.0070 [Emergency], subpart 3 or 4. If satisfactory progress is not being made, discharge proceedings must be started by the utilization review committee.

Subp. 3. **Treatment absence.** A resident's bed must be held during a resident's treatment absence if the treatment is on the order of the resident's attending physician as part of the resident's individual care plan. The resident must participate in treatment on a continuing basis and make satisfactory progress as determined by the administrator of the treatment program. If satisfactory progress is not being made, discharge proceedings must be instituted by the utilization review committee.

Subp. 4. **Personal absence.** A resident's bed must be held when the person leaves the board-operated facility on a personal absence. A personal absence may be no longer than 96 hours.

Subp. 5. **Effect on maintenance charges.** A resident whose bed is held under this part shall continue to pay any maintenance charge or charges that accrued or are accruing either before or during the resident's absence from the board-operated facility. Absences exceeding 96 hours with or without notice result in termination of the resident's entitlement to the per diem payment of the United States Department of Veterans Affairs retroactive to the date of departure.

Subp. 6. **Exception.** A bed may be held without charge for an approved applicant for up to two weeks from the date of acceptance of the offer of admission. A bed held under this subpart must be a reserved bed.

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Subp. 7. **Monitoring of bed hold status.** The appropriateness of continued bed hold must be reviewed by the utilization review committee of the board-operated facility at least once every 30 days during the resident's ongoing absence. A decision about approval of continued bed hold must be based on the resident's satisfactory progress toward recovery from the condition for which the resident was hospitalized or completion of the treatment program or rehabilitation program, and the existence of a reasonable expectation that the facility will be able to care for the resident upon return to the board-operated facility and the resident's compliance with subpart 5 if applicable. Continued bed hold or continued residency with personal absences exceeding 96 hours or more than five personal absences per year that are less than 96 hours must be reviewed by the utilization review committee. The decision about continued residence must be based on the resident's continuing need for care as determined by the utilization review committee. The determination must be according to the criteria in part 9050.0070 [Emergency], subparts 3 and 4.

9050.0200 [Emergency] DISCHARGE.

Subpart 1. **General criteria.** Discharge from a nursing care facility or a boarding care facility constitutes permanent release from that board-operated facility and terminates the duties and responsibilities of the board and the facility staff with respect to the discharged individual. Once discharged, a former resident must reapply for admission to a Minnesota veterans home facility.

Subp. 2. **Types of discharge.** A resident must be discharged from the facility either voluntarily or involuntarily according to items A and B.

A. A discharge is voluntary if there is mutual consent between the resident, the resident's legal representative or spouse, if any, the resident's attending physician, and the administrator of the facility.

B. A discharge is involuntary if it is without mutual

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consent of the resident, the resident's legal representative who has the legal authority, or spouse, if any, the resident's attending physician, and the administrator of the facility ~~or if it is contrary to the expressed preference of the resident~~.

Subp. 3. **Grounds for discharge.** Discharge procedures must be instituted with regard to a resident if one of the following grounds or circumstances exist:

A. the resident or resident's legal representative fails or refuses to comply with ~~the resident's admissions agreement~~ payment obligations in the admission agreement as provided for in part 9050.0040, subpart 5, item C;

B. the resident or resident's legal representative makes a written request for discharge of the resident;

C. the board-operated facility is unable to meet the care needs of the resident, as determined by the utilization review committee according to part 9050.0070 [Emergency], subpart 3 or 4;

D. the resident is absent from the facility for 96 consecutive hours or more without notice; or

E. the resident or resident's legal representative ~~or spouse~~:

(1) falsifies or fraudulently represents information on income disclosure and verification forms required in parts 9050.0800 to 9050.0900 [Emergency];

(2) refuses to provide information or releases; or

(3) falsifies or fraudulently represents information relating to criteria in part 9050.0070 [Emergency], subpart 3 or 4, or issues in part 9050.0060 [Emergency], subpart 4.

Subp. 4. **Notice of involuntary discharge.** Unless the time for the notice is extended by the administrator of a board-operated facility or a situation arises that is outside the facility's control, such as a utilization review, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment of stay, a

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resident must be notified in writing by the administrator of the facility of its intent to proceed with involuntary discharge of the resident at least 30 days before the scheduled date of discharge as provided by Minnesota Statutes, section 144.651, subdivision 29.

Subp. 5. **Contents of notice.** The notice must:

A. state that the discharge is involuntary;

B. state the grounds for the discharge as specified in subpart 3; ~~and~~

C. contain documentation supporting the grounds alleged for the discharge; and

D. state that the resident has the right to appeal the discharge and a description of the appeal procedures.

Subp. 6. **Exceptions.** ~~A resident absent from a board operated facility for 96 consecutive hours without notice is subject to immediate institution of involuntary discharge procedures.~~ A resident's discharge under ~~this~~ subpart 3, item D, is subject to ~~a reinstatement hearing~~ reconsideration if the resident reports his or her whereabouts to the administrator of the facility and requests ~~the reinstatement hearing~~ reconsideration within 30 days from the resident's departure from the facility without notice.

9050.0210 [Emergency] VOLUNTARY DISCHARGE PROCEDURES.

Subpart 1. **When used.** Voluntary discharge procedures must be used when a discharge from the board-operated facility is voluntary as in part 9050.0200 [Emergency], subpart 2, item A, or following review of an appeal from an involuntary discharge order when a court has issued an enforcement order or the resident has agreed to comply with the order for discharge.

Subp. 2. **Responsibilities of facility staff.** The board shall ensure that the tasks in items A to E are completed in effecting discharge under this part.

A. The discharge component of the resident's individual care plan must be updated and implemented after the resident has had an opportunity to confer with a social worker

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about the plan as described in subitems (1) and (2).

(1) A discharge conference must be arranged by the social worker with the resident, the resident's family with the resident's consent, the social worker, and multidisciplinary staff. The social worker shall make a referral of the resident to social or health care services identified in the resident's individual care plan as necessary for the resident's discharge.

(2) The board shall ensure that adequate arrangements exist to meet the resident's financial and other needs following the resident's discharge.

B. The attending physician and board-operated facility multidisciplinary staff shall complete the resident's medical record. The resident's medical record must be retained as specified in parts 4655.3200 to 4655.3600.

C. The resident's medications must be disposed of by a pharmacist according to parts 4655.7600 to 4655.7860.

D. The board-operated facility staff shall release certified copies of the resident's record or the portions specifically requested to a requesting party subject to the requirements of the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. The requesting party shall pay the actual cost of photocopying records. To release a record or information regarding a resident, the resident must sign a form that includes the:

(1) resident's name;

(2) date;

(3) specific nature of information to be released;

(4) names of persons authorized to give information;

(5) names of persons to whom information is given;

(6) description of information to be released; and

(7) date the authorization expires.

A separate form is required for each release. The period

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of validity of an authorization may not exceed one year.

E. At the time of discharge, a description of the place and circumstances of discharge must be documented in the resident's record.

9050.0220 [Emergency] INVOLUNTARY DISCHARGE PROCEDURES.

Subpart 1. **Generally, recommendations.** Involuntary discharge for a reason specified in part 9050.0200 [Emergency], subpart 3, items C or D, must be based on the recommendation of the utilization review committee. Involuntary discharge under part 9050.0200 [Emergency], subpart 3, item A or E, must be based on the recommendation of the facility financial staff or social services staff.

Subp. 2. **Initial notice, review of recommendation.** An initial notice for involuntary discharge must be issued by the administrator of the board-operated facility if, after review of the recommendations and documentation from the utilization review committee or finance department, the administrator agrees with the recommendations.

Subp. 3. **Reconsideration.** A resident or the resident's legal representative may request a reconsideration of the initial notice of involuntary discharge. The request must be made in writing within ten days of receipt of the initial notice of involuntary discharge. Reconsideration must be before the administrator of the board-operated facility under the procedures in subpart 4.

Subp. 4. **Reconsideration procedures, scheduling, representation.**

A. A resident may be represented at a reconsideration under this part by an attorney, the resident, an advocate from the Office of the Ombudsman for Older Minnesotans, or other person of the resident's own choosing.

B. A resident and the resident's representative may question witnesses and present reasons why the resident should not be discharged.

C. The administrator shall record the proceedings

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electronically or stenographically. The cost must be borne by the facility.

D. The time for the reconsideration proceeding must be set by the administrator. The time may be extended for the resident for good cause shown. For purposes of this item, good cause exists when a resident cannot attend because of:

(1) illness or injury of the resident;

(2) illness, injury, or death of a member of the resident's family that requires the resident's presence during the time the review is scheduled;

(3) an inability to obtain necessary assistance;

(4) employment, school, or employment and training service obligations that are scheduled during the reconsideration and that cannot be changed to allow the resident's participation;

(5) a judicial proceeding that requires the resident's presence in court during the hours when the reconsideration is scheduled; or

(6) a nonmedical emergency that requires the resident's presence at a different location during the hours when the reconsideration is scheduled. "Emergency" under this subitem means a sudden unexpected occurrence or situation of a serious or urgent nature that requires immediate action.

Subp. 5. **Administrator's decision and preliminary order.** The administrator, after the reconsideration proceeding and on review of the record, shall review the question of discharge and issue a preliminary order supporting or reversing the initial involuntary discharge notice and state the reasons for the involuntary discharge.

Subp. 6. **Appeals process.** An applicant or resident, or legal representative, may appeal a discharge or transfer order. Appeals must be in accordance with contested case procedures under the Administrative Procedure Act, Minnesota Statutes, sections 14.48 to 14.56, until rules are adopted under Minnesota Statutes, section 144A.135, by the commissioner of health. Unless otherwise decided by the administrator of the

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board-operated facility, a final discharge order issued by the administrator following the Office of Administrative Hearings' review remains in effect pending any appeal according to Minnesota Statutes, section 14.65.

Nothing in this part may be construed to limit, change, or restrict other appeal or review procedures available to a resident under law.

9050.0230 [Emergency] ENFORCEMENT OF FINAL DISCHARGE ORDER.

A final discharge order is the order issued by the administrator of a board-operated facility following review of the preliminary discharge order under Minnesota Statutes, chapter 14. A final discharge order is the final agency action. When a resident refuses to comply with the terms of a final discharge order issued following review under Minnesota Statutes, chapter 14, and final agency action, the administrator may seek enforcement of the final discharge order by applying to the district court for an order enforcing the administrative order of discharge. Pursuant to Minnesota Statutes, section 198.045, the district court may order the sheriff of the county in which the board-operated facility is located to remove the resident from the board-operated facility and authorize the administrator to remove the resident's property and hold it until it can be returned to the former resident. Upon issuance of the court order, the procedures in part 9050.0210 [Emergency] regarding voluntary discharge must be followed, to the extent possible, to effect the discharge.

9050.0300 [Emergency] COMPLIANCE REVIEW.

Subpart 1. **Generally.** A board-operated facility must have and implement a compliance review procedure to review a resident's compliance with an individual care plan and facility emergency rules as specified in chapter 9050. The review must determine what action, if any, is to be taken to ensure the resident's compliance and whether the board-operated facility is able to care for the resident according to the criteria in part 9050.0070 [Emergency), subparts 3 and 4.

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Subp. 2. **Requirements of procedure.** A compliance review procedure must provide for:

A. the resident's right to participation of a resident advocate in the compliance review;

B. notice to the resident of each problem or infraction;

C. instruction for the resident regarding procedures or options for compliance;

D. opportunity for participation of the resident or the resident's legal representative, social workers, and, with the resident's consent, the resident's family members;

E. differentiated reviews and actions consistent with the frequency and severity of the resident's compliance problem;

F. notice to the resident that repeated noncompliance may result in imposition of disciplinary options or restrictions that the utilization review committee finds necessary to provide for the resident's care needs according to part 9050.0070 [Emergency], subpart 3 or 4, and the resident's individual care plan;

G. an accelerated review procedure to be used when the severity of the resident's noncompliance endangers the health and safety of the resident, other residents, or staff members of the board-operated facility;

H. consideration of the resident's ability to comprehend and cooperate with parts 9050.0010 to 9050.0900 [Emergency] or with the individual care plan provisions; and

I. notice to the resident that the ultimate consequence of noncompliance is a recommendation for discharge, if the noncompliance results in the board-operated facility's inability to meet the care needs of the resident according to part 9050.0070 [Emergency], subparts 3 and 4.

Subp. 3. **Conduct of review; responsibilities.** Compliance review must be conducted by the utilization review committee or subcommittee. Decisions as to the use of the review procedure, disciplinary options, or recommendations for discharge must be by majority vote. Decisions of the committee or subcommittee at

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each level or occasion of review must be based on the facility's ability to care for the resident according to part 9050.0070 [Emergency], subpart 3 or 4.

9050.0400 [Emergency] UTILIZATION REVIEW COMMITTEE.

Subpart 1. **Appointment and duties.** The administrator of a facility shall appoint a utilization review committee composed of persons as specified in subpart 2 who are employed by or under contract to the board-operated facility or the board. The committee shall have the duties specified in subpart 3.

Subp. 2. **Composition.** The utilization review committee consists of two physicians and at least one of each of the following professionals: a registered nurse, the administrator or the administrator's designee, a social worker, and a medical records technician. Additional committee members may include any of the following staff members as indicated by the diagnosis or diagnoses of the resident to be reviewed: a chemical dependency counselor, a mental health practitioner or mental health professional, or a dietician. The administrator or the administrator's designee, one other committee member, and at least two physicians must be in attendance to hold a meeting and to take action.

Subp. 3. **Duties.** The duties of the utilization review committee are to:

A. review the necessity and appropriateness of admissions, bed holds, transfers, and the need for discharge of all residents according to the United States Department of Veterans Affairs, chapter 9050, and Department of Health nursing and boarding care criteria specified in parts 4655.0400, 4655.0500, 4655.0700, and 4655.1500;

B. recommend to the administrator of the board-operated facility criteria for use in admitting residents for care plan reviews and discharge;

C. perform medical care evaluation studies at the request of the board and review assessments of residents;

D. provide reports and recommendations to the

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administrators and the board;

E. provide information as required to appropriate state and federal agencies and fiscal agents, including the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, Minnesota Department of Health, Minnesota Department of Human Services, Minnesota Department of Administration, and Legislative Auditor;

F. periodically evaluate the Minnesota veterans homes utilization review procedures and recommend ways to correct deficiencies in the review procedures; and

G. review each resident's case record annually to:

(1) determine the facility's ability to meet the resident's care needs;

(2) assess the resident's willingness to cooperate with an individual care plan and obey facility emergency rules in chapter 9050;

(3) assess the appropriateness of the resident's continued stay; and

(4) develop and update the discharge component of the individual care plan for each resident, as appropriate.

Subp. 4. **Decisions.** Decisions must be by majority vote of the members of the utilization review committee following review at a committee meeting. Decisions about residents must be based on the facility's ability to meet the care needs of the resident or applicant according to part 9050.0070 [Emergency], subpart 3 or 4.

9050.0500 [Emergency] COST OF CARE; BASIS FOR MAINTENANCE CHARGE; BILLING.

Subpart 1. **Annual calculation; effective date; notice of change.** The cost of care used to determine the maintenance charge of a resident must be calculated annually under this part. A change in the cost of care becomes effective on July 1 of the rate year following the reporting year used to calculate the cost of care. The cost of care must remain fixed for that rate year. A notice of change in the cost of care must be

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provided to all residents and their legal representatives 30 days before its effective date.

Subp. 2. **Costs to be included in calculating cost of care.** The calculation of the cost of care includes both the direct and indirect costs of providing resident care. These costs must be compiled separately for each board-operated facility on the basis of whether nursing home or boarding care services are provided.

A. Direct costs include the costs of staff care directly attributable to boarding care or nursing home services that directly benefit the resident. An example of a direct cost is nursing service.

B. Indirect costs include costs incurred for common or joint purposes that are identified with more than one level of care and are for services that are provided on behalf of a resident of the facility or facilities. Examples are the costs of housekeeping, laundry, administration, and food services. Indirect costs must be reduced by the amount of receipts received by the board-operated facility for lease or rent payments, meals, and other common purpose sources.

C. Calculation of the cost of care does not include the expenses of the board and capital expenditures or revenues, including federal matching funds and designated contributions, and resident fund accounts as specified in parts 4655.4120 to 4655.4170.

Subp. 3. **Method of calculating average daily per resident cost of care.** The cost of care for a nursing home or boarding care home must be calculated as follows:

A. total the direct costs for a particular campus or board-operated facility for a reporting year;

B. divide item A by 365;

C. divide item B by the average number of residents in nursing home care or boarding care for a reporting year;

D. total the indirect costs for a particular campus or board-operated facility for a reporting year;

E. divide item D by 365;

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F. divide item E by the average number of residents at a particular campus or board-operated facility for a reporting year; and

G. total items C and F. The result is the average daily per resident cost of care for nursing home care or boarding care.

Subp. 4. **Cost of care related to maintenance charge.** The cost of care as calculated in subpart 3 must be used to determine the maintenance charge to the resident. The maintenance charge must be based on the resident's ability to pay. The maintenance charge must be calculated as specified in part 9050.0560 [Emergency]. The maintenance charge must be reviewed and adjusted as specified in parts 9050.0560 [Emergency] and 9050.0580 [Emergency]. Additionally, when applicable, the resident's maintenance charge must be reduced by the amount of the per diem reimbursement paid on behalf of a resident by the United States Department of Veterans Affairs.

Subp. 5. **Effect of bed hold on maintenance charges.** A resident who pays a maintenance charge, regardless of amount, shall continue to pay that same maintenance charge during a bed hold as specified in part 9050.0150 [Emergency], subpart 5.

Subp. 6. **Billing.** Billing for maintenance charges must be as specified in items A to F.

A. The maintenance charge must be billed monthly.

B. The monthly billing must be the resident's chargeable income as calculated in part 9050.0755 [Emergency], up to the full cost of care.

C. The maintenance charge must be billed to the address designated by the resident or the resident's legal representative on the resident's application for admission.

D. A billing for one month's service must be issued no later than the tenth of the month following the month in which the service was provided.

E. A resident must be charged for the day of admission but not for the day of discharge. For purposes of this item, one day is the 24-hour period ending at midnight.

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F. A billing must state the date by which payment must be received.

9050.0510 [Emergency] MAINTENANCE CHARGE; ADDITIONAL SERVICES; VETERAN EXCLUSIVE SERVICES.

Subpart 1. **Additional services at resident's own expense.** In addition to the services in the resident's admissions agreement, a resident may use additional health care services at the resident's own expense if the health care services do not exceed the level of care for which the facility is licensed and if the service provider complies with documentation requirements of the board-operated facility. A resident who chooses to use additional health care services at the resident's own expense shall continue to pay the maintenance charge determined under part 9050.0530 [Emergency].

Subp. 2. **Veteran exclusive services.** "Veteran exclusive services" are medical benefits or services provided or sponsored by the United States Department of Veterans Affairs exclusively for veterans. Examples include the United States Department of Veterans Affairs physician services and laboratory services. Nonveteran residents are not entitled to veteran exclusive medical benefits or services. Payment of the maintenance charge does not make a nonveteran eligible for veteran exclusive benefits or services provided at the board-operated facility. Nonveteran residents shall obtain necessary health care services comparable to veteran exclusive services at the resident's expense. The services must be within the confines of the level of care for which the facility is licensed.

9050.0520 [Emergency] MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.

Subpart 1. **Interest on delinquent accounts.** A resident's account is considered delinquent if a resident willfully refuses or fails to pay the bill by the due date. Applicants or residents must be notified if payment has not been received by the due date printed on the bill. Interest must be charged on all delinquent accounts, effective the date the bill was due, as

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provided in Minnesota Statutes, section 334.01. For purposes of this subpart, "willful refusal or failure to pay" means a situation in which:

A. the decision of whether to pay is completely within the control of the resident or the resident's legal representative; or

B. a resident or the resident's legal representative has the ability or resources to pay the maintenance charge and fails to pay.

Subp. 2. **Discharge for nonpayment.** Discharge proceedings must be instituted under part 9050.0200 [Emergency], subpart 2, item A, when an account is delinquent. Discharge proceedings for nonpayment must be stopped when full payment, including accrued interest, is made.

9050.0530 [Emergency] RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.

If a person is admitted under Minnesota Statutes, section 198.03, a written admissions agreement must be made between the board or its designated representative and the resident or the resident's legal representative about maintenance charges for care and services, obligations concerning payment of the resident's maintenance charge, and the board's refund policy.

9050.0540 [Emergency] NO UNPAID ABSENCE.

Residents are not excused from payment of the maintenance charge when they are absent from the board-operated facility. A resident must continue to pay the maintenance charge determined under part 9050.0560 [Emergency] during a period of absence.

9050.0550 [Emergency] MAINTENANCE CHARGE; RESOURCES CONSIDERED.

Subpart 1. **In general.** The applicant's or resident's ability to pay must be determined from insurance and other benefits, value of property owned, and income. The applicant's or resident's property must be used first to pay the maintenance charge. The applicant's or resident's income must be used after the applicant's or resident's property is reduced to the limits

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in subpart 3 and part 9050.0600 [Emergency] to pay the maintenance charge.

Subp. 2. **Insurance benefits.** When the investigation of the applicant's or resident's financial status discloses eligibility for insurance benefits, the applicant or resident must be determined to be able to pay the cost of care provided to the full extent of insurance benefits available. When the insurance benefits pay less than the full cost of care, the ability of the applicant or resident to pay the remaining part must be determined from the applicant's or resident's nonexcluded property and income.

Subp. 3. **Property.** If the applicant or resident owns property in excess of $3,000 that is not excluded under part 9050.0600 [Emergency], subparts 2 and 3, the applicant or resident must be determined able to pay the full cost of care according to part 9050.0755 [Emergency]. The person shall pay the full cost of care until the property is reduced to the limits in parts 9050.0560 [Emergency] and 9050.0600 [Emergency].

Subp. 4. **Chargeable income.** The applicant's or resident's chargeable income is the income remaining after deductions from gross income have been made according to part 9050.0720 [Emergency] and after deductions from net income have been made according to part 9050.0755 [Emergency]. The applicant's or resident's entire chargeable income must be considered available to pay the cost of care. If an applicant or resident qualifies for governmental benefits or reimbursements or other benefits, the benefits must be included as income in determining the maintenance charge payable by or on behalf of a resident, unless an assignment of benefits naming the board-operated facility as representative payee has been executed in favor of the board-operated facility.

Subp. 5. **Property and income of spouse.** Property and income of the spouse of the applicant or resident must not be considered an available resource for payment of a maintenance charge.

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9050.0560 [Emergency] MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.

Subpart 1. **Time of determination.** The amount of the maintenance charge must be determined if:

A. a person is admitted to a board-operated facility and at least annually after admission;

B. there is a substantial change in the applicant's or resident's financial status or the financial status of the spouse of the applicant or resident;

C. a change in the applicant's or resident's living status requires recalculation of the benefits provided by the United States Department of Veterans Affairs or other source;

D. the resident is transferred from one level of care to another for 30 days or more; and

E. the resident is being discharged.

For purposes of the subpart, "substantial change" in financial status means a change that increases the person's net worth above the $3,000 limit or a change in the person's monthly income. Substantial change must be reported to the facility financial officer ten days after the applicant or resident, legal representative, or spouse of the applicant or resident learns of the change.

Subp. 2. **Method of calculation.** The amount that a resident must pay, or have paid on the resident's behalf, as a maintenance charge must be determined as specified in items A and B.

A. If an applicant's or residents net worth exceeds $3,000, the person's maintenance charge must be the full cost of care for the applicant's or resident's level of care less the United States Department of Veterans Affairs per diem reimbursement, when applicable, until the applicant's or resident's net worth is reduced to $2,500.

B. If the applicant's or resident's net worth is less than $2,500, the applicant's or resident's income must be considered in calculating the person's maintenance charge. The person's monthly maintenance charge is the person's total

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chargeable income, up to the full cost of care. The person's chargeable income must be calculated according to part 9050.0755 [Emergency].

9050.0570 [Emergency] MAINTENANCE CHARGE; NOTICE AFTER FINANCIAL STATUS REVIEW.

The facility financial staff shall notify the applicant or resident, legal representative of the applicant or resident, or spouse of the applicant or resident, of any change in the applicant's or resident's maintenance charge following a financial status review. The notice must include information about the right to a review of the maintenance charge under part 9050.0580 [Emergency].

9050.0580 [Emergency] REVIEW OF MAINTENANCE CHARGE DETERMINATION.

An applicant or resident or legal representative may request that the administrator of a board-operated facility reconsider a maintenance charge determination. The request must be in writing, directed to the administrator. The administrator shall, within ten days of receipt of the request, conduct a review of the maintenance charge determination. The review must be in the same format and time frames as the procedures under part 9050.0220 [Emergency]. The administrator's determination is final upon receipt by the applicant or resident, or legal representative, and is the final agency action.

9050.0590 [Emergency] MAINTENANCE CHARGE; REFUND.

If an applicant or resident who has paid, or on whose behalf payment has been made of, the maintenance charge for a billing month, is discharged from a board-operated facility before the end of the month for which payment has been made, the applicant or resident is entitled to a refund. The amount of the refund to which an applicant or resident, or legal representative, is entitled must be calculated by prorating the monthly maintenance charge by the number of unused days.

9050.0600 [Emergency] PROPERTY LIMITATIONS.

Subpart 1. **General provisions of property ownership.** The

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equity value of all nonexcluded real and personal property owned by an applicant or resident must not exceed $3,000. The facility financial staff must use the equity value of legally available real and personal property, except property excluded in subpart 2 or 3, to determine the resources available to or on behalf of an applicant or resident.

A. If real or personal property is jointly owned by two or more persons, the facility financial staff shall assume that each person owns an equal share. When the owners document greater or smaller ownership, the facility financial staff shall use that greater or smaller share to determine the equity value held by or on behalf of an applicant or resident. Other types of ownership, such as a life estate, must be evaluated according to law.

B. Real or personal property owned by or on behalf of an applicant or resident is presumed legally available unless the applicant or resident documents that the property is not legally available to the applicant or resident. If real or personal property is not legally available, its equity must not be applied against the limits of subparts 2 and 3. Examples of property not available to a person are an estate that has not been probated, property owned together with one or more other people that the facility financial staff determines cannot be liquidated or reduced to cash through exercise of the applicant's or resident's legal rights, and property of an applicant or resident who is determined incompetent by a court and whose guardianship is pending. The facility financial staff shall consider as available property that <u>property which</u> a person has failed to make available for purposes of gaining admission to a board-operated facility or avoiding payment of the maintenance charge. An example of a person's failure to make property available occurs when the person refuses to accept a share of an inheritance.

C. Real or personal property transferred by an applicant or resident in violation of part 9050.0650 [Emergency] is presumed legally available.

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D. The facility financial staff shall consider as available an individual retirement account, Keogh account, or other pension or deferred compensation plan account. The facility financial staff shall evaluate the accounts on the basis of the funds deposited in the account and the interest accrued on the funds less the penalty for early withdrawal.

E. The facility financial staff shall consider as available the proceeds that a person receives in a tort settlement, whether the settlement is entered into by the person or the person's guardian. If the settlement is received as a one-time payment, the facility financial staff shall treat it as a lump sum. If the settlement is structured to be paid over a period of time, the facility financial staff shall evaluate the property ~~on the basis of the discounted net present value of all funds that will be deposited at any time in the future. In determining present value, an annual interest rate of six percent must be used~~ as those funds become available to the resident. This item applies only to settlements entered into after the effective date of parts 9050.0010 to 9050.0900 [Emergency].

Subp. 2. **Real property limitations.** Real property owned by an applicant or resident must be excluded from consideration as an available resource, subject to the limitations in items A and B.

A. The facility financial staff shall exclude the homestead of an applicant or resident from consideration as a resource according to the provisions in subitems (1) to (4).

(1) The spouse of an applicant or resident or the dependent child or children of the applicant or resident, if any, must occupy the homestead.

(2) An applicant or resident or spouse of an applicant or resident who is purchasing real property through a contract for deed and using that property as a home is considered the owner of real property.

(3) The total amount of land that can be excluded under this subpart is limited as specified in Minnesota

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Statutes, section 510.02. Additional contiguous platted lots must be assessed as to their legal and actual availability according to subpart 1.

(4) When real property that has been used as a home by an applicant or resident, the spouse of an applicant or resident, or the dependent child or children of an applicant or resident is sold, the facility financial staff shall treat the proceeds from that sale as excluded property for a period of two years if the person intends to reinvest them in another home and maintains those proceeds, unused for other purposes, in a separate account. If the property is held jointly, any earnings that accrue on the sales proceeds before reinvestment or any excess proceeds not used for reinvestment must be treated as joint income or property and divided according to subpart 1, item A.

B. Real property being sold on a contract for deed must be excluded if the net present value of the contract in combination with other property does not exceed the limitations in parts 9050.0560 [Emergency] and 9050.0600 [Emergency]. If the present value exceeds limitations, the contract must be sold. Proceeds from the sale must be treated as lump sum payments.

C. Real property that is rental property leased at a market rent and producing a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

D. Real property on or in which the person operates a business that is anticipated to produce a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

E. Real property that is not salable must be excluded. For purposes of this item, "not salable" means:

(1) two sources agree that the property is not salable due to a specified condition; or

(2) an actual sale attempt was made at a price not more than an estimate of the highest current market value

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obtained within six months of application for admission or since the last determination of the maintenance charge, but no offer to purchase was received.

For purposes of subitems (1) and (2), the source of information must be from the same geographic area as the property and knowledgeable about the value of the type of property offered for sale. For purposes of subitem (2), "an actual sale attempt" means the individual has listed the property with a licensed real estate broker or salesperson or, if the property is offered for sale by the owner, the owner has affixed to the property a readable sign that includes the address or phone number of the owner and the owner has advertised the property for sale in the official newspaper of the county, the newspaper of largest circulation in the county, or the local shopper. The minimum period of an actual sale attempt is 90 consecutive days.

F. Other real property must be excluded ~~according to~~ if required by federal law, federal regulations, or state law.

Subp. 3. **Other property limitations.** The facility financial staff shall exclude the value of the following personal property:

A. one motor vehicle, for personal use;

B. the value of a prepaid burial account, burial plan, burial contract, or burial trust up to $2,500 for persons who are already residents of a board-operated facility when the investment is made~~, regardless of the amount invested or value~~. If the investment is made by the person before admission to a board-operated facility, the entire amount of the investment must be excluded;

C. 50 percent of property owned jointly with a spouse;

D. household goods and furniture and personal effects, wearing apparel, and jewelry regularly used by the applicant or resident in day-to-day living;

E. the value of personal property needed to produce income, including tools, implements, farm animals and inventory,

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or capital and operating assets of a trade or business necessary to income production, and if the property is sold, the proceeds must be treated as lump sum payments; and

F. other personal property specifically excluded by federal law, federal regulation, or state law.

Subp. 4. **Separate account for excluded funds.** Funds excluded from consideration as an available resource by subpart 2 or 3 must be placed in an account separate from other funds to retain the exclusion. Upon application for admission and redetermination of a maintenance charge, the facility financial staff shall inform the person in writing of the requirement to place excluded funds in a separate account.

9050.0650 [Emergency] TRANSFERS OF PROPERTY.

Subpart 1. **Generally.** A person whose application for admission is pending or a current resident of a board-operated facility shall declare all transfers or sales of property within ten days of the transfer or sale. The value of property transferred or sold must be treated as an available resource for payment of the resident's maintenance charge. The value of the property transferred or sold that will be applied against the property limits in parts 9050.0560 [Emergency] and 9050.0600 [Emergency] is the market value of the property at the time of the sale or transfer less any encumbrances on the property. A transfer for purposes of preserving an estate for heirs is the same as a transfer for the purposes of establishing eligibility for admission to a board-operated facility or avoiding payment of a maintenance charge, except for transfers permitted under subpart 2, item B.

Subp. 2. **Permitted transfers.** Transfer or sale of property by or on behalf of an applicant or resident is permitted if the transfer or sale:

A. takes place more than 12 months before the person's admission to a board-operated facility;

B. is to the applicant's or resident's spouse or dependent child or children before the person's admission to a

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board-operated facility; or

C. is for market value with the proceeds available for payment toward the person's cost of care.

Subp. 3. **Fraudulent transfers.** A transfer or sale of property for less than market value within 12 months before admission or during the resident's stay in a board-operated facility, unless permitted under subpart 2, is presumed to be for the purpose of establishing or maintaining eligibility for admission to or continued residence in a board-operated facility or to avoid payment of the maintenance charge, unless the person furnishes convincing evidence to show that the transfer was for another purpose. Convincing evidence must include evidence that the person had no health or economic reasons to believe that nursing home or boarding care would be needed.

Subp. 4. **Loans of property.** An applicant or resident who lends property or on whose behalf property is loaned is considered to have transferred the property. The facility financial staff shall evaluate the transaction as a transfer of property under subparts 1 and 2. If the person receives adequate compensation for the loan or made the loan more than 12 months before the person's entrance into a board-operated facility, the facility financial staff shall honor the loan. Adequate compensation must be shown by a written loan agreement and receipt of payments according to the schedule in the agreement. If the loan is payable on demand, is due, or is otherwise negotiable, the property is presumed to be available to the applicant or resident. This presumption may be overcome by convincing evidence presented by the person that the loan will not be repaid. Interest payments made by the borrower to the person are considered income in the month received and an asset if retained. Principal payments made by the borrower to the person are considered as assets.

Subp. 5. **Unacceptable compensation for transfer of property.** Services are not considered acceptable compensation for the transfer or sale of property. For purposes of this subpart, "services" means labor performed by one person for

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another person or entity. Goods are not considered compensation unless supported by contemporaneous receipts or other evidence of expenditure. The purchase of paid up life insurance with no cash surrender value available to the person while the person is a resident or within 12 months before admission must be considered a transfer of an asset without acceptable compensation.

9050.0700 [Emergency] INCOME.

Subpart 1. **Evaluation of income.** The facility financial staff shall evaluate only income received by or on behalf of an applicant or resident when determining the maintenance charge payable by or on behalf of an applicant or resident. All payments, unless specifically excluded in subpart 3, must be counted as income. All income must be counted in the calendar month received. Income becomes property if retained after the month in which it is received, unless this part specifically states otherwise.

Subp. 2. **Availability of income.** Income must be attributed to the person who earns it or to the beneficiary of the income according to items A and B.

A. Funds distributed from a trust, whether from the principal holding or sale of trust property or from the interest and other earnings of the trust holdings, must be considered income when the income is legally available to or on behalf of an applicant or resident. Trusts are presumed legally available unless an applicant or resident can document by court order that the trust is not legally available. Trusts established other than by will by the person or the person's spouse under which the person may be the beneficiary of all or part of the payments from the trust and the distribution of the payments are determined by one or more trustees who may exercise discretion about the distribution to the person must be considered an available resource. This item applies regardless of whether the trust is irrevocable or is established for purposes other than to enable a person to qualify for admission to a board-operated

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facility or whether the discretion of the trustees is exercised. A trust fund established by the applicant or resident on behalf of another person within 12 months before admission or during the resident's stay in a board-operated facility must be considered transferred property under part 9050.0650 [Emergency].

B. Income from jointly owned property must be divided equally among the property owners unless the terms of ownership provide for a different distribution of equity.

Subp. 3. **Excluded income.** The facility financial staff shall exclude the following from calculation of the applicant's or resident's gross income:

A. earnings derived from participation in a work therapy program while the person is a participant in the program; and

B. 50 percent of income received by or paid to an applicant or resident and spouse, jointly.

9050.0710 [Emergency] CALCULATION OF GROSS INCOME.

The facility financial staff shall calculate gross income by adding together the amounts of income from sources in subparts 1 to 6.

Subpart 1. **Earned income.** Earned income is treated according to items A to C.

A. Sick leave and vacation payments for earned or accrued leave time are earned income.

B. Earned income received by persons employed on a contractual basis must be prorated over the period covered by the contract even when the payments are received over a lesser period of time.

C. The earned income tax credit, whether received from an employer or from the federal government, is earned income. An applicant or resident or spouse of an applicant or resident who is eligible for the earned income tax credit is required to apply for it. An applicant or resident may choose to apply for the credit either when the applicant or resident

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files an income tax return for the year in which the applicant or resident was eligible or in advance through the applicant's or resident's employer.

Subp. 2. **Self-employment earnings.** The facility financial staff shall determine gross earned income from self-employment by totaling gross receipts. Gross receipts from self-employment must be budgeted in the month in which they are received. Expenses must be budgeted against gross receipts in the month in which those expenses are paid, except for items A to C.

A. The purchase cost of inventory items, including materials that are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.

B. Expenses to cover employee federal insurance contributions act payments (FICA), employee tax withholding, sales tax withholding, employee worker compensation, business insurance, property rental, property taxes, and other costs that are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which payment for those items is made.

C. Gross receipts from self-employment may be prorated forward to equal the period of time over which the expenses were incurred except that gross receipts must not be prorated over a period that exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.

Subp. 3. **Farm income.** Farm income is the difference between gross receipts and operating expenses, subject to the provisions about self-employment income. Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from the sale of home-produced foods. Farm income must be annualized.

Subp. 4. **Rental income.** Income from rental property must be considered self-employment earnings when effort is expended

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by the owner to maintain or manage the property. When no effort is expended by the owner to maintain or manage the property, income from rental property must be considered unearned income. The facility financial staff shall total gross rental receipts to determine rental income. When an applicant or resident or spouse lives on the rental property, the facility financial staff shall divide the expenses for upkeep, taxes, insurance, utilities, and interest by the number of rooms to determine expense per room. The facility financial staff shall deduct expenses from rental income only for the number of rooms rented, not for rooms occupied by an applicant, resident, spouse, or household member.

Subp. 5. **Unearned income.** Unearned income is treated according to items A and B.

A. An amount must be deducted for costs necessary to secure payments of unearned income. These costs include legal fees, medical fees, and mandatory deductions such as federal and state income taxes.

B. Payments for illness or disability, except those payments described as earned income in part 9050.0710 [Emergency], subpart 1, item A, must be considered unearned income whether the premium payments are made wholly or in part by an employer or by an applicant or resident.

Subp. 6. **Lump sums.** Lump sums received by or on behalf of an applicant or resident must be considered earned income under subparts 1 to 4 or unearned income according to subpart 5. Lump sums are considered income in the month received and property if retained beyond the month of receipt, unless it is a contractual payment or retroactive payment of benefits.

9050.0720 [Emergency] CALCULATION OF NET INCOME; DEDUCTION FOR EMPLOYMENT EXPENSES.

Subpart 1. **Calculation method.** The facility financial staff shall calculate the net income of an applicant or resident by totaling all sources of gross income identified in part 9050.0710 [Emergency] and subtracting from gross income the

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applicable deductions allowed in subpart 2.

Subp. 2. **Deduction for employment expenses of applicant or resident.** The facility financial staff shall deduct the expenses in this part and parts 9050.0730 [Emergency] and 9050.0740 [Emergency] from gross income to determine net income. Deductible items include:

A. state and federal income tax payments and withholdings consistent with the number of allowable exemptions;

B. FICA payments;

C. mandatory retirement fund payments;

D. actual reasonable unreimbursed expenses of child care necessary to earn an income and paid to anyone other than a parent of the child;

E. union dues;

F. professional association dues if they are required to obtain or retain employment;

G. health and dental insurance premiums whether mandatory or voluntary, if cost effective;

H. cost of uniforms, tools, and equipment used on the job that are required to retain a job but are not furnished by the employer;

I. cost of meals during employment hours for each day the person is employed;

J. public liability insurance premiums if they are required by the employer when an automobile is used in employment and the premiums are not paid by the employer;

K. court ordered support payments actually paid directly by the applicant or resident or withheld by the employer and transferred to a child or spouse not living with the applicant or resident or to a different former spouse of the applicant or resident;

L. voluntary support payments for dependent spouse or household according to part 9050.0750 [Emergency];

M. Medicare insurance payments;

N. Medicaid spend-down payments actually made according to part 9505.0065. subpart 11;

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O. payment of documented debts, incurred prior to the person's admission to the board-operated facility, for which the person is legally responsible;

P. educational expenses actually paid by the person that are not covered by United States Department of Veterans Affairs educational expense benefits or other government or private scholarships, loans, or grants if there is demonstrated progress by the person towards completion of an educational program as part of the person's individual care plan;

Q. guardianship or conservatorship fees to the extent allowed by Minnesota law or by court order;

R. hospital and medical insurance premiums and supplemental health care premiums for the resident or applicant, if cost effective; and

S. cost of transportation related to employment. For the person who uses public transportation or takes part in a car pool, the facility financial staff shall deduct the fare or fee the person actually pays. For the person who uses a private motor vehicle, the facility financial staff shall deduct the amount per mile allowed on the most recent federal income tax return for actual miles driven for business purposes.

9050.0730 [Emergency] DEDUCTIONS FROM RENTAL INCOME.

In calculating net rental income, the facility financial staff shall deduct the rental property costs in items A to C from total rental receipts. The rental property costs must be prorated according to shares of ownership if the property is jointly owned. Money deducted from rental income under items A to C must be excluded as income in the month of receipt and as an asset if the funds are retained after the month of receipt. The retained funds must be placed in a separate account until used for:

A. upkeep and repairs, an annual amount equal to a maximum of two percent of the property's market value or a lesser amount as requested by the person;

B. real estate taxes, premiums for insurance on the

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property, and mortgage or contract for deed payments, payment of interest and principal; and

C. utilities specified as the owner's responsibility in the rental agreement.

9050.0740 [Emergency] DEDUCTIONS FROM SELF-EMPLOYMENT INCOME.

In calculating net self-employment income, the facility financial staff shall deduct from the total business receipts the costs of producing the income as allowed on the United States income tax schedule. However, capital expenditures, depreciation, and carryover losses claimed for business purposes on the most recent federal income tax return are not deductible business expenses. Net self-employment income, if greater than zero, must be added to other earned and unearned income to determine income for purposes of calculating the maintenance charge payable by or on behalf of an applicant or resident. Losses from self-employment income may not be deducted from other earned or unearned income.

9050.0750 [Emergency] DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

Subpart 1. **Generally.** The facility financial staff shall deduct from the applicant's or resident's gross monthly income calculated under part 9050.0710 [Emergency] the amount necessary to meet the basic needs of the dependent spouse or household as calculated under this part. The applicant or resident or spouse of an applicant or resident who requests a deduction under this part must verify the monthly expenses of the dependent spouse or household that are not met by income or resources otherwise available to the dependent spouse or household.

Subp. 2. **Determination of spouse's monthly expenses.** A spouse's monthly expenses are the sum of:

A. monthly rent or house payment;

B. costs of supporting a dependent child or children residing with the spouse;

C. real estate taxes;

D. homeowner's or renter's insurance;

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E. home maintenance costs;

F. electric and gas charges;

G. water and sewer charges;

H. solid waste removal charges;

I. telephone costs;

J. transportation costs, including costs of public transportation and costs of acquiring and maintaining a privately owned motor vehicle;

K. food;

L. clothing;

M. medical insurance for the spouse and the applicant's or resident's dependent child or children residing with the spouse;

N. medical expense payments;

O. personal needs of the spouse or dependent child or children;

P. payments for documented consumer debts incurred before the resident's admission to a board-operated facility for which the spouse is legally responsible; and

Q. support payments actually paid by the spouse to his or her former spouse or dependents who do not reside with him or her.

Subp. 3. **Calculation of amount of deduction.** The facility financial staff shall calculate the amount to be deducted from the applicant's or resident's monthly income for support of a dependent spouse or household as follows:

A. calculate the spouse's gross monthly income using the method for calculation of the applicant's or resident's gross income in part 9050.0710 [Emergency];

B. total the spouse's monthly expenses as determined under subpart 2;

C. subtract item B from item A; and

D. the amount by which item B exceeds item A is the amount allowed as a deduction for the dependent spouse or household.

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9050.0755 [Emergency] CALCULATION OF CHARGEABLE INCOME OF APPLICANT OR RESIDENT.

The chargeable income of an applicant or resident is as follows:

A. total the person's gross income according to part 9050.0710 [Emergency];

B. subtract from the total gross income the applicable expenses or deductions in parts 9050.0720 to 9050.0750 [Emergency] to get the net income;

C. subtract from net income $85 for personal needs;

D. multiply item C by 0.05 and deduct this amount from item C; and

E. the sum calculated in item D is the applicant's or resident's monthly chargeable income.

9050.0760 [Emergency] ANTICIPATING INCOME.

Income must be anticipated on a semiannual basis for all applicants or residents. Anticipated income must be determined using the method in items A to G that most accurately reflects the circumstances of the person.

A. If income is unvarying in amount and timing of receipt, an eligibility statement or wage stub must be used to verify the amount of the income. Examples of unvarying income are social security payments, pensions, unemployment compensation, and fixed salaries. For purposes of this item, "eligibility statement" means a document from a payer informing the person of eligibility for the amount of income.

B. Income that is expected to fluctuate slightly must be anticipated by using the income in the month of admission or redetermination. Monthly income must be calculated by multiplying:

(1) average weekly income by 4.3;

(2) average biweekly income by 2.16; or

(3) average semimonthly income by 2.

C. If income is expected to fluctuate but does not follow a seasonal pattern, monthly income is the average of

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monthly income received during the three most recent months.

D. If income fluctuates within a seasonal pattern but is reasonably stable from year to year, monthly income is the average of monthly income during the most recently completed calendar year.

E. Except as provided in item G, monthly farm income is the average of monthly income for the three most recent years during which the farm has been in operation.

F. Zero income must be used for any month in which no source of income is reasonably certain.

G. If the applicant or resident has had a recent financial change that makes a method in item C, D, or E an inaccurate predictor of future income, the facility financial staff shall make a reasonable estimate of future income and document the income basis used.

9050.0770 [Emergency] BENEFITS APPLICATION REQUIRED.

An applicant or resident or legal representative, if any, must apply for the maximum of every benefit for which the applicant or resident may be eligible that will increase the income of the applicant or resident. The board-operated facility staff shall provide an applicant or resident or legal representative information about possible available benefits or programs of assistance and assistance in making application for those benefits.

9050.0800 [Emergency] FINANCIAL INTERVIEW.

Subpart 1. **General conduct.** An applicant or resident must be present at an interview held to determine the applicant's or resident's ability to pay or to obtain financial information from the applicant or resident unless the applicant's or resident's presence is medically contraindicated by the attending physician of the applicant or resident. If the applicant's or resident's participation in the interview is medically contraindicated, the secondary source of information in part 9050.0810 [Emergency], subpart 2, must be present. The signed statement of the applicant's or resident's attending

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physician that attests to the medical contraindication must be placed in the applicant's or resident's financial information file.

Subp. 2. **Rights, duties, and consequences of interview.** Before conducting an applicant's or resident's interview to determine financial status or ability to pay, the interviewer shall:

A. inform the person that the person may choose an individual to assist in the determination process and any other contact with the board or its designated representative by authorizing that assistance in writing;

B. inform the person that the requested information will be used to determine ability to pay and to calculate the resident's maintenance charge;

C. inform the person that financial information obtained from or about the applicant or resident may not be released without the applicant's or resident's written consent, except pursuant to Minnesota Statutes, chapter 13, to specific state and federal agencies including the Minnesota Department of Veterans Affairs, Legislative Auditor, and United States Department of Veterans Affairs;

D. inform the person of the person's legal obligation to provide sufficient information, required documents, and proof necessary to determine ability to pay and the consequences of failure to do so;

E. inform the person that failure to supply the requested information must result in a determination that the person is able to pay the full cost of care and that if a person supplies false information the resident may be subject to discharge;

F. provide the person with an information pamphlet on the cost of care and review with the applicant or resident how the board determines the cost of care and how the amount an applicant or resident must pay toward that cost is determined;

G. inform the person of county, state, and federal financial programs that may assist in paying the cost of care

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and meeting personal and family needs;

H. provide the person with board-approved forms used to verify or investigate financial resources including:

(1) statement of income and net worth;

(2) statement of expenses;

(3) authorization to release information;

(4) maintenance rate affidavits; and

(5) other disclosure and verification forms the board reasonably requests to fully evaluate the applicant's or resident's financial status or the financial status of the applicant's or resident's legal representative or spouse, if any; and

I. request that the person complete and sign the authorization forms provided and provide verification or documentation of financial information.

9050.0810 [Emergency] SOURCES OF FINANCIAL INFORMATION.

Subpart 1. **Applicant or resident primary source.** An applicant or resident is the primary source of financial information to determine ability to pay except when the management of the applicant's or resident's financial affairs is in the hands of a legal representative. If the applicant or resident is not the source of financial information, the reason must be noted in the applicant's or resident's financial information file.

Subp. 2. **Secondary or alternate sources of information.** If an applicant or resident is not able to act on the applicant's or resident's own behalf, the person interviewed to obtain financial information must be, in order of priority, the applicant's or resident's legal representative or spouse, if any.

9050.0820 [Emergency] VERIFICATION OF FINANCIAL INFORMATION.

Subpart 1. **Verification required.** Information provided by the applicant or resident, spouse, or legal representative, if any, in the financial interview, on the signed financial information form, and a financial status review under part 9050.0560 [Emergency], subpart 1, must be verified by the

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facility financial staff.

Subp. 2. **Information to be verified.** The following items must be verified:

A. income;

B. insurance benefits;

C. property;

D. expenses or deductions claimed;

E. number of dependents claimed;

F. social security benefits;

G. United States Department of Veterans Affairs benefits;

H. pensions and annuities; and

I. transfers of property according to part 9050.0650 [Emergency].

Subp. 3. **Time of verification.** The facility financial officer must request verification of the required information no earlier than 60 days before admission and no later than the date of admission or date of financial status review or other review of financial status as provided in part 9050.0560 [Emergency], subpart 1.

9050.0900 [Emergency] AUTHORIZATION FORMS.

Subpart 1. **Required.** An applicant or resident, spouse, or legal representative, if any, shall provide a separate signed authorization form for each verification that must be obtained from a third party.

Subp. 2. **Content.** The authorization form must contain the following information above the person's signature:

A. person's name;

B. date;

C. information authorized;

D. who is authorized to give the information;

E. to whom the information is to be given;

F. information's use; and

G. date of expiration of the authorization.

A separate form must be signed and completed for each

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authorization of access. The period of the authorization must not exceed one year.

Subp. 3. **Refusal to sign authorization forms; consequences.** The applicant or resident, applicant's or resident's legal representative, or spouse must complete the following tasks within 30 days of the financial interview or other authorized request:

A. complete and sign a financial information or authorization form;

B. apply for insurance or other benefits for which an applicant, resident, or spouse of an applicant or resident may be eligible;

C. complete assignment of benefits forms required by third-party payers;

D. sign authorizations for release of medical records; and

E. provide verification of information given on financial disclosure forms.

~~Failure to comply with items A to E results in a determination that the applicant or resident can pay the full cost of care.~~ Providing false information relating to items A to E results in disqualification of an application for admission or in discharge of a resident under part 9050.0200 [Emergency], item E. The maintenance charge must be redetermined or the application for admission must be reinstated or the discharge proceeding discontinued if the applicant, resident, or spouse takes the required action.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV - 7 1989

Joan Anderson Growe

Secretary of State

9:07AM

APPROVED AS TO FORM AND LEGALITY

November 6 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MT Casserly

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
MINNESOTA VETRANS HOMES BOARD

CERTIFICATE OF AUTHORIZING RESOLUTION

I, James G. Sieben, do hereby certify that I am the Chairman of the Minnesota Vetrans Homes Boards, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 13th day of July , 1989, that a quorum was present, and that a majority of those present voted for the relolution which has not been rescinded or modififed.

RESOLVED, that James G. Sieben, Chairman of the Minnesota Vetrans Homes Board is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt a Rule Relating to Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050.0010 to 9050.0900 to all persons who have registered their names with the Board for that purpose and publish the Notice and Rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of October, 1989.

CHAIRMAN OF THE BOARD
Minnesota Vetrans Homes Board

Lana Whitson
ATTESTED TO

Department of Veterans Affairs
Minnesota Veterans Homes Board

Proposed Emergency Rules Relating to Veterans Homes Admissions, Discharges, Cost of Care Calculations, and Maintenance Charges

Rules as Proposed (all new material)

9050.0010 [Emergency] SCOPE.

The emergency rules in chapter 9050 apply to all veterans homes facilities presently owned or controlled by the state of Minnesota and operated by the Minnesota Veterans Homes Board, to all facilities that are or may be developed in the future for ownership or control by the state of Minnesota and operation by the Minnesota Veterans Homes Board, and to all individuals residing in or conducting activities in the facilities unless otherwise indicated.

9050.0020 [Emergency] APPLICABILITY.

Parts 9050.0010 to 9050.0900 [Emergency] govern the operation of the Minnesota veterans homes and establish the standards used to determine:

A. an applicant's eligibility and suitability for admission to a board-operated facility;

B. a resident's eligibility for participation in programs at a board-operated facility;

C. appropriateness of a resident's continued care in a board-operated facility;

D. services to be provided in connection with residence in a board-operated facility;

E. procedures to be used in effecting admissions and discharges;

F. standards of resident care and conduct; and

G. charges to be paid by or on behalf of a resident for care in the home.

Parts 9050.0010 to 9050.0900 [Emergency] must be interpreted to give effect to Minnesota Statutes, chapters 196,

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197, and 198.

9050.0030 [Emergency] COMPLIANCE WITH STATUTES, RULES, AND CODES.

The Minnesota Veterans Homes Board shall ensure compliance by the facility and staff with applicable statutes, with applicable rules of the Minnesota Department of Health and the Minnesota Department of Human Services, and with applicable health, safety, sanitation, building, zoning, and operations codes, including the following:

A. Minnesota Department of Health licensure and operations requirements in chapters 4655 and 4660 and Minnesota Statutes, sections 144.50 to 144.56 and 144A.02 to 144A.10;

B. chapter 4605 about communicable diseases;

C. chapter 4620 about clean indoor air;

D. chapter 4638 governing health care facilities generally;

E. chapter 4642 about medical records;

F. the fire code in chapter 7510 and Minnesota Statutes, section 299F.011;

G. the Department of Labor and Industry safety code in chapter 5205;

H. the building code in chapters 1300 to 1365 and Minnesota Statutes, section 16B.59;

I. the plumbing code in parts 4715.0100 to 4715.6000 and Minnesota Statutes, sections 326.37 to 326.45;

J. the vulnerable adults act in parts 9555.7100 to 9555.7700 and Minnesota Statutes, section 626.557;

K. the health care facilities grievance provisions in Minnesota Statutes, sections 144A.51 to 144A.53; and

L. the patient's bill of rights in Minnesota Statutes, section 144.651 and the complaint and resident's rights provisions of Minnesota Statutes, section 144A.13.

9050.0040 [Emergency] DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to parts 9050.0010 to 9050.0900 [Emergency].

Subp. 2. **Absence with notice; absence without notice.**

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"Absence with notice" or "absence without notice" means when a resident removes himself or herself from the particular area or level of care specified in the individual care plan with or without informing the Minnesota veterans home facility administration or staff of departure, intended destination, and anticipated return.

Subp. 3. **Administrator.** "Administrator" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 4.

Subp. 4. **Admission.** "Admission" means the act that allows an eligible applicant to officially enter a Minnesota veterans home facility as a resident.

Subp. 5. **Admissions agreement.** "Admissions agreement" means a written contract entered into by the resident or the resident's legal representative or spouse, if any, or both, and the board or its designated representative at the time of admission of the resident to a board-operated facility. The agreement must:

A. identify the service obligations of the facility with respect to the resident, as determined by the board according to licensure requirements and applicable statutes and rules, as specified in part 9050.0030 [Emergency];

B. identify the responsibilities of the resident with respect to the facility and other residents; and

C. if applicable, detail the amount to be paid as maintenance charge by or on behalf of a resident toward the cost of care, subject to a change in financial status of the person responsible for payment.

The agreement must be signed by the person responsible for paying any charges.

Subp. 6. **Against medical advice.** "Against medical advice" means a resident has left the particular area or level of care at the Minnesota veterans home facility or campus specified in the individual care plan, or has chosen to terminate resident status contrary to the recommendations of the attending physician.

Subp. 7. **Annual financial status review.** "Annual

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financial status review" means the annual verification and assessment of income, property, and expenses used to calculate the ability of a resident or the resident's legal representative or spouse acting on the resident's behalf, if any, to pay an amount toward the resident's cost of care.

Subp. 8. **Applicant.** "Applicant" means a person seeking admission to a board-operated facility.

Subp. 9. **Application.** "Application" means the applicant's written request for admission as provided in part 9050.0055 [Emergency].

Subp. 10. **Assessment.** "Assessment" means determination of an applicant's or resident's need for services by identifying the person's skills and behaviors and the environmental, physical, medical, and health factors that affect development or remediation of the person's skills and behavior.

Subp. 11. **Attending physician.** "Attending physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147 who is an applicant's or resident's primary treating or supervising physician. An attending physician may be a Minnesota veterans home facility staff physician.

Subp. 12. **Basic needs.** "Basic needs" means food, clothing, shelter, utilities, personal hygiene items, and other subsistence items.

Subp. 13. **Bed change.** "Bed change" means a resident is assigned to a different bed in the same room, to another room, or to another building at the same level of care.

Subp. 14. **Bed hold.** "Bed hold" means a particular bed occupied by a Minnesota veterans home resident, or a comparable bed, that is held open for the resident during the resident's absence from a board-operated facility for medically necessary treatment at another health care facility, for a rehabilitation program, or during the resident's absence, with notice, from a board-operated facility.

Subp. 15. **Board.** "Board" means the board of directors of the Minnesota veterans homes or its designee created by

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Minnesota Statutes, section 198.022, and defined in Minnesota Statutes, section 198.001, subdivision 6.

Subp. 16. **Boarding care.** "Boarding care" means board, room, laundry, personal services, supervision over medication that can be safely self-administered, and a program of activities and supervision required by persons who are not able to properly care for themselves. Boarding care is the state equivalent of domiciliary care as that term is used by the United States Department of Veterans Affairs.

Subp. 17. **Boarding care facility.** "Boarding care facility" means a facility or unit of a facility licensed by the commissioner of health under chapters 4655 and 4660 and under Minnesota Statutes, sections 144.50 to 144.56.

Subp. 18. **Board-operated facility.** "Board-operated facility" means a building located on a Minnesota veterans home campus in which nursing care or boarding care is provided.

Subp. 19. **Business expense.** "Business expense" means the cost of producing income from a business, excluding capital expenditures and depreciation.

Subp. 20. **Campus.** "Campus" means the property owned or controlled by the state of Minnesota on which a Minnesota veterans home facility is located.

Subp. 21. **Care plan review.** "Care plan review" means an assessment of a resident's physical and mental condition and treatment needs. Care plan review includes:

A. a review of the resident's reason for seeking admission and treatment;

B. a review of the resident's diagnoses and assessments;

C. a review of the resident's individual care plan;

D. a review of the appropriateness, duration, and outcome of treatment and care provided at the board-operated facility; and

E. a review of the treatment and care recommendations of the multidisciplinary staff.

Subp. 22. **Chemical.** "Chemical" means alcohol, solvents,

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and other mood altering substances including controlled substances as defined in Minnesota Statutes, chapter 152.

Subp. 23. **Chemical abuse.** "Chemical abuse" has the meaning given it in part 9530.4100, subpart 5.

Subp. 24. **Chemical dependency counselor.** "Chemical dependency counselor" means a staff person who meets the qualifications in part 9530.4270, subpart 4.

Subp. 25. **Chemical dependency treatment program.** "Chemical dependency treatment program" means an in-patient, residential treatment program operated in a licensed hospital or licensed facility under parts 9530.4100 to 9530.4450.

Subp. 26. **Chemically dependent; chemical dependency.** "Chemically dependent" or "chemical dependency" has the meaning given it in part 9530.4100, subpart 6.

Subp. 27. **Conservator.** "Conservator" has the meaning given it in Minnesota Statutes, section 525.539, subdivision 3.

Subp. 28. **Contract.** "Contract" means a legally enforceable agreement entered into by the board and an applicant, resident, or the resident's legal representative or spouse, if any, or a provider or by a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 29. **Cost effective.** "Cost effective" means a result that is economical in terms of the goods and services received for the money spent, given feasible alternatives or a result in which the cost is less than the value of the benefit received.

Subp. 30. **Cost of care.** "Cost of care" means the average daily per resident cost of providing care, calculated separately for a resident of a boarding care facility or nursing home facility. The cost must be calculated according to part 9050.0500 [Emergency].

Subp. 31. **Dependent.** "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota or United States income tax return. An individual may not be claimed as a full unallocated dependent by more than one person. When two or more persons are entitled to claim the

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dependent, the dependent must be allocated equally among the persons unless the persons choose another allocation.

Subp. 32. **Detoxification program.** "Detoxification program" has the meaning given it in Minnesota Statutes, section 254A.08, subdivision 2.

Subp. 33. **Diagnostic and Statistical Manual of Mental Disorders; DSM-MD.** "Diagnostic and Statistical Manual of Mental Disorders" or "DSM-MD" means the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-MD). This publication is incorporated by reference, is not subject to frequent change, and is available at the State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 34. **Dietician.** "Dietician" means a dietician registered with the National Commission on Dietetic Registration.

Subp. 35. **Direct cost.** "Direct cost" has the meaning given it in part 9050.0500 [Emergency], subpart 2, item A.

Subp. 36. **Discharge.** "Discharge" means a termination of residence in the nursing home or boarding care home that is documented in the discharge summary signed by the attending physician. For purposes of this definition, a discharge does not include:

A. transfer or bed change within a particular nursing or boarding care home;

B. a transfer from one licensure level to another at the same Minnesota veterans home campus; or

C. an absence from the nursing home or boarding care home for hospitalization, treatment purposes, or personal reasons when the resident is expected to return to the same nursing home or boarding care home and complies with the bed hold requirements of part 9050.0150 [Emergency].

Subp. 37. **Earned income.** "Earned income" means compensation from lawful employment or lawful self-employment, including salaries, wages, tips, gratuities, commissions, earnings from self-employment, earned income tax credits, incentive payments from work or training programs, payments made

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by an employer for regularly accrued vacation or sick leave, employee bonuses and profit sharing, jury duty pay, picket duty pay, and profit from other lawful activities earned by the individual's effort or labor. Earned income does not include returns from capital investment or benefits that accrue as compensation for lack of employment. Earned income must be determined according to parts 9050.0700 to 9050.0740 [Emergency].

Subp. 38. **Educational expenses.** "Educational expenses" means the amounts paid for a person's tuition, mandatory fees, transportation to and from school, supplies and equipment required for coursework, and child care while the person is in school or in transit.

Subp. 39. **Emergency.** "Emergency" means a life-threatening medical condition that if not immediately diagnosed and treated could cause a person serious physical or mental disability, continuation of severe pain, or death.

Subp. 40. **Equity.** "Equity" means the amount of equity in real or personal property owned by a person. Equity is determined by subtracting any outstanding encumbrances on fair market value.

Subp. 41. **Goal.** "Goal" means the desired behavioral outcome of an activity that can be observed and reliably measured by two or more independent observers.

Subp. 42. **Gross income.** "Gross income" means all earned and unearned income before any deduction, disregard, or exclusion.

Subp. 43. **Guardian.** "Guardian" has the meaning given it in Minnesota Statutes, section 525.539, subdivision 2.

Subp. 44. **Health care facility.** "Health care facility" means a hospital, nursing home, boarding care home, or supervised living facility licensed by the Minnesota Department of Health under Minnesota Statutes, sections 144.50 to 144.56 or 144A.01 to 144A.17.

Subp. 45. **Health care professional.** "Health care professional" means a licensed health professional as defined in Minnesota Statutes, section 144.4172, subdivision 7.

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Subp. 46. **Health care service.** "Health care service" means a diagnostic, preventive, or corrective procedure provided in a health care facility, or by or under the supervision of a health care professional, or by or under the auspices of a rehabilitation program as defined in subpart 103.

Subp. 47. **Home.** "Home" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 8.

Subp. 48. **Homestead.** "Homestead" means a dwelling owned and occupied by the applicant or resident, or that person's spouse, as a primary residence. Homestead includes the land upon which the dwelling is situated as specified in Minnesota Statutes, section 510.02.

Subp. 49. **Hospital.** "Hospital" means an acute care institution as defined in Minnesota Statutes, section 144.696, subdivision 3, and licensed under Minnesota Statutes, sections 144.50 to 144.58.

Subp. 50. **Hospital absence.** "Hospital absence" means an absence from a board-operated facility for medically necessary treatment in a hospital.

Subp. 51. **Household.** "Household" means the spouse of an applicant or resident and the applicant's or resident's dependent child or children living in the homestead.

Subp. 52. **Household income.** "Household income" means all income received by or on behalf of the applicant's or resident's spouse in a calendar year.

Subp. 53. **Inappropriate and harmful use.** "Inappropriate and harmful use" has the meaning given it in part 9530.4100, subpart 14.

Subp. 54. **Income.** "Income" means cash or in-kind benefits, whether earned or unearned, received by or available to an individual and not established as property under part 9050.0700 [Emergency], subpart 1.

Subp. 55. **Independent living; live independently.** "Independent living" or "live independently" means the situation of an individual living in his or her own dwelling and having the opportunity to control basic decisions about his or her own

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life to the fullest extent possible.

Subp. 56. **Independent physician.** "Independent physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147, who is not the applicant's or resident's attending physician. The independent physician may be a Minnesota veterans home staff physician of a board-operated facility other than the one in which the individual in question resides.

Subp. 57. **Indirect cost.** "Indirect cost" has the meaning given it in part 9050.0500 [Emergency], subpart 2, item B.

Subp. 58. **Individual care plan.** "Individual care plan" means a written plan developed under part 4655.6000 for implementing and coordinating a resident's care and treatment that is developed and maintained by the multidisciplinary staff on the basis of assessment results for each resident. The purpose of the individual care plan is to integrate care, identify and meet the service needs of the resident, set treatment goals and objectives for the resident, and identify responsibilities of the multidisciplinary staff for the resident's care and treatment.

Subp. 59. **International Classification of Diseases; ICD-9-CM.** "International Classification of Diseases" or "ICD-9-CM" means the current edition of the Clinical Manual of the International Classification of Diseases, as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Subp. 60. **Legal availability.** "Legal availability" means a person's right under the law to secure, possess, dispose of, or control income or property.

Subp. 61. **Legal representative.** "Legal representative" means an individual acting or speaking on behalf of an applicant or resident whose authority is granted or recognized by statute and the nature and extent of that authority is defined by statute, by a court of competent jurisdiction, by other legal

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action, or by recognition of the United States Department of Veterans Affairs or Social Security Administration in the matter under consideration. Examples are a guardian, conservator, person with power of attorney, custodian, and representative payee.

Subp. 62. **Level of care.** "Level of care" means the licensure level of the board-operated facility in which a person lives or the case mix classification assigned to the person under parts 9549.0058, subpart 2, and 9549.0059.

Subp. 63. **Level of care change.** "Level of care change" means movement of a resident from one level of care to another within a board-operated facility or from one facility to another on the same campus.

Subp. 64. **Licensed consulting psychologist.** "Licensed consulting psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 4.

Subp. 65. **Licensed practical nurse.** "Licensed practical nurse" means a person licensed under Minnesota Statutes, sections 148.91 to 148.299.

Subp. 66. **Licensed psychologist.** "Licensed psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 5.

Subp. 67. **Life estate.** "Life estate" means an interest in real property with the right of use or enjoyment limited to the life or lives of one or more human beings that is not terminable at any fixed or computable period of time.

Subp. 68. **Lump sum.** "Lump sum" means nonrecurring income received at one time. Examples include windfalls, debt repayments, payments from the sale of property, tax refunds, payments of accrued benefits, gifts, and inheritances.

Subp. 69. **Maintenance charge.** "Maintenance charge" means the portion of the cost of care paid by or on behalf of a specific resident.

Subp. 70. **Market rent.** "Market rent" means the rental income that a property would most probably command on the open market in an arm's length negotiation as shown by current

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rentals being paid for comparable space of comparable worth.

Subp. 71. **Market value.** "Market value" means the most probable price in terms of money that property should bring in a competitive open market under all conditions requisite to a fair sale. The value on the most recent property tax statement must be presumed to be the market value for purposes of calculating the maintenance charge unless the person or the board or its designated representative provides convincing evidence to overcome the presumption.

Subp. 72. **Medical condition.** "Medical condition" means the diagnosis or diagnoses listed in current editions of ICD-9-CM or DSM-MD, made by the applicant's or resident's attending physician.

Subp. 73. **Medical director.** "Medical director" means a physician licensed under Minnesota Statutes, chapter 147, and employed by or under contract to the board who is responsible for overall direction of medical practice in a facility and for liaison with independent physicians at the facility.

Subp. 74. **Medical treatment plan.** "Medical treatment plan" means the plan signed by the resident's attending physician that includes the resident's primary and secondary diagnoses, order for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential. The medical treatment plan is a component of the individual care plan.

Subp. 75. **Medically necessary; medical necessity.** "Medically necessary" or "medical necessity" means a health care service that is consistent with the resident's diagnosis or condition and is provided pursuant to the provider's authority under state law and within the scope of licensure, if any, and:

A. is recognized as the prevailing standard or current practice by the provider's peer group;

B. is rendered:

(1) in response to a life-threatening condition or pain;

(2) to treat an injury, illness, or infection;

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(3) to treat a condition that could result in physical or mental disability; or

(4) to achieve a level of physical or mental function consistent with prevailing community standards for the diagnosis or condition; or

C. is a preventive health care service.

Subp. 76. **Mental health practitioner.** "Mental health practitioner" means a person qualified under Minnesota Statutes, section 245.462, subdivision 17.

Subp. 77. **Mental health professional.** "Mental health professional" means a person qualified under Minnesota Statutes, section 245.462, subdivision 18.

Subp. 78. **Mental illness.** "Mental illness" has the meaning given it in Minnesota Statutes, section 245.462, subdivision 20, clause (a).

Subp. 79. **Month.** "Month" means a calendar month.

Subp. 80. **Multidisciplinary staff.** "Multidisciplinary staff" means the health care professionals and mental health practitioners or mental health professionals employed by or under contract to the board to provide clinical and evaluative services in the treatment of conditions of the residents.

Subp. 81. **Net income.** "Net income" means income remaining after allowable deductions and exclusions have been subtracted from gross income under parts 9050.0720 to 9050.0755 [Emergency].

Subp. 82. **Net worth.** "Net worth" means the total sum of property owned by an applicant, resident, or spouse of an applicant or resident or managed by a legal representative on behalf of an applicant, resident, or spouse of an applicant or resident less any encumbrances on the property.

Subp. 83. **Nursing care.** "Nursing care" has the meaning given it in part 4655.0100, subpart 8, item B, and Minnesota Statutes, section 144A.01, subdivision 6.

Subp. 84. **Nursing home.** "Nursing home" means a facility licensed by the commissioner of health under chapters 4655 and 4660 and Minnesota Statutes, chapter 144A.

Subp. 85. **Nursing staff.** "Nursing staff" has the meaning

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given it in part 4655.0100, subpart 9.

Subp. 86. **Objective.** "Objective" means a short-term treatment expectation and its accompanying measurable physical or behavioral criteria as specified in the individual care plan. An objective is set to facilitate achieving the goals in a resident's individual care plan.

Subp. 87. **Outcome.** "Outcome" means the measure of change or the degree of attainment of treatment goals and objectives in the resident's individual care plan that is achieved as a result of provision of service.

Subp. 88. **Pathological use.** "Pathological use" has the meaning given it in part 9530.4100, subpart 18.

Subp. 89. **Personal absence.** "Personal absence" means an absence from a board-operated facility for family visits, vacations, or other personal, nontreatment related reasons.

Subp. 90. **Personal fund account.** "Personal fund account" means the account maintained at a facility by a resident that is solely for use of that resident and managed according to parts 4655.4150 to 4655.4170.

Subp. 91. **Personal property.** "Personal property" means property other than real property.

Subp. 92. **Pharmacist.** "Pharmacist" means a person licensed under Minnesota Statutes, chapter 151.

Subp. 93. **Physical therapist.** "Physical therapist" means a person licensed under Minnesota Statutes, sections 148.65 to 148.78.

Subp. 94. **Preventive health care service.** "Preventive health care service" means a health care service that is provided to a resident to avoid or minimize the occurrence of illness, infection, disability, or other health condition.

Subp. 95. **Psychiatrist.** "Psychiatrist" means a physician licensed under Minnesota Statutes, chapter 147, who can give written documentation of having successfully completed a postgraduate psychiatry program of at least three years duration that is accredited by the American Board of Psychiatry and Neurology.

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Subp. 96. **Rate year.** "Rate year" means the state fiscal year for which a payment rate is effective.

Subp. 97. **Real property.** "Real property" means land and all buildings, structures, and improvements or other fixtures on it, all rights and privileges belonging or appertaining to it, all manufactured homes attached to it on permanent foundations, and all trees, mines, minerals, quarries, and fossils on or under it.

Subp. 98. **Registered nurse.** "Registered nurse" means a nurse licensed under Minnesota Statutes, sections 148.171 to 148.285.

Subp. 99. **Rehabilitation program.** "Rehabilitation program" means a program of chemical dependency treatment or rehabilitation provided in a residential facility as defined in Minnesota Statutes, section 245.782, subdivision 6.

Subp. 100. **Reporting year.** "Reporting year" means the period from April 1 to March 31 immediately preceding the rate year, for which the nursing home or boarding care home calculates its costs, and which is the basis for the determination of the cost of care for the following rate year.

Subp. 101. **Representative payee.** "Representative payee" means an individual designated by the Social Security Administration to receive benefits on behalf of the applicant or resident.

Subp. 102. **Reserved bed.** "Reserved bed" has the meaning given it in part 9050.0150 [Emergency], subpart 6.

Subp. 103. **Resident.** "Resident" has the meaning given it in Minnesota Statutes, section 198.001, subdivision 2.

Subp. 104. **Resident's financial information file.** "Resident's financial information file" means financial data collected to determine the ability of an applicant or resident to pay or have paid the amount indicated in the admissions agreement toward the resident's cost of care.

Subp. 105. **Resource.** "Resource" means any property, income, or benefit that is available to pay for the cost of care of the resident.

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Subp. 106. **Social worker.** "Social worker" means a person who is licensed under Minnesota Statutes, section 148B.21, who has met the minimum qualifications of a social worker under the Minnesota Merit System or a county civil service system in Minnesota.

Subp. 107. **Staff physician.** "Staff physician" means a physician licensed to practice medicine under Minnesota Statutes, chapter 147, who is employed by or under contract to the board to provide services in a board-operated facility.

Subp. 108. **Staff psychiatrist.** "Staff psychiatrist" means a psychiatrist who is employed by or under contract to the board to provide psychiatric services in a board-operated facility.

Subp. 109. **Staff psychologist.** "Staff psychologist" means a person licensed under Minnesota Statutes, section 148.91, subdivision 4 or 5, who is employed by or under contract to the board to provide psychological services in a board-operated facility.

Subp. 110. **Transfer.** "Transfer" means:

A. movement of a resident to or from another health care facility for purposes of hospitalization or other health care services if a bed is held at the particular board-operated facility for the resident pending completion of medically necessary treatment and the resident's anticipated return to the same board-operated facility; or

B. movement to or from a nursing home to a boarding care facility or to or from a boarding care facility to a nursing home at a particular campus, when a bed hold is not required and a return to the resident's previous level of care is not anticipated.

Subp. 111. **Treatment.** "Treatment" means the use of medically necessary health care services to prevent, correct, or ameliorate disease or abnormalities detected by diagnostic or screening procedures.

Subp. 112. **Treatment absence.** "Treatment absence" means an absence of a resident from a board-operated facility, with the expectation of the resident's return to the board-operated

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facility. The absence must be to be placed in a residential institutional setting, including a detoxification facility, a rehabilitation program, or health care facility other than a hospital.

Subp. 113. **Unearned income.** "Unearned income" means any form of gross income that does not meet the definition of earned income. Unearned income includes an annuity, retirement, or disability benefit, including veteran's or worker's compensation, social security disability, railroad retirement benefits, or unemployment compensation; benefits under a federally funded categorical assistance program including supplemental security income, or other assistance programs, gifts, rents, dividends, interest and royalties, support and maintenance payments, pension payments, return on capital investment, insurance payments or settlements, severance payments, employment benefits and rewards for past employment; and educational grants, deferred payment loans, and scholarships. Unearned income must be calculated according to part 9050.0710 [Emergency], subpart 5.

Subp. 114. **Unemployment compensation.** "Unemployment compensation" means the insurance benefits paid to an unemployed worker under Minnesota Statutes, sections 268.03 to 268.231.

Subp. 115. **Utilization review.** "Utilization review" means the activity or function within the board-operated facility responsible for the ongoing evaluation of the necessity for and the quality and timeliness of services provided in board-operated facilities, according to chapters 4655 and 4660, when the services are not under the responsibility of a professional standards review organization.

Subp. 116. **Verification.** "Verification" means the process the facility financial staff or social services staff must use to establish the accuracy or completeness of information from an applicant, a resident, a third party, or other source as that information relates to a person's eligibility for admission, suitability for admission, or calculation of maintenance charge.

Subp. 117. **Veteran.** "Veteran" has the meaning given it in

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Minnesota Statutes, section 197.447.

Subp. 118. **Volunteer.** "Volunteer" means a person who, without compensation, gives time and effort in supportive or person-to-person services.

Subp. 119. **Vulnerable adults act.** "Vulnerable adults act" has the meaning given it in Minnesota Statutes, section 626.557.

Subp. 120. **Working days.** "Working days" means Monday through Friday, excluding state recognized legal holidays.

9050.0050 [Emergency] PERSONS ELIGIBLE FOR ADMISSION.

Subpart 1. **General qualifications.** A person seeking admission to a board-operated facility must meet the admission requirements in Minnesota Statutes, sections 198.01, 198.02, and 198.03, and the criteria in part 9050.0070 [Emergency]. The person must also provide current evidence of medical need for admission and financial information as specified in parts 9050.0800 to 9050.0900 [Emergency].

For purposes of subparts 2 and 3, a person is a resident of the state if the person has been physically present in the state on a continuous basis for six months before the date of application for admission.

For purposes of subparts 2 to 4, an applicant or resident has adequate means of financial support if the applicant or resident is financially able to live independently. A person is financially able to live independently if the person has assets in excess of $3,000 or income sufficient to meet basic needs.

Subp. 2. **Veterans.** A person must meet the criteria in Minnesota Statutes, sections 197.447 and 198.022, paragraphs (1) and (2), to be eligible for admission to a board-operated facility as a veteran.

Subp. 3. **Nonveterans.** A person who is not a veteran must meet the criteria in Minnesota Statutes, section 198.022, paragraphs (1) and (3), to be eligible for admission to a board-operated facility.

Subp. 4. **Exceptions.** An applicant otherwise eligible for admission to a board-operated facility under subpart 2 or 3 who

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has adequate means of support may be admitted to a board-operated facility if the applicant complies with the requirements in Minnesota Statutes, section 198.03. An applicant seeking admission under Minnesota Statutes, section 198.03, and this subpart must not have past unpaid debts to the state for maintenance charges for prior residence in a board-operated facility. An applicant who has past unpaid debts to the state must make full payment of the past unpaid bills for maintenance charges or negotiate a reasonable repayment plan with the board before an application for admission will be placed on the active waiting list.

9050.0055 [Emergency] ADMISSIONS PROCESS, WAITING LIST, PRIORITY.

Subpart 1. **Process.** A person seeking admission to a board-operated facility may obtain an application form and information describing the required application procedures from the facility. The social services staff of the board-operated facility shall assist the person to complete the application form and process. When an application is requested, the social services staff shall provide a checklist of items requiring documentation, information, or verification to complete the application. An application is complete when the following information is received by the board-operated facility:

A. a completed, signed application form;

B. a copy of the person's military discharge papers;

C. a signed copy of the board-operated facility's admission policy statement; and

D. the following medical records:

(1) a discharge summary from all hospitals at which the person received treatment within the five years before application;

(2) a patient care information form from the current nursing home, if any;

(3) if the person resides at home at the time of application, a patient care information form completed by the primary caregiver; and

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(4) if the person resides at home at the time of application, a history and physical from the attending physician.

The social services staff of the board-operated facility shall keep a checklist on which to record the date of receipt of information for the person's application file. Upon completion of an application file, a determination must be made by the board-operated facility social services staff as to whether the applicant meets the general eligibility requirements in part 9050.0050 [Emergency]. If the requirements of part 9050.0050 [Emergency] are met, an applicant's name must be referred to the admissions committee or be placed on the waiting list for the particular facility as specified in subpart 3.

Subp. 2. **Timing of review by the admissions committee.** The admissions committee shall review an application for admission to determine the applicant's suitability for admission to a board-operated facility as determined by the criteria in part 9050.0070 [Emergency], subparts 3 and 4, according to items A and B.

A. If the board-operated facility to which a person has applied has no waiting list, the admissions committee shall review the application file within ten working days of its completion.

B. If the board-operated facility to which the person has applied has a waiting list, the admissions committee shall review the application file within ten working days from the time the applicant's name reaches the first place on the active waiting list and a bed becomes available.

Subp. 3. **Waiting lists.** Each board-operated facility shall maintain an active waiting list and an inactive waiting list to determine the admission priority of applicants. The active waiting list is for applicants desiring the first available bed at the level of care appropriate to the applicant's needs. The inactive waiting list is for those applicants who do not want to exercise their option for admission, but who want to be prepared to exercise that option and want to be kept informed of openings or of the length of the

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active waiting list at the board-operated facility.

If an eligible applicant cannot be considered for admission to a board-operated facility with an appropriate level of care due to unavailability of a bed, the applicant must be placed on either an active or inactive waiting list according to preference. An applicant shall indicate preference for the active or inactive waiting list on the application for admission. An applicant may request movement from one waiting list to another at any time, unless the request is precluded by subpart 5. An applicant requesting movement from one waiting list to another must be placed at the bottom of the waiting list to which movement was requested. The applicant's position on the waiting list is determined by the date on which the application file is complete.

Subp. 4. **Priority.** Current residents of board-operated facilities have priority for consideration for admission to other board-operated facilities at an appropriate level of care if they meet the criteria for that level of care and a bed is available. A person on the active waiting list must be considered for admission and, if approved by the admissions committee, offered a bed consistent with the person's position on the active waiting list and the person's case mix classification and level of care needs as determined by the admissions committee. A person offered admission has seven working days to consider the offer. If the person declines the offer of admission, the person's name must be put on the bottom of the active waiting list, unless the person requests removal from the active waiting list or transfer to the inactive waiting list. If the person fails to respond to the offer of admission within seven working days from the date the offer is made, the person's application file must be closed and the person's name removed from all waiting lists. A person whose name is removed from all waiting lists for failure to respond to an offer for admission must reapply.

Subp. 5. **Limitations on refusals to exercise option for admission from active waiting list.** Refusal or failure to

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exercise the option for admission from the active waiting list is limited as set forth in items A and B.

A. A person who is placed on the waiting list after the effective date of parts 9050.0010 to 9050.0900 [Emergency] and who twice refuses an opportunity for admission must be removed from the active waiting list and placed on the inactive waiting list. The person is not permitted to transfer to the active waiting list for one year from the date the person refused an opportunity for admission unless the person can verify by an attending physician a significant change in health status since the date of last refusal.

B. A person who is on the waiting list as of the effective date of parts 9050.0010 to 9050.0900 [Emergency] and who has previously refused one or more opportunities for admission must be allowed one additional opportunity for admission before being moved to the inactive waiting list.

Subp. 6. **Initial financial status review.** The facility financial staff shall evaluate the financial status of a person approved for admission. The purpose of the initial financial status review is to determine the person's ability to pay toward the cost of care and to calculate the person's maintenance charge. The financial status review must be conducted according to parts 9050.0800 to 9050.0900 [Emergency]. The maintenance charge calculation must be according to part 9050.0560 [Emergency].

9050.0060 [Emergency] ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.

Subpart 1. **Admissions committee appointed.** The administrator of a facility shall appoint an admissions committee for that facility to review and act on applications for admission to that facility.

Subp. 2. **Composition of admissions committee.** The admissions committee must consist of three or more of the following staff members of the board-operated facility: the administrator or a designee, a registered nurse, a social

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worker, a mental health professional or mental health practitioner, and a physical therapist. Additional admissions committee members may include any of the following staff members, as indicated by the diagnosis or diagnoses of the applicant to be reviewed: a chemical dependency counselor, a mental health professional or mental health practitioner, physical therapist, dietician, and clergy member.

Subp. 3. **Duties.** The admissions committee has the duties specified in items A and B.

A. The admissions committee shall review and act on all applications by conducting a screening as specified in subpart 4, and by reviewing the completed application and documentation in part 9050.0055 [Emergency]. The admissions committee shall determine whether or not to admit the applicant according to the facility's ability to meet the applicant's care needs, based on the admissions criteria in part 9050.0070 [Emergency], subparts 3 and 4.

B. The admissions committee shall record the minutes of each committee meeting. The minutes must reflect the date of the review, the applicant's name, the current living status of the applicant, the reason for the placement request, a brief description of the applicant's physical or mental status, and the rationale behind the committee decision. The minutes must be kept by the administrator for the time specified for retention of medical records in parts 4655.3200 to 4655.3600.

Subp. 4. **Screening.** To prepare for review of an application for admission, the admissions committee or its designated representatives shall conduct a preadmission screening similar to that prescribed in Minnesota Statutes, section 256B.091. The admissions committee or its designated representatives shall interview the applicant or the applicant's legal representative, if any, and the applicant's family members with the applicant's consent. The admissions committee shall also obtain the following information:

A. military service records or discharge information about the applicant or the applicant's spouse;

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B. medical and psychiatric information from previous or current placements and current attending physicians and, as appropriate, psychologists or psychiatrists;

C. information from the applicant's previous or current placements about the applicant's compliance with the applicant's medical treatment plan or individual treatment or care plan;

D. Bureau of Criminal Apprehension reports or criminal background information or reports, as appropriate;

E. level of care information from previous and current placements; and

F. financial status for purposes of determining the applicant's ability to pay.

9050.0070 [Emergency] TYPES OF ADMISSIONS.

Subpart 1. **General criteria.** Admissions must be according to the requirements in parts 4655.0400, 4655.0500, 4655.0700, and 4655.1500.

Subp. 2. **Selection of residents.** Of those applicants eligible for admission under part 9050.0050 [Emergency] and Minnesota Statutes, sections 198.01, 198.022, and 198.03, the admissions committee of the board-operated facility, in consultation with the applicant's attending physician, shall determine whether an applicant is to be admitted by applying the criteria for each type of facility in subparts 3 and 4.

Subp. 3. **Criteria for admission to and continued stay in a boarding care facility.** The decision about admission to or continued stay in a board-operated facility licensed to provide boarding care must be based on the facility's ability to meet the care needs of the applicant or resident. A person whose care needs can be met by the board-operated facility must be admitted, placed on the waiting list, or retained as a resident if the admissions committee determines the person meets the criteria in items A to N. A person whose care needs cannot be met must be denied admission or continued stay if the admissions committee determines the person does not meet the criteria in

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items A to N.

A. The person must have or be assigned a case mix classification of A or B under the case mix system established by parts 9549.0058, subpart 2, and 9549.0059 and Minnesota Statutes, section 144.072.

B. The person must have a medical and, if appropriate, psychiatric diagnosis from the attending physician indicating placement in a boarding care facility is a medical necessity.

C. The person's attending physician must document the person's need for the services provided in a boarding care facility.

D. A person must be alert and oriented to person, place, and time, and able to function within a structure of daily monitoring by the nursing staff of the boarding care facility. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist.

E. A person must be able to recognize and appropriately react to hazards in the environment. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist. The case mix indicator, developed under Minnesota Statutes, section 144.072, for orientation and self-preservation skills must be used to determine whether the individual has the mental judgment or physical ability necessary to function in a changing environment and a potentially harmful situation.

F. The person must participate in establishing and comply with the person's individual care plan and comply with the medical treatment plan prescribed by the attending physician. Continuing compliance must be measured as specified in the compliance review process in part 9050.0300 [Emergency].

G. A person must be physically and mentally capable of providing personal care and hygiene including dressing, grooming, washing other than bathing, eating, and toileting. A person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist.

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H. The person must be assessed by a staff registered nurse as independent in transferring and mobility.

I. The person must require no more than twice daily face-to-face monitoring by the nursing staff of the boarding care facility. For continued stay, face-to-face monitoring for special medical needs may exceed twice daily for up to five days with approval of the assistant director of nursing of the boarding care facility.

J. A staff psychiatrist or psychologist must document that the person with a history of violent or self-abusive behavior does not pose a threat of harm to self or others.

K. A person diagnosed by the attending physician as actively psychotic must require no more than twice daily face-to-face monitoring by facility nursing staff and no more than weekly face-to-face therapeutic contacts with a staff psychiatrist or psychologist.

L. A person with a history of chemical abuse or a diagnosis of chemical dependency must have successfully completed an in-patient residential chemical dependency treatment or rehabilitation program as defined in part 9050.0040 [Emergency], subparts 25 and 103, and must be chemically free. For purposes of this item, a person is chemically free if the person can document six months of nonuse or use with no symptoms of dependency prior to admission and demonstrates continued nonuse of chemicals during residence.

M. The person must be able to comply with Minnesota veterans homes rules in parts 9050.0010 to 9050.0900 [Emergency]. Ability to comply is demonstrated by a documented history of compliance in a prior placement, if any. Continuing compliance must be measured as specified in the compliance review process in part 9050.0300 [Emergency].

N. The person must be free from any reportable communicable disease or infection as defined in part 4605.7040 that poses a threat to the health and safety of others.

Subp. 4. **Criteria for admission to and continued stay in a nursing home facility.** The decision about admission or

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continued stay in a board-operated facility licensed as a nursing home must be based on the facility's ability to meet the care needs of the person. A person whose care needs can be met by the facility must be admitted, placed on the waiting list, or retained as a resident if the admissions committee determines that the person meets all of the criteria in items A to F. A person whose care needs cannot be met must not be admitted or retained as a resident if the admissions committee determines the person fails to meet all of the criteria in items A to F.

A. The person must have or be assigned a case mix classification of A to K under the case mix system established by parts 9549.0058, subpart 2, and 9549.0059 and Minnesota Statutes, section 144.072.

B. The person must have a medical and, if appropriate, psychiatric diagnosis from the attending physician indicating placement in a nursing home is a medical necessity.

C. The person's attending physician must document the person's need for the services provided in a nursing home.

D. The person must demonstrate a history of compliance with an individual treatment or care plan or with the medical treatment plan prescribed by the attending physician. The person with a history of noncompliance must be assessed by a staff registered nurse as to the facility's ability to meet the person's care needs.

E. The person must be free from any reportable communicable disease or infection as defined in part 4605.7040 that poses a threat to the health and safety of others.

F. A staff psychiatrist or psychologist must document that the person with a history of violent or self-abusive behavior does not pose a threat of harm to self or others.

9050.0080 [Emergency] ADMISSION DECISION; NOTICE AND REVIEW.

Subpart 1. **Notice.** An applicant must be advised by the board, in writing, of the admissions committee's decision and the reasons for the decision. The notice must be sent to the applicant no later than three working days after the admissions

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committee's decision. The notice must include information about the applicant's right to request a review of a denial and about the review process as specified in subpart 2 or information regarding additional actions necessary to effect admission. Nothing in this subpart precludes concurrent or prior notification by telephone.

Subp. 2. **Review.** An applicant or the applicant's legal representative may request a review of a decision of the admissions committee to deny the applicant's admission. The applicant or applicant's legal representative desiring the review shall forward the request, in writing, to the administrator of the facility. The review must be completed within 30 days of receipt of the request. The administrator may request that the admissions committee reconsider its decision or the administrator may review the existing minutes to determine the basis for a negative decision. If a reconsideration is requested, it must be conducted at the next scheduled admissions committee meeting. The decision resulting from the reconsideration and the reasons for the decision must be forwarded to the administrator in writing. The administrator shall conduct a final review of the admissions committee's decision, based on the admissions criteria in part 9050.0070 [Emergency], subpart 3 or 4, and shall issue a final decision. The decision of the administrator shall constitute final agency action.

9050.0100 [Emergency] TRANSFER.

Subpart 1. **Generally.** A resident may be transferred from a board-operated facility to another health care facility or rehabilitation program or detoxification program if:

A. ordered or recommended by the attending physician or the utilization review committee as part of the resident's individual care plan;

B. requested by the resident or the resident's legal representative, if any; or

C. an emergency situation exists.

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A resident may be transferred only with the resident's consent or the consent of the legal representative, if any, except in an emergency when obtaining consent before transfer is not possible. A resident who refuses consent for transfer to another health care facility or rehabilitation program or detoxification program on recommendation of the attending physician or the utilization review committee, or both, may be subject to discharge for noncompliance with the resident's individual care plan. The utilization review committee's decision to recommend discharge of a resident for refusing consent for transfer is limited by the Patient's Bill of Rights established in Minnesota Statutes, section 144.651, and must be based on the facility's ability to meet the person's care needs as determined by the criteria in part 9050.0700 [Emergency], subparts 3 and 4. A resident transferred from another facility back to the board-operated facility does not need to reapply for admission.

Subp. 2. **Notice.** Unless a situation occurs that is outside the board-operated facility's control, such as a utilization review, the accommodation of newly admitted residents, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment of stay, a resident for whom the utilization review committee or the attending physician recommends a transfer must be notified of the recommendation at least:

A. 30 days before the anticipated transfer date, if to a non-board-operated facility or program, according to Minnesota Statutes, section 144.651, subdivision 29; and

B. seven days before the anticipated transfer to another bed or level of care within the same board-operated facility, or to another board-operated facility located at the same campus, according to Minnesota Statutes, section 144.651, subdivision 29.

Subp. 3. **Mechanisms of effecting transfer.** A transfer must be effected in the manner applicable to a voluntary discharge in part 9050.0210 [Emergency]. The party recommending

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or requesting transfer shall arrange for transportation for the resident to the new facility or location.

Subp. 4. **Transfers to United States Department of Veterans Affairs Medical Center.** The board-operated facility must not guarantee access or admission to or treatment at the United States Department of Veterans Affairs Medical Center, nor does residence at a board-operated facility grant residents preference with regard to access, admissions, or treatment at the United States Department of Veterans Affairs Medical Center. If the United States Department of Veterans Affairs Medical Center agrees to accept the resident and has an available bed, the resident must be transferred to that facility. If the United States Department of Veterans Affairs Medical Center denies the resident treatment or admission, the resident must be transferred to a hospital or other health care facility that is able to provide the appropriate service. The Minnesota Veterans Homes Board, the Minnesota veterans home facility, the Minnesota Department of Veterans Affairs, or the state of Minnesota are not responsible for the costs of a resident's hospitalization or treatment at a facility that is not a board-operated facility.

Subp. 5. **Appeals.** A resident may appeal a transfer decision that is not based on an emergency. Appeal is to be taken in the same manner as appeal of discharge under part 9050.0220 [Emergency].

9050.0150 [Emergency] BED HOLD.

Subpart 1. **Generally.** A resident's bed or a comparable bed at an appropriate level of care must be held for the resident if the resident is absent from the board-operated facility for a circumstance specified in subparts 2 to 4 and continues payment as required in subpart 5 and part 9050.0540 [Emergency].

Subp. 2. **Hospital absence.** A resident's bed must be held during a resident's hospital absence if the treatment in the hospital is on the order of the resident's attending physician

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or is a result of a medical emergency. A hospital absence in excess of 30 days must be periodically monitored by facility staff with regard to the resident's progress and likelihood the resident can be cared for on return to the board-operated facility as determined by the criteria in part 9050.0070 [Emergency], subpart 3 or 4. If satisfactory progress is not being made, discharge proceedings must be started by the utilization review committee.

Subp. 3. **Treatment absence.** A resident's bed must be held during a resident's treatment absence if the treatment is on the order of the resident's attending physician as part of the resident's individual care plan. The resident must participate in treatment on a continuing basis and make satisfactory progress as determined by the administrator of the treatment program. If satisfactory progress is not being made, discharge proceedings must be instituted by the utilization review committee.

Subp. 4. **Personal absence.** A resident's bed must be held when the person leaves the board-operated facility on a personal absence. A personal absence may be no longer than 96 hours.

Subp. 5. **Effect on maintenance charges.** A resident whose bed is held under this part shall continue to pay any maintenance charge or charges that accrued or are accruing either before or during the resident's absence from the board-operated facility. Absences exceeding 96 hours with or without notice result in termination of the resident's entitlement to the per diem payment of the United States Department of Veterans Affairs retroactive to the date of departure.

Subp. 6. **Exception.** A bed may be held without charge for an approved applicant for up to two weeks from the date of acceptance of the offer of admission. A bed held under this subpart must be a reserved bed.

Subp. 7. **Monitoring of bed hold status.** The appropriateness of continued bed hold must be reviewed by the utilization review committee of the board-operated facility at

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least once every 30 days during the resident's ongoing absence. A decision about approval of continued bed hold must be based on the resident's satisfactory progress toward recovery from the condition for which the resident was hospitalized or completion of the treatment program or rehabilitation program, and the existence of a reasonable expectation that the facility will be able to care for the resident upon return to the board-operated facility and the resident's compliance with subpart 5 if applicable. Continued bed hold or continued residency with personal absences exceeding 96 hours or more than five personal absences per year that are less than 96 hours must be reviewed by the utilization review committee. The decision about continued residence must be based on the resident's continuing need for care as determined by the utilization review committee. The determination must be according to the criteria in part 9050.0070 [Emergency], subparts 3 and 4.

9050.0200 [Emergency] DISCHARGE.

Subpart 1. **General criteria.** Discharge from a nursing care facility or a boarding care facility constitutes permanent release from that board-operated facility and terminates the duties and responsibilities of the board and the facility staff with respect to the discharged individual. Once discharged, a former resident must reapply for admission to a Minnesota veterans home facility.

Subp. 2. **Types of discharge.** A resident must be discharged from the facility either voluntarily or involuntarily according to items A and B.

A. A discharge is voluntary if there is mutual consent between the resident, the resident's legal representative or spouse, if any, the resident's attending physician, and the administrator of the facility.

B. A discharge is involuntary if it is without mutual consent of the resident, the resident's legal representative who has the legal authority, or spouse, if any, the resident's attending physician, and the administrator of the facility or if

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it is contrary to the expressed preference of the resident.

Subp. 3. **Grounds for discharge.** Discharge procedures must be instituted with regard to a resident if one of the following grounds or circumstances exist:

A. the resident or resident's legal representative fails or refuses to comply with the resident's admissions agreement;

B. the resident or resident's legal representative makes a written request for discharge of the resident;

C. the board-operated facility is unable to meet the care needs of the resident, as determined by the utilization review committee according to part 9050.0070 [Emergency], subpart 3 or 4;

D. the resident is absent from the facility for 96 consecutive hours or more without notice; or

E. the resident or resident's legal representative or spouse:

(1) falsifies or fraudulently represents information on income disclosure and verification forms required in parts 9050.0800 to 9050.0900 [Emergency];

(2) refuses to provide information or releases; or

(3) falsifies or fraudulently represents information relating to criteria in part 9050.0070 [Emergency], subpart 3 or 4, or issues in part 9050.0060 [Emergency], subpart 4.

Subp. 4. **Notice of involuntary discharge.** Unless the time for the notice is extended by the administrator of a board-operated facility or a situation arises that is outside the facility's control, such as a utilization review, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment of stay, a resident must be notified in writing by the administrator of the facility of its intent to proceed with involuntary discharge of the resident at least 30 days before the scheduled date of discharge as provided by Minnesota Statutes, section 144.651,

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subdivision 29.

Subp. 5. **Contents of notice.** The notice must:

A. state that the discharge is involuntary;

B. state the grounds for the discharge as specified in subpart 3; and

C. contain documentation supporting the grounds alleged for the discharge.

Subp. 6. **Exceptions.** A resident absent from a board-operated facility for 96 consecutive hours without notice is subject to immediate institution of involuntary discharge procedures. A resident's discharge under this subpart is subject to a reinstatement hearing if the resident reports his or her whereabouts to the administrator of the facility and requests the reinstatement hearing within 30 days from the resident's departure from the facility without notice.

9050.0210 [Emergency] VOLUNTARY DISCHARGE PROCEDURES.

Subpart 1. **When used.** Voluntary discharge procedures must be used when a discharge from the board-operated facility is voluntary as in part 9050.0200 [Emergency], subpart 2, item A, or following review of an appeal from an involuntary discharge order when a court has issued an enforcement order or the resident has agreed to comply with the order for discharge.

Subp. 2. **Responsibilities of facility staff.** The board shall ensure that the tasks in items A to E are completed in effecting discharge under this part.

A. The discharge component of the resident's individual care plan must be updated and implemented after the resident has had an opportunity to confer with a social worker about the plan as described in subitems (1) and (2).

(1) A discharge conference must be arranged by the social worker with the resident, the resident's family with the resident's consent, the social worker, and multidisciplinary staff. The social worker shall make a referral of the resident to social or health care services identified in the resident's individual care plan as necessary for the resident's discharge.

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(2) The board shall ensure that adequate arrangements exist to meet the resident's financial and other needs following the resident's discharge.

B. The attending physician and board-operated facility multidisciplinary staff shall complete the resident's medical record. The resident's medical record must be retained as specified in parts 4655.3200 to 4655.3600.

C. The resident's medications must be disposed of by a pharmacist according to parts 4655.7600 to 4655.7860.

D. The board-operated facility staff shall release certified copies of the resident's record or the portions specifically requested to a requesting party subject to the requirements of the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. The requesting party shall pay the actual cost of photocopying records. To release a record or information regarding a resident, the resident must sign a form that includes the:

(1) resident's name;

(2) date;

(3) specific nature of information to be released;

(4) names of persons authorized to give information;

(5) names of persons to whom information is given;

(6) description of information to be released; and

(7) date the authorization expires.

A separate form is required for each release. The period of validity of an authorization may not exceed one year.

E. At the time of discharge, a description of the place and circumstances of discharge must be documented in the resident's record.

9050.0220 [Emergency] INVOLUNTARY DISCHARGE PROCEDURES.

Subpart 1. **Generally, recommendations.** Involuntary

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discharge for a reason specified in part 9050.0200 [Emergency], subpart 3, items C or D, must be based on the recommendation of the utilization review committee. Involuntary discharge under part 9050.0200 [Emergency], subpart 3, item A or E, must be based on the recommendation of the facility financial staff or social services staff.

Subp. 2. **Initial notice, review of recommendation.** An initial notice for involuntary discharge must be issued by the administrator of the board-operated facility if, after review of the recommendations and documentation from the utilization review committee or finance department, the administrator agrees with the recommendations.

Subp. 3. **Reconsideration.** A resident or the resident's legal representative may request a reconsideration of the initial notice of involuntary discharge. The request must be made in writing within ten days of receipt of the initial notice of involuntary discharge. Reconsideration must be before the administrator of the board-operated facility under the procedures in subpart 4.

Subp. 4. **Reconsideration procedures, scheduling, representation.**

A. A resident may be represented at a reconsideration under this part by an attorney, the resident, an advocate from the Office of the Ombudsman for Older Minnesotans, or other person of the resident's own choosing.

B. A resident and the resident's representative may question witnesses and present reasons why the resident should not be discharged.

C. The administrator shall record the proceedings electronically or stenographically. The cost must be borne by the facility.

D. The time for the reconsideration proceeding must be set by the administrator. The time may be extended for the resident for good cause shown. For purposes of this item, good cause exists when a resident cannot attend because of:

(1) illness or injury of the resident;

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(2) illness, injury, or death of a member of the resident's family that requires the resident's presence during the time the review is scheduled;

(3) an inability to obtain necessary assistance;

(4) employment, school, or employment and training service obligations that are scheduled during the reconsideration and that cannot be changed to allow the resident's participation;

(5) a judicial proceeding that requires the resident's presence in court during the hours when the reconsideration is scheduled; or

(6) a nonmedical emergency that requires the resident's presence at a different location during the hours when the reconsideration is scheduled. "Emergency" under this subitem means a sudden unexpected occurrence or situation of a serious or urgent nature that requires immediate action.

Subp. 5. **Administrator's decision and preliminary order.** The administrator, after the reconsideration proceeding and on review of the record, shall review the question of discharge and issue a preliminary order supporting or reversing the initial involuntary discharge notice and state the reasons for the involuntary discharge.

Subp. 6. **Appeals process.** An applicant or resident, or legal representative, may appeal a discharge or transfer order. Appeals must be in accordance with contested case procedures under the Administrative Procedure Act, Minnesota Statutes, sections 14.48 to 14.56, until rules are adopted under Minnesota Statutes, section 144A.135, by the commissioner of health. Unless otherwise decided by the administrator of the board-operated facility, a final discharge order issued by the administrator following the Office of Administrative Hearings' review remains in effect pending any appeal according to Minnesota Statutes, section 14.65.

Nothing in this part may be construed to limit, change, or restrict other appeal or review procedures available to a resident under law.

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9050.0230 [Emergency] ENFORCEMENT OF FINAL DISCHARGE ORDER.

A final discharge order is the order issued by the administrator of a board-operated facility following review of the preliminary discharge order under Minnesota Statutes, chapter 14. A final discharge order is the final agency action. When a resident refuses to comply with the terms of a final discharge order issued following review under Minnesota Statutes, chapter 14, and final agency action, the administrator may seek enforcement of the final discharge order by applying to the district court for an order enforcing the administrative order of discharge. Pursuant to Minnesota Statutes, section 198.045, the district court may order the sheriff of the county in which the board-operated facility is located to remove the resident from the board-operated facility and authorize the administrator to remove the resident's property and hold it until it can be returned to the former resident. Upon issuance of the court order, the procedures in part 9050.0210 [Emergency] regarding voluntary discharge must be followed, to the extent possible, to effect the discharge.

9050.0300 [Emergency] COMPLIANCE REVIEW.

Subpart 1. **Generally.** A board-operated facility must have and implement a compliance review procedure to review a resident's compliance with an individual care plan and facility emergency rules as specified in chapter 9050. The review must determine what action, if any, is to be taken to ensure the resident's compliance and whether the board-operated facility is able to care for the resident according to the criteria in part 9050.0070 [Emergency), subparts 3 and 4.

Subp. 2. **Requirements of procedure.** A compliance review procedure must provide for:

A. the resident's right to participation of a resident advocate in the compliance review;

B. notice to the resident of each problem or infraction;

C. instruction for the resident regarding procedures

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or options for compliance;

D. opportunity for participation of the resident or the resident's legal representative, social workers, and, with the resident's consent, the resident's family members;

E. differentiated reviews and actions consistent with the frequency and severity of the resident's compliance problem;

F. notice to the resident that repeated noncompliance may result in imposition of disciplinary options or restrictions that the utilization review committee finds necessary to provide for the resident's care needs according to part 9050.0070 [Emergency], subpart 3 or 4, and the resident's individual care plan;

G. an accelerated review procedure to be used when the severity of the resident's noncompliance endangers the health and safety of the resident, other residents, or staff members of the board-operated facility;

H. consideration of the resident's ability to comprehend and cooperate with parts 9050.0010 to 9050.0900 [Emergency] or with the individual care plan provisions; and

I. notice to the resident that the ultimate consequence of noncompliance is a recommendation for discharge, if the noncompliance results in the board-operated facility's inability to meet the care needs of the resident according to part 9050.0070 [Emergency], subparts 3 and 4.

Subp. 3. **Conduct of review; responsibilities.** Compliance review must be conducted by the utilization review committee or subcommittee. Decisions as to the use of the review procedure, disciplinary options, or recommendations for discharge must be by majority vote. Decisions of the committee or subcommittee at each level or occasion of review must be based on the facility's ability to care for the resident according to part 9050.0070 [Emergency], subpart 3 or 4.

9050.0400 [Emergency] UTILIZATION REVIEW COMMITTEE.

Subpart 1. **Appointment and duties.** The administrator of a facility shall appoint a utilization review committee composed

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of persons as specified in subpart 2 who are employed by or under contract to the board-operated facility or the board. The committee shall have the duties specified in subpart 3.

Subp. 2. **Composition.** The utilization review committee consists of two physicians and at least one of each of the following professionals: a registered nurse, the administrator or the administrator's designee, a social worker, and a medical records technician. Additional committee members may include any of the following staff members as indicated by the diagnosis or diagnoses of the resident to be reviewed: a chemical dependency counselor, a mental health practitioner or mental health professional, or a dietician. The administrator or the administrator's designee, one other committee member, and at least two physicians must be in attendance to hold a meeting and to take action.

Subp. 3. **Duties.** The duties of the utilization review committee are to:

A. review the necessity and appropriateness of admissions, bed holds, transfers, and the need for discharge of all residents according to the United States Department of Veterans Affairs, chapter 9050, and Department of Health nursing and boarding care criteria specified in parts 4655.0400, 4655.0500, 4655.0700, and 4655.1500;

B. recommend to the administrator of the board-operated facility criteria for use in admitting residents for care plan reviews and discharge;

C. perform medical care evaluation studies at the request of the board and review assessments of residents;

D. provide reports and recommendations to the administrators and the board;

E. provide information as required to appropriate state and federal agencies and fiscal agents, including the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, Minnesota Department of Health, Minnesota Department of Human Services, Minnesota Department of Administration, and Legislative Auditor;

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F. periodically evaluate the Minnesota veterans homes utilization review procedures and recommend ways to correct deficiencies in the review procedures; and

G. review each resident's case record annually to:

(1) determine the facility's ability to meet the resident's care needs;

(2) assess the resident's willingness to cooperate with an individual care plan and obey facility emergency rules in chapter 9050;

(3) assess the appropriateness of the resident's continued stay; and

(4) develop and update the discharge component of the individual care plan for each resident, as appropriate.

Subp. 4. **Decisions.** Decisions must be by majority vote of the members of the utilization review committee following review at a committee meeting. Decisions about residents must be based on the facility's ability to meet the care needs of the resident or applicant according to part 9050.0070 [Emergency], subpart 3 or 4.

9050.0500 [Emergency] COST OF CARE; BASIS FOR MAINTENANCE CHARGE; BILLING.

Subpart 1. **Annual calculation; effective date; notice of change.** The cost of care used to determine the maintenance charge of a resident must be calculated annually under this part. A change in the cost of care becomes effective on July 1 of the rate year following the reporting year used to calculate the cost of care. The cost of care must remain fixed for that rate year. A notice of change in the cost of care must be provided to all residents and their legal representatives 30 days before its effective date.

Subp. 2. **Costs to be included in calculating cost of care.** The calculation of the cost of care includes both the direct and indirect costs of providing resident care. These costs must be compiled separately for each board-operated facility on the basis of whether nursing home or boarding care

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services are provided.

A. Direct costs include the costs of staff care directly attributable to boarding care or nursing home services that directly benefit the resident. An example of a direct cost is nursing service.

B. Indirect costs include costs incurred for common or joint purposes that are identified with more than one level of care and are for services that are provided on behalf of a resident of the facility or facilities. Examples are the costs of housekeeping, laundry, administration, and food services. Indirect costs must be reduced by the amount of receipts received by the board-operated facility for lease or rent payments, meals, and other common purpose sources.

C. Calculation of the cost of care does not include the expenses of the board and capital expenditures or revenues, including federal matching funds and designated contributions, and resident fund accounts as specified in parts 4655.4120 to 4655.4170.

Subp. 3. **Method of calculating average daily per resident cost of care.** The cost of care for a nursing home or boarding care home must be calculated as follows:

A. total the direct costs for a particular campus or board-operated facility for a reporting year;

B. divide item A by 365;

C. divide item B by the average number of residents in nursing home care or boarding care for a reporting year;

D. total the indirect costs for a particular campus or board-operated facility for a reporting year;

E. divide item D by 365;

F. divide item E by the average number of residents at a particular campus or board-operated facility for a reporting year; and

G. total items C and F. The result is the average daily per resident cost of care for nursing home care or boarding care.

Subp. 4. **Cost of care related to maintenance charge.** The

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cost of care as calculated in subpart 3 must be used to determine the maintenance charge to the resident. The maintenance charge must be based on the resident's ability to pay. The maintenance charge must be calculated as specified in part 9050.0560 [Emergency]. The maintenance charge must be reviewed and adjusted as specified in parts 9050.0560 [Emergency] and 9050.0580 [Emergency]. Additionally, when applicable, the resident's maintenance charge must be reduced by the amount of the per diem reimbursement paid on behalf of a resident by the United States Department of Veterans Affairs.

Subp. 5. **Effect of bed hold on maintenance charges.** A resident who pays a maintenance charge, regardless of amount, shall continue to pay that same maintenance charge during a bed hold as specified in part 9050.0150 [Emergency], subpart 5.

Subp. 6. **Billing.** Billing for maintenance charges must be as specified in items A to F.

A. The maintenance charge must be billed monthly.

B. The monthly billing must be the resident's chargeable income as calculated in part 9050.0755 [Emergency], up to the full cost of care.

C. The maintenance charge must be billed to the address designated by the resident or the resident's legal representative on the resident's application for admission.

D. A billing for one month's service must be issued no later than the tenth of the month following the month in which the service was provided.

E. A resident must be charged for the day of admission but not for the day of discharge. For purposes of this item, one day is the 24-hour period ending at midnight.

F. A billing must state the date by which payment must be received.

9050.0510 [Emergency] MAINTENANCE CHARGE; ADDITIONAL SERVICES; VETERAN EXCLUSIVE SERVICES.

Subpart 1. **Additional services at resident's own expense.** In addition to the services in the resident's admissions

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agreement, a resident may use additional health care services at the resident's own expense if the health care services do not exceed the level of care for which the facility is licensed and if the service provider complies with documentation requirements of the board-operated facility. A resident who chooses to use additional health care services at the resident's own expense shall continue to pay the maintenance charge determined under part 9050.0530 [Emergency].

Subp. 2. **Veteran exclusive services.** "Veteran exclusive services" are medical benefits or services provided or sponsored by the United States Department of Veterans Affairs exclusively for veterans. Examples include the United States Department of Veterans Affairs physician services and laboratory services. Nonveteran residents are not entitled to veteran exclusive medical benefits or services. Payment of the maintenance charge does not make a nonveteran eligible for veteran exclusive benefits or services provided at the board-operated facility. Nonveteran residents shall obtain necessary health care services comparable to veteran exclusive services at the resident's expense. The services must be within the confines of the level of care for which the facility is licensed.

9050.0520 [Emergency] MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.

Subpart 1. **Interest on delinquent accounts.** A resident's account is considered delinquent if a resident willfully refuses or fails to pay the bill by the due date. Applicants or residents must be notified if payment has not been received by the due date printed on the bill. Interest must be charged on all delinquent accounts, effective the date the bill was due, as provided in Minnesota Statutes, section 334.01. For purposes of this subpart, "willful refusal or failure to pay" means a situation in which:

A. the decision of whether to pay is completely within the control of the resident or the resident's legal representative; or

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B. a resident or the resident's legal representative has the ability or resources to pay the maintenance charge and fails to pay.

Subp. 2. **Discharge for nonpayment.** Discharge proceedings must be instituted under part 9050.0200 [Emergency], subpart 2, item A, when an account is delinquent. Discharge proceedings for nonpayment must be stopped when full payment, including accrued interest, is made.

9050.0530 [Emergency] RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.

If a person is admitted under Minnesota Statutes, section 198.03, a written admissions agreement must be made between the board or its designated representative and the resident or the resident's legal representative about maintenance charges for care and services, obligations concerning payment of the resident's maintenance charge, and the board's refund policy.

9050.0540 [Emergency] NO UNPAID ABSENCE.

Residents are not excused from payment of the maintenance charge when they are absent from the board-operated facility. A resident must continue to pay the maintenance charge determined under part 9050.0560 [Emergency] during a period of absence.

9050.0550 [Emergency] MAINTENANCE CHARGE; RESOURCES CONSIDERED.

Subpart 1. **In general.** The applicant's or resident's ability to pay must be determined from insurance and other benefits, value of property owned, and income. The applicant's or resident's property must be used first to pay the maintenance charge. The applicant's or resident's income must be used after the applicant's or resident's property is reduced to the limits in subpart 3 and part 9050.0600 [Emergency] to pay the maintenance charge.

Subp. 2. **Insurance benefits.** When the investigation of the applicant's or resident's financial status discloses eligibility for insurance benefits, the applicant or resident must be determined to be able to pay the cost of care provided

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to the full extent of insurance benefits available. When the insurance benefits pay less than the full cost of care, the ability of the applicant or resident to pay the remaining part must be determined from the applicant's or resident's nonexcluded property and income.

Subp. 3. **Property.** If the applicant or resident owns property in excess of $3,000 that is not excluded under part 9050.0600 [Emergency], subparts 2 and 3, the applicant or resident must be determined able to pay the full cost of care according to part 9050.0755 [Emergency]. The person shall pay the full cost of care until the property is reduced to the limits in parts 9050.0560 [Emergency] and 9050.0600 [Emergency].

Subp. 4. **Chargeable income.** The applicant's or resident's chargeable income is the income remaining after deductions from gross income have been made according to part 9050.0720 [Emergency] and after deductions from net income have been made according to part 9050.0755 [Emergency]. The applicant's or resident's entire chargeable income must be considered available to pay the cost of care. If an applicant or resident qualifies for governmental benefits or reimbursements or other benefits, the benefits must be included as income in determining the maintenance charge payable by or on behalf of a resident, unless an assignment of benefits naming the board-operated facility as representative payee has been executed in favor of the board-operated facility.

Subp. 5. **Property and income of spouse.** Property and income of the spouse of the applicant or resident must not be considered an available resource for payment of a maintenance charge.

9050.0560 [Emergency] MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.

Subpart 1. **Time of determination.** The amount of the maintenance charge must be determined if:

A. a person is admitted to a board-operated facility and at least annually after admission;

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B. there is a substantial change in the applicant's or resident's financial status or the financial status of the spouse of the applicant or resident;

C. a change in the applicant's or resident's living status requires recalculation of the benefits provided by the United States Department of Veterans Affairs or other source;

D. the resident is transferred from one level of care to another for 30 days or more; and

E. the resident is being discharged.

For purposes of the subpart, "substantial change" in financial status means a change that increases the person's net worth above the $3,000 limit or a change in the person's monthly income. Substantial change must be reported to the facility financial officer ten days after the applicant or resident, legal representative, or spouse of the applicant or resident learns of the change.

Subp. 2. **Method of calculation.** The amount that a resident must pay, or have paid on the resident's behalf, as a maintenance charge must be determined as specified in items A and B.

A. If an applicant's or residents net worth exceeds $3,000, the person's maintenance charge must be the full cost of care for the applicant's or resident's level of care less the United States Department of Veterans Affairs per diem reimbursement, when applicable, until the applicant's or resident's net worth is reduced to $2,500.

B. If the applicant's or resident's net worth is less than $2,500, the applicant's or resident's income must be considered in calculating the person's maintenance charge. The person's monthly maintenance charge is the person's total chargeable income, up to the full cost of care. The person's chargeable income must be calculated according to part 9050.0755 [Emergency].

9050.0570 [Emergency] MAINTENANCE CHARGE; NOTICE AFTER FINANCIAL STATUS REVIEW.

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The facility financial staff shall notify the applicant or resident, legal representative of the applicant or resident, or spouse of the applicant or resident, of any change in the applicant's or resident's maintenance charge following a financial status review. The notice must include information about the right to a review of the maintenance charge under part 9050.0580 [Emergency].

9050.0580 [Emergency] REVIEW OF MAINTENANCE CHARGE DETERMINATION.

An applicant or resident or legal representative may request that the administrator of a board-operated facility reconsider a maintenance charge determination. The request must be in writing, directed to the administrator. The administrator shall, within ten days of receipt of the request, conduct a review of the maintenance charge determination. The review must be in the same format and time frames as the procedures under part 9050.0220 [Emergency]. The administrator's determination is final upon receipt by the applicant or resident, or legal representative, and is the final agency action.

9050.0590 [Emergency] MAINTENANCE CHARGE; REFUND.

If an applicant or resident who has paid, or on whose behalf payment has been made of, the maintenance charge for a billing month, is discharged from a board-operated facility before the end of the month for which payment has been made, the applicant or resident is entitled to a refund. The amount of the refund to which an applicant or resident, or legal representative, is entitled must be calculated by prorating the monthly maintenance charge by the number of unused days.

9050.0600 [Emergency] PROPERTY LIMITATIONS.

Subpart 1. **General provisions of property ownership.** The equity value of all nonexcluded real and personal property owned by an applicant or resident must not exceed $3,000. The facility financial staff must use the equity value of legally available real and personal property, except property excluded in subpart 2 or 3, to determine the resources available to or on

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behalf of an applicant or resident.

A. If real or personal property is jointly owned by two or more persons, the facility financial staff shall assume that each person owns an equal share. When the owners document greater or smaller ownership, the facility financial staff shall use that greater or smaller share to determine the equity value held by or on behalf of an applicant or resident. Other types of ownership, such as a life estate, must be evaluated according to law.

B. Real or personal property owned by or on behalf of an applicant or resident is presumed legally available unless the applicant or resident documents that the property is not legally available to the applicant or resident. If real or personal property is not legally available, its equity must not be applied against the limits of subparts 2 and 3. Examples of property not available to a person are an estate that has not been probated, property owned together with one or more other people that the facility financial staff determines cannot be liquidated or reduced to cash through exercise of the applicant's or resident's legal rights, and property of an applicant or resident who is determined incompetent by a court and whose guardianship is pending. The facility financial staff shall consider as available property that a person has failed to make available for purposes of gaining admission to a board-operated facility or avoiding payment of the maintenance charge. An example of a person's failure to make property available occurs when the person refuses to accept a share of an inheritance.

C. Real or personal property transferred by an applicant or resident in violation of part 9050.0650 [Emergency] is presumed legally available.

D. The facility financial staff shall consider as available an individual retirement account, Keogh account, or other pension or deferred compensation plan account. The facility financial staff shall evaluate the accounts on the basis of the funds deposited in the account and the interest

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accrued on the funds less the penalty for early withdrawal.

E. The facility financial staff shall consider as available the proceeds that a person receives in a tort settlement, whether the settlement is entered into by the person or the person's guardian. If the settlement is received as a one-time payment, the facility financial staff shall treat it as a lump sum. If the settlement is structured to be paid over a period of time, the facility financial staff shall evaluate the property on the basis of the discounted net present value of all funds that will be deposited at any time in the future. In determining present value, an annual interest rate of six percent must be used. This item applies only to settlements entered into after the effective date of parts 9050.0010 to 9050.0900 [Emergency].

Subp. 2. **Real property limitations.** Real property owned by an applicant or resident must be excluded from consideration as an available resource, subject to the limitations in items A and B.

A. The facility financial staff shall exclude the homestead of an applicant or resident from consideration as a resource according to the provisions in subitems (1) to (4).

(1) The spouse of an applicant or resident or the dependent child or children of the applicant or resident, if any, must occupy the homestead.

(2) An applicant or resident or spouse of an applicant or resident who is purchasing real property through a contract for deed and using that property as a home is considered the owner of real property.

(3) The total amount of land that can be excluded under this subpart is limited as specified in Minnesota Statutes, section 510.02. Additional contiguous platted lots must be assessed as to their legal and actual availability according to subpart 1.

(4) When real property that has been used as a home by an applicant or resident, the spouse of an applicant or resident, or the dependent child or children of an applicant or

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resident is sold, the facility financial staff shall treat the proceeds from that sale as excluded property for a period of two years if the person intends to reinvest them in another home and maintains those proceeds, unused for other purposes, in a separate account. If the property is held jointly, any earnings that accrue on the sales proceeds before reinvestment or any excess proceeds not used for reinvestment must be treated as joint income or property and divided according to subpart 1, item A.

B. Real property being sold on a contract for deed must be excluded if the net present value of the contract in combination with other property does not exceed the limitations in parts 9050.0560 [Emergency] and 9050.0600 [Emergency]. If the present value exceeds limitations, the contract must be sold. Proceeds from the sale must be treated as lump sum payments.

C. Real property that is rental property leased at a market rent and producing a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

D. Real property on or in which the person operates a business that is anticipated to produce a net income must be excluded. If the property is sold, the proceeds must be treated as lump sum payments.

E. Real property that is not salable must be excluded. For purposes of this item, "not salable" means:

(1) two sources agree that the property is not salable due to a specified condition; or

(2) an actual sale attempt was made at a price not more than an estimate of the highest current market value obtained within six months of application for admission or since the last determination of the maintenance charge, but no offer to purchase was received.

For purposes of subitems (1) and (2), the source of information must be from the same geographic area as the property and knowledgeable about the value of the type of

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property offered for sale. For purposes of subitem (2), "an actual sale attempt" means the individual has listed the property with a licensed real estate broker or salesperson or, if the property is offered for sale by the owner, the owner has affixed to the property a readable sign that includes the address or phone number of the owner and the owner has advertised the property for sale in the official newspaper of the county, the newspaper of largest circulation in the county, or the local shopper. The minimum period of an actual sale attempt is 90 consecutive days.

F. Other real property must be excluded according to federal law, federal regulations, or state law.

Subp. 3. **Other property limitations.** The facility financial staff shall exclude the value of the following personal property:

A. one motor vehicle, for personal use;

B. the value of a prepaid burial account, burial plan, burial contract, or burial trust up to $2,500 for persons who are residents of a board-operated facility when the investment is made, regardless of the amount invested or value, if made by the person before admission to a board-operated facility;

C. 50 percent of property owned jointly with a spouse;

D. household goods and furniture and personal effects, wearing apparel, and jewelry regularly used by the applicant or resident in day-to-day living;

E. the value of personal property needed to produce income, including tools, implements, farm animals and inventory, or capital and operating assets of a trade or business necessary to income production, and if the property is sold, the proceeds must be treated as lump sum payments; and

F. other personal property specifically excluded by federal law, federal regulation, or state law.

Subp. 4. **Separate account for excluded funds.** Funds excluded from consideration as an available resource by subpart

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2 or 3 must be placed in an account separate from other funds to retain the exclusion. Upon application for admission and redetermination of a maintenance charge, the facility financial staff shall inform the person in writing of the requirement to place excluded funds in a separate account.

9050.0650 [Emergency] TRANSFERS OF PROPERTY.

Subpart 1. **Generally.** A person whose application for admission is pending or a current resident of a board-operated facility shall declare all transfers or sales of property within ten days of the transfer or sale. The value of property transferred or sold must be treated as an available resource for payment of the resident's maintenance charge. The value of the property transferred or sold that will be applied against the property limits in parts 9050.0560 [Emergency] and 9050.0600 [Emergency] is the market value of the property at the time of the sale or transfer less any encumbrances on the property. A transfer for purposes of preserving an estate for heirs is the same as a transfer for the purposes of establishing eligibility for admission to a board-operated facility or avoiding payment of a maintenance charge.

Subp. 2. **Permitted transfers.** Transfer or sale of property by or on behalf of an applicant or resident is permitted if the transfer or sale:

A. takes place more than 12 months before the person's admission to a board-operated facility;

B. is to the applicant's or resident's spouse or dependent child or children before the person's admission to a board-operated facility; or

C. is for market value with the proceeds available for payment toward the person's cost of care.

Subp. 3. **Fraudulent transfers.** A transfer or sale of property for less than market value within 12 months before admission or during the resident's stay in a board-operated facility, unless permitted under subpart 2, is presumed to be for the purpose of establishing or maintaining eligibility for

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admission to or continued residence in a board-operated facility or to avoid payment of the maintenance charge, unless the person furnishes convincing evidence to show that the transfer was for another purpose. Convincing evidence must include evidence that the person had no health or economic reasons to believe that nursing home or boarding care would be needed.

Subp. 4. **Loans of property.** An applicant or resident who lends property or on whose behalf property is loaned is considered to have transferred the property. The facility financial staff shall evaluate the transaction as a transfer of property under subparts 1 and 2. If the person receives adequate compensation for the loan or made the loan more than 12 months before the person's entrance into a board-operated facility, the facility financial staff shall honor the loan. Adequate compensation must be shown by a written loan agreement and receipt of payments according to the schedule in the agreement. If the loan is payable on demand, is due, or is otherwise negotiable, the property is presumed to be available to the applicant or resident. This presumption may be overcome by convincing evidence presented by the person that the loan will not be repaid. Interest payments made by the borrower to the person are considered income in the month received and an asset if retained. Principal payments made by the borrower to the person are considered as assets.

Subp. 5. **Unacceptable compensation for transfer of property.** Services are not considered acceptable compensation for the transfer or sale of property. For purposes of this subpart, "services" means labor performed by one person for another person or entity. Goods are not considered compensation unless supported by contemporaneous receipts or other evidence of expenditure. The purchase of paid up life insurance with no cash surrender value available to the person while the person is a resident or within 12 months before admission must be considered a transfer of an asset without acceptable compensation.

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9050.0700 [Emergency] INCOME.

Subpart 1. **Evaluation of income.** The facility financial staff shall evaluate only income received by or on behalf of an applicant or resident when determining the maintenance charge payable by or on behalf of an applicant or resident. All payments, unless specifically excluded in subpart 3, must be counted as income. All income must be counted in the calendar month received. Income becomes property if retained after the month in which it is received, unless this part specifically states otherwise.

Subp. 2. **Availability of income.** Income must be attributed to the person who earns it or to the beneficiary of the income according to items A and B.

A. Funds distributed from a trust, whether from the principal holding or sale of trust property or from the interest and other earnings of the trust holdings, must be considered income when the income is legally available to or on behalf of an applicant or resident. Trusts are presumed legally available unless an applicant or resident can document by court order that the trust is not legally available. Trusts established other than by will by the person or the person's spouse under which the person may be the beneficiary of all or part of the payments from the trust and the distribution of the payments are determined by one or more trustees who may exercise discretion about the distribution to the person must be considered an available resource. This item applies regardless of whether the trust is irrevocable or is established for purposes other than to enable a person to qualify for admission to a board-operated facility or whether the discretion of the trustees is exercised. A trust fund established by the applicant or resident on behalf of another person within 12 months before admission or during the resident's stay in a board-operated facility must be considered transferred property under part 9050.0650 [Emergency].

B. Income from jointly owned property must be divided equally among the property owners unless the terms of ownership

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provide for a different distribution of equity.

Subp. 3. **Excluded income.** The facility financial staff shall exclude the following from calculation of the applicant's or resident's gross income:

A. earnings derived from participation in a work therapy program while the person is a participant in the program; and

B. 50 percent of income received by or paid to an applicant or resident and spouse, jointly.

9050.0710 [Emergency] CALCULATION OF GROSS INCOME.

The facility financial staff shall calculate gross income by adding together the amounts of income from sources in subparts 1 to 6.

Subpart 1. **Earned income.** Earned income is treated according to items A to C.

A. Sick leave and vacation payments for earned or accrued leave time are earned income.

B. Earned income received by persons employed on a contractual basis must be prorated over the period covered by the contract even when the payments are received over a lesser period of time.

C. The earned income tax credit, whether received from an employer or from the federal government, is earned income. An applicant or resident or spouse of an applicant or resident who is eligible for the earned income tax credit is required to apply for it. An applicant or resident may choose to apply for the credit either when the applicant or resident files an income tax return for the year in which the applicant or resident was eligible or in advance through the applicant's or resident's employer.

Subp. 2. **Self-employment earnings.** The facility financial staff shall determine gross earned income from self-employment by totaling gross receipts. Gross receipts from self-employment must be budgeted in the month in which they are received. Expenses must be budgeted against gross receipts in the month in

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which those expenses are paid, except for items A to C.

A. The purchase cost of inventory items, including materials that are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.

B. Expenses to cover employee federal insurance contributions act payments (FICA), employee tax withholding, sales tax withholding, employee worker compensation, business insurance, property rental, property taxes, and other costs that are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which payment for those items is made.

C. Gross receipts from self-employment may be prorated forward to equal the period of time over which the expenses were incurred except that gross receipts must not be prorated over a period that exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.

Subp. 3. **Farm income.** Farm income is the difference between gross receipts and operating expenses, subject to the provisions about self-employment income. Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from the sale of home-produced foods. Farm income must be annualized.

Subp. 4. **Rental income.** Income from rental property must be considered self-employment earnings when effort is expended by the owner to maintain or manage the property. When no effort is expended by the owner to maintain or manage the property, income from rental property must be considered unearned income. The facility financial staff shall total gross rental receipts to determine rental income. When an applicant or resident or spouse lives on the rental property, the facility financial staff shall divide the expenses for upkeep, taxes, insurance, utilities, and interest by the number of rooms to determine

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expense per room. The facility financial staff shall deduct expenses from rental income only for the number of rooms rented, not for rooms occupied by an applicant, resident, spouse, or household member.

Subp. 5. **Unearned income.** Unearned income is treated according to items A and B.

A. An amount must be deducted for costs necessary to secure payments of unearned income. These costs include legal fees, medical fees, and mandatory deductions such as federal and state income taxes.

B. Payments for illness or disability, except those payments described as earned income in part 9050.0710 [Emergency], subpart 1, item A, must be considered unearned income whether the premium payments are made wholly or in part by an employer or by an applicant or resident.

Subp. 6. **Lump sums.** Lump sums received by or on behalf of an applicant or resident must be considered earned income under subparts 1 to 4 or unearned income according to subpart 5. Lump sums are considered income in the month received and property if retained beyond the month of receipt, unless it is a contractual payment or retroactive payment of benefits.

9050.0720 [Emergency] CALCULATION OF NET INCOME; DEDUCTION FOR EMPLOYMENT EXPENSES.

Subpart 1. **Calculation method.** The facility financial staff shall calculate the net income of an applicant or resident by totaling all sources of gross income identified in part 9050.0710 [Emergency] and subtracting from gross income the applicable deductions allowed in subpart 2.

Subp. 2. **Deduction for employment expenses of applicant or resident.** The facility financial staff shall deduct the expenses in this part and parts 9050.0730 [Emergency] and 9050.0740 [Emergency] from gross income to determine net income. Deductible items include:

A. state and federal income tax payments and withholdings consistent with the number of allowable exemptions;

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B. FICA payments;

C. mandatory retirement fund payments;

D. actual reasonable unreimbursed expenses of child care necessary to earn an income and paid to anyone other than a parent of the child;

E. union dues;

F. professional association dues if they are required to obtain or retain employment;

G. health and dental insurance premiums whether mandatory or voluntary, if cost effective;

H. cost of uniforms, tools, and equipment used on the job that are required to retain a job but are not furnished by the employer;

I. cost of meals during employment hours for each day the person is employed;

J. public liability insurance premiums if they are required by the employer when an automobile is used in employment and the premiums are not paid by the employer;

K. court ordered support payments actually paid directly by the applicant or resident or withheld by the employer and transferred to a child or spouse not living with the applicant or resident or to a different former spouse of the applicant or resident;

L. voluntary support payments for dependent spouse or household according to part 9050.0750 [Emergency];

M. Medicare insurance payments;

N. Medicaid spend-down payments actually made according to part 9505.0065. subpart 11;

O. payment of documented debts, incurred prior to the person's admission to the board-operated facility, for which the person is legally responsible;

P. educational expenses actually paid by the person that are not covered by United States Department of Veterans Affairs educational expense benefits or other government or private scholarships, loans, or grants if there is demonstrated progress by the person towards completion of an educational

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program as part of the person's individual care plan;

Q. guardianship or conservatorship fees to the extent allowed by Minnesota law or by court order;

R. hospital and medical insurance premiums and supplemental health care premiums for the resident or applicant, if cost effective; and

S. cost of transportation related to employment. For the person who uses public transportation or takes part in a car pool, the facility financial staff shall deduct the fare or fee the person actually pays. For the person who uses a private motor vehicle, the facility financial staff shall deduct the amount per mile allowed on the most recent federal income tax return for actual miles driven for business purposes.

9050.0730 [Emergency] DEDUCTIONS FROM RENTAL INCOME.

In calculating net rental income, the facility financial staff shall deduct the rental property costs in items A to C from total rental receipts. The rental property costs must be prorated according to shares of ownership if the property is jointly owned. Money deducted from rental income under items A to C must be excluded as income in the month of receipt and as an asset if the funds are retained after the month of receipt. The retained funds must be placed in a separate account until used for:

A. upkeep and repairs, an annual amount equal to a maximum of two percent of the property's market value or a lesser amount as requested by the person;

B. real estate taxes, premiums for insurance on the property, and mortgage or contract for deed payments, payment of interest and principal; and

C. utilities specified as the owner's responsibility in the rental agreement.

9050.0740 [Emergency] DEDUCTIONS FROM SELF-EMPLOYMENT INCOME.

In calculating net self-employment income, the facility financial staff shall deduct from the total business receipts the costs of producing the income as allowed on the United

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States income tax schedule. However, capital expenditures, depreciation, and carryover losses claimed for business purposes on the most recent federal income tax return are not deductible business expenses. Net self-employment income, if greater than zero, must be added to other earned and unearned income to determine income for purposes of calculating the maintenance charge payable by or on behalf of an applicant or resident. Losses from self-employment income may not be deducted from other earned or unearned income.

9050.0750 [Emergency] DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

Subpart 1. **Generally.** The facility financial staff shall deduct from the applicant's or resident's gross monthly income calculated under part 9050.0710 [Emergency] the amount necessary to meet the basic needs of the dependent spouse or household as calculated under this part. The applicant or resident or spouse of an applicant or resident who requests a deduction under this part must verify the monthly expenses of the dependent spouse or household that are not met by income or resources otherwise available to the dependent spouse or household.

Subp. 2. **Determination of spouse's monthly expenses.** A spouse's monthly expenses are the sum of:

A. monthly rent or house payment;

B. costs of supporting a dependent child or children residing with the spouse;

C. real estate taxes;

D. homeowner's or renter's insurance;

E. home maintenance costs;

F. electric and gas charges;

G. water and sewer charges;

H. solid waste removal charges;

I. telephone costs;

J. transportation costs, including costs of public transportation and costs of acquiring and maintaining a privately owned motor vehicle;

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K. food;

L. clothing;

M. medical insurance for the spouse and the applicant's or resident's dependent child or children residing with the spouse;

N. medical expense payments;

O. personal needs of the spouse or dependent child or children;

P. payments for documented consumer debts incurred before the resident's admission to a board-operated facility for which the spouse is legally responsible; and

Q. support payments actually paid by the spouse to his or her former spouse or dependents who do not reside with him or her.

Subp. 3. **Calculation of amount of deduction.** The facility financial staff shall calculate the amount to be deducted from the applicant's or resident's monthly income for support of a dependent spouse or household as follows:

A. calculate the spouse's gross monthly income using the method for calculation of the applicant's or resident's gross income in part 9050.0710 [Emergency];

B. total the spouse's monthly expenses as determined under subpart 2;

C. subtract item B from item A; and

D. the amount by which item B exceeds item A is the amount allowed as a deduction for the dependent spouse or household.

9050.0755 [Emergency] CALCULATION OF CHARGEABLE INCOME OF APPLICANT OR RESIDENT.

The chargeable income of an applicant or resident is as follows:

A. total the person's gross income according to part 9050.0710 [Emergency];

B. subtract from the total gross income the applicable expenses or deductions in parts 9050.0720 to

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9050.0750 [Emergency] to get the net income;

C. subtract from net income $85 for personal needs;

D. multiply item C by 0.05 and deduct this amount from item C; and

E. the sum calculated in item D is the applicant's or resident's monthly chargeable income.

9050.0760 [Emergency] ANTICIPATING INCOME.

Income must be anticipated on a semiannual basis for all applicants or residents. Anticipated income must be determined using the method in items A to G that most accurately reflects the circumstances of the person.

A. If income is unvarying in amount and timing of receipt, an eligibility statement or wage stub must be used to verify the amount of the income. Examples of unvarying income are social security payments, pensions, unemployment compensation, and fixed salaries. For purposes of this item, "eligibility statement" means a document from a payer informing the person of eligibility for the amount of income.

B. Income that is expected to fluctuate slightly must be anticipated by using the income in the month of admission or redetermination. Monthly income must be calculated by multiplying:

(1) average weekly income by 4.3;

(2) average biweekly income by 2.16; or

(3) average semimonthly income by 2.

C. If income is expected to fluctuate but does not follow a seasonal pattern, monthly income is the average of monthly income received during the three most recent months.

D. If income fluctuates within a seasonal pattern but is reasonably stable from year to year, monthly income is the average of monthly income during the most recently completed calendar year.

E. Except as provided in item G, monthly farm income is the average of monthly income for the three most recent years during which the farm has been in operation.

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F. Zero income must be used for any month in which no source of income is reasonably certain.

G. If the applicant or resident has had a recent financial change that makes a method in item C, D, or E an inaccurate predictor of future income, the facility financial staff shall make a reasonable estimate of future income and document the income basis used.

9050.0770 [Emergency] BENEFITS APPLICATION REQUIRED.

An applicant or resident or legal representative, if any, must apply for the maximum of every benefit for which the applicant or resident may be eligible that will increase the income of the applicant or resident. The board-operated facility staff shall provide an applicant or resident or legal representative information about possible available benefits or programs of assistance and assistance in making application for those benefits.

9050.0800 [Emergency] FINANCIAL INTERVIEW.

Subpart 1. **General conduct.** An applicant or resident must be present at an interview held to determine the applicant's or resident's ability to pay or to obtain financial information from the applicant or resident unless the applicant's or resident's presence is medically contraindicated by the attending physician of the applicant or resident. If the applicant's or resident's participation in the interview is medically contraindicated, the secondary source of information in part 9050.0810 [Emergency], subpart 2, must be present. The signed statement of the applicant's or resident's attending physician that attests to the medical contraindication must be placed in the applicant's or resident's financial information file.

Subp. 2. **Rights, duties, and consequences of interview.** Before conducting an applicant's or resident's interview to determine financial status or ability to pay, the interviewer shall:

A. inform the person that the person may choose an

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individual to assist in the determination process and any other contact with the board or its designated representative by authorizing that assistance in writing;

B. inform the person that the requested information will be used to determine ability to pay and to calculate the resident's maintenance charge;

C. inform the person that financial information obtained from or about the applicant or resident may not be released without the applicant's or resident's written consent, except pursuant to Minnesota Statutes, chapter 13, to specific state and federal agencies including the Minnesota Department of Veterans Affairs, Legislative Auditor, and United States Department of Veterans Affairs;

D. inform the person of the person's legal obligation to provide sufficient information, required documents, and proof necessary to determine ability to pay and the consequences of failure to do so;

E. inform the person that failure to supply the requested information must result in a determination that the person is able to pay the full cost of care and that if a person supplies false information the resident may be subject to discharge;

F. provide the person with an information pamphlet on the cost of care and review with the applicant or resident how the board determines the cost of care and how the amount an applicant or resident must pay toward that cost is determined;

G. inform the person of county, state, and federal financial programs that may assist in paying the cost of care and meeting personal and family needs;

H. provide the person with board-approved forms used to verify or investigate financial resources including:

(1) statement of income and net worth;

(2) statement of expenses;

(3) authorization to release information;

(4) maintenance rate affidavits; and

(5) other disclosure and verification forms the

Approved
by Revisor _____

board reasonably requests to fully evaluate the applicant's or resident's financial status or the financial status of the applicant's or resident's legal representative or spouse, if any; and

I. request that the person complete and sign the authorization forms provided and provide verification or documentation of financial information.

9050.0810 [Emergency] SOURCES OF FINANCIAL INFORMATION.

Subpart 1. **Applicant or resident primary source.** An applicant or resident is the primary source of financial information to determine ability to pay except when the management of the applicant's or resident's financial affairs is in the hands of a legal representative. If the applicant or resident is not the source of financial information, the reason must be noted in the applicant's or resident's financial information file.

Subp. 2. **Secondary or alternate sources of information.** If an applicant or resident is not able to act on the applicant's or resident's own behalf, the person interviewed to obtain financial information must be, in order of priority, the applicant's or resident's legal representative or spouse, if any.

9050.0820 [Emergency] VERIFICATION OF FINANCIAL INFORMATION.

Subpart 1. **Verification required.** Information provided by the applicant or resident, spouse, or legal representative, if any, in the financial interview, on the signed financial information form, and a financial status review under part 9050.0560 [Emergency], subpart 1, must be verified by the facility financial staff.

Subp. 2. **Information to be verified.** The following items must be verified:

A. income;

B. insurance benefits;

C. property;

D. expenses or deductions claimed;

E. number of dependents claimed;

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by Revisor _____

F. social security benefits;

G. United States Department of Veterans Affairs benefits;

H. pensions and annuities; and

I. transfers of property according to part 9050.0650 [Emergency].

Subp. 3. **Time of verification.** The facility financial officer must request verification of the required information no earlier than 60 days before admission and no later than the date of admission or date of financial status review or other review of financial status as provided in part 9050.0560 [Emergency], subpart 1.

9050.0900 [Emergency] AUTHORIZATION FORMS.

Subpart 1. **Required.** An applicant or resident, spouse, or legal representative, if any, shall provide a separate signed authorization form for each verification that must be obtained from a third party.

Subp. 2. **Content.** The authorization form must contain the following information above the person's signature:

A. person's name;

B. date;

C. information authorized;

D. who is authorized to give the information;

E. to whom the information is to be given;

F. information's use; and

G. date of expiration of the authorization.

A separate form must be signed and completed for each authorization of access. The period of the authorization must not exceed one year.

Subp. 3. **Refusal to sign authorization forms; consequences.** The applicant or resident, applicant's or resident's legal representative, or spouse must complete the following tasks within 30 days of the financial interview or other authorized request:

A. complete and sign a financial information or

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by Revisor _____

authorization form;

B. apply for insurance or other benefits for which an applicant, resident, or spouse of an applicant or resident may be eligible;

C. complete assignment of benefits forms required by third-party payers;

D. sign authorizations for release of medical records; and

E. provide verification of information given on financial disclosure forms.

Failure to comply with items A to E results in a determination that the applicant or resident can pay the full cost of care. Providing false information relating to items A to E results in disqualification of an application for admission or in discharge of a resident under part 9050.0200 [Emergency], item E. The maintenance charge must be redetermined or the application for admission must be reinstated or the discharge proceeding discontinued if the applicant, resident, or spouse takes the required action.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Veterans Homes Admissions, Discharges, Cost of Care Calculations, and Maintenance Charges

AGENCY: Department of Veterans Affairs

MINNESOTA RULES: Chapter 9050

The attached rules are approved for publication
in the State Register

Craig E. Lindeke

Craig E. Lindeke
Senior Assistant Revisor

Minnesota Veterans Homes Board

Proposed Emergency Rules Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges

Minn. Rules Parts 9050.0010 to 9050.0900

(1) Notice is hereby given that the Minnesota Veterans Homes Board (Board) intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minn. Stat. section 198.003 (1988), as amended by Laws of 1989, Chapter 84. The Board, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules, Minn. Stat. sections 14.29 to 14.36 (1988).

(2) All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule. (3) Any comments must be submitted to:

Richard Zierdt, Executive Director
Minnesota Veterans Homes Board
Veterans Service Building, Second Floor
St. Paul, Minnesota
(612) 296-2073

(4) A copy of the proposed rule is attached to this notice.

(5) A free copy of the proposed emergency rules is available by contacting Richard Zierdt at the address and telephone number stated above.

(6) The proposed emergency rules may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed emergency rules as noticed.

(7) Upon adoption of the emergency rules by the Board, the emergency

rules as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. (7) Any person may request notification of the date of submission of this material 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 a written request to Richard Zierdt at the address stated above.

(8) The emergency rules will take effect five working days after approval by the Attorney General and be effective until December 31, 1989. The emergency rules will be continued in effect for an additional 180 days if the Board gives notice of continuation in accordance with Minn. Stat. section 14.35 (1988).

Chairman, Minnesota Veterans Homes Board

2nd draft

STATE OF MINNESOTA
MINNESOTA VETRANS HOMES BOARD

In the Matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Coat of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050,0010 to 9050.0900.

AFFIDAVIT REGARDING COMMENTS PURSUANT TO NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Richard Zierdt, being duly sworn on oath deposes and says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing published in the State Register on September 11, 1989 as the person to receive comments on the Board's intent to adopt rules concerning the above-entitled subject.

2. That the comment period set forth in the notice terminated at 4:30 p.m. on October 6, 1989.

3. That during the comment period the following comments were received:

A letter from Mr. Terry Higgins commenting on items contained on pages 20, 21, 23, 30, 31, and 34, with the largest part of Mr. Higgins's comments being directed toward cost of care and maitenance charge issues.

A letter from Gretchen Musicant representing the Minnesota Nurses Assoc. commenting on the following Rules Parts: 9050.0060, 9050.0070, and 9050.0210. Her comments concerned the role of nurses in admissions and discharge.

A letter from Francesca Chervenak representing Legal Aid Society of Minneapolis, Inc. commenting on Rules parts 9050.0040, Subp. 36. 61., 9050.0050 Subp. 1. 2nd Par., 9050.0070 Subp. 3.B.C.L.M.N., 9050.0070 Subp. 4.B.D., 9050.0100 Subp. 2. 5., 9050.0200 Subp. 2.B., 3.A.E., 4., 5., 6., 9050.0600 Subp. 1.B. E., 2. F., 3.B., 9050.0650 , 9050.0900 Subp. 3. Her comments on the rules parts listed above included comments concerning deffinitions, discharge, admissions, transfer, compliance, cost of care and maintenance issues.

Copies of the comments I received are attached to this affidavit.

Richard Zierdt
Executive Director
Minnesota Veterans Homes Board

Subscribed and sworn to before me
this 23rd day of October 1989

Notary Public, Ramsey Co, MN

KIMBERLY R. LaTOURNEAU
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 22, 1993

Minnesota Nurses Association
1295 BANDANA BLVD. NO., SUITE 140
ST. PAUL, MINNESOTA 55108-5115
(612) 646-4807

MN VETERANS HOMES
OCT 0 ? 1989
BOARD

September 28, 1989

Richard Zierdt
Executive Director
Minnesota Veterans' Home Board
Second Floor
Veterans Service Building
Saint Paul, Minnesota 55155

Dear Mr. Zierdt:

On behalf of the Minnesota Nurses Association, I would like to comment on the proposed *Emergency Rules Relating to Veterans Homes Admissions, Discharges, Cost of Care Calculations* and *Maintenance Charges*. The following changes are recommended:

MR 9050.0060 [Emergency] Admissions Committee: Creation, Composition and Duties

Subp. 4. Screening

To prepare for review of an application for admission the admissions committee or ~~its~~ a registered nurse and a social worker who are designated representatives shall conduct a preadmission screening similar to that prescribed in Minnesota Statutes, Section 256B.091 ....

Rationale:

In order to be consistent with preadmission screening as prescribed in Minnesota Statutes, a registered nurse and a social worker should conduct the screening. In practice an exception is made when a person is admitted to a nursing home from a hospital. In this case a screening by a registered nurse is sufficient.

MR 9050.0070 [Emergency] Types of Admissions

Subp. 3 Criteria for Admission To and Continued Stay In a Boarding Care Facility

References in D, E, G, J and K to a "psychiatrist or psychologist" should be replaced with "by a mental health professional".

Rationale:

The use of the term "mental health professional" is consistent with MS 24S.462 which identifies the mental health providers who are qualified to provide clinical services in the treatment of mental illness and to screen for residential and inpatient services (245.476). The use of this term allows more flexibility in choice of provider while continuing to assure quality of service and remaining consistent with current Minnesota law.

MR 9050.0210 [Emergency] Voluntary Discharge Procedures

Subp. 2 Responsibilities of Facility Staff

A. (1): A discharge conference must be arranged by the social worker or a registered nurse with the resident, the resident's family ....

Rationale:

Discharge planning falls within the scope of nursing practice and is an appropriate role for the registered nurse. In practice, the facility may choose to designate one person or profession as the preferred convener of a discharge conference, but it is not wise to limit the ability of the facility to respond to the need for a discharge conference in a timely manner. Allowing only one professional to serve as convener may be unduly restrictive and impede the facility's ability to respond to requests for voluntary discharge in a timely manner.

Thank you for the opportunity to provide comments on this rule.

Sincerely,

Gretchen Musicant

Gretchen Musicant, RN, MPH
Staff Specialist, Governmental Affairs

GM:hc

MN VETERANS HOMES

OCT 03 1989

BOARD

Richard Zierdt,
Minnesota Veterans Home Board
Veterans Service Build
St, Paul Mn. 55155.

Dear Mr Zierdt,

Below is the comments you requested regarding emergency rules.

COMMENTS;

Page 20 Sec B. The law does not require physician approval to be admitted into the vets home.

Page 21 Sec F. As a former resident I was instructed to stay away form the phychisans and social workers because of abuse. in fact I was awarded $200,000.00 because of abuse. Because of the history of abuse and neglect that continues to happen it will endanger some residents lifes to follow this rule. I have instructed some residnets to follow the same advice I recived for my own protection.

Page 21 Sec M. Compliance is an issue that is determined by a administrative law judge.

Page 23 Under Transfer. A resident has the right to refuse treatment under the Pt bill of rights and the home canot use discharge as a means of circumventing or threating a resident into compliance.

Page 30 Sec 6. Explain the specfic method and how the resident is to appeal to the office of administrative hearings.

Page 31 sec G. What is the process the Home will use to accelerated the review process when there is an emergency.

Page 34 Subp 4. Cost of care related to maintenance charge. The law states. Mn Rules: 4655. 1600. "All Patients and residents bills shall be itemized as to the services rendered" Currently residents are not given itemized bills so that it may be determined what their cost of care is as it relates to the actual services rendered. The home has been cited for not providing care. and has endangered lives. Which continues today. residents for their own safty stay away from treatment and have a right not to pay for services not rendered.

The Admissions Agreement states: "At no time shall the maximun cost to the resident exceed 100% of the actual cost ot services rendered". If the home does not itemize their bill how is anyone to know if the payment form the residents exceeds 100% of services rendered.

Their are no provisions in the rules that gives residents a method to enforce rules that are being broken by the home.

The documented misconduct in the past regarding resident abuse, financil misuse, and mental cruelty by the state. Has created a class of veterans who will never have enough trust in the state to put their lives into the hands of the state by giving the state access to treat them in a meaningful way. The money the state demands from residents should refelct the residents ablity to use and enjoy the services the state provides.

Terry Higgins

Terry Higgins

2618 Clinton Ave So
Mpls, Mn. 55408
871-2749

Assessors Board

Suite 10, Bigelow Bldg., 450 N. Syndicate Ave., St. Paul 55104. 612-642-0481

Minnesota Statutes 270.41

APPOINTING AUTHORITY: Commissioner of Revenue. COMPENSATION: None.

The board licenses assessors and provides continuing education for assessors. Nine members, include two pub designated appraiser, two county assessors, two local assessors (one township assessor) and two employees of the Monthly meetings. Members must file with the Ethical Practices Board.

Minnesota Council for the Hearing Impaired

Deaf Services, Dept. of Human Services, 444 Lafayette Rd., St. Paul 55155-3814. 612-297-1872

Minnesota Statutes 256C.28

APPOINTING AUTHORITY: Commissioner of Human Services. COMPENSATION: $35 per diem.

The council advises the commissioner and governor regarding policies, programs, services affecting hearing i creates public awareness of needs and potential of hearing impaired people. The council includes fifteen member are appointed at large, plus one member from each advisory committee under section 256C.24, subd. 3. At leas the members must be hearing impaired. Terms are for two years. Members who are full time state employees or ful of political subdivisions of the state will not receive the per diem.

Hazardous Substance Notification Advisory Committee

Dept. of Public Safety, 211 Transportation Bldg., St. Paul 55155. 612-296-6642

Minnesota Statutes 299E097

APPOINTING AUTHORITY: Commissioner of Public Safety. COMPENSATION: $35 per diem.

The committee advises the development of rules to implement and enforce sections 10 to 18 (1986 Laws Specia assist in the development of amendments to the hazardous substance report. Eleven members include representati professional firefighters, fire marshals, law enforcement personnel, emergency medical personnel, an independent he with training in toxicology, and four representatives from business and industry, of whom at least one will represen

Department of Veterans Affairs

Veterans Home Board

Notice of Intent to Solicit Outside Opinion Concerning Permanent Rules for G of the Minnesota Veterans Homes

NOTICE IS HEREBY GIVEN that the Veterans' Home Board of the Minnesota Department of Veterans Affairs is making activity concerning governance of the Minnesota Veterans Homes.

This rule is authorized by *Laws of Minnesota 1988*, *Minnesota Statutes*, section 198.003, and concerns governance Veterans Homes.

All interested or affected persons or groups are requested to participate. Statements of information and comme orally or in writing. Written statements of information and comment may be addressed to:

Jane R. Larson
Minnesota Veterans Homes
Building 6, Room 105
5101 Minnehaha Avenue South
Minneapolis, Minnesota 55417

Oral statements of information and comment will be received during regular business hours over the telephone at

All statements of information and comment will be accepted until further notice is given or the Notice of Heari Intent to Adopt Without a Hearing are published in the *State Register*. Any written material received by the Departme part of the hearing record.

MINNESOTA VETERANS HOME
5101 MINNEHAHA AVENUE SOUTH
MINNEAPOLIS, MN 55417

DEPARTMENT OF VETERANS AFFAIRS
(612) 721-0600

December 29, 1988

Re: Veterans Homes rules - Solicitation of Outside Opinion

Dear

Enclosed is a copy of the "Notice of Solicitation of Outside Opinion" published in the November 28, 1988 edition of the State Register. This notice is to inform the public of rule-making activity begun by the Minnesota Veterans Homes Board.

As an individual or party who has previously expressed interest in or as someone potentially effected by the rules governing the Minnesota Veterans Homes, your attention is directed to this notice.

Your comments, suggestions and questions regarding development of the rules is desired.

Kindly circulate or make available copies of this notice to individuals who may have an interest in this subject and encourage their contact with my office.

Your assistance and input is appreciated. Thank you.

Sincerely,

Jane R. Larson
Minnesota Veterans Homes Board Rules Project

Emergency Rules

Proposed Emergency Rules
According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules
Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules
Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Veterans Affairs

Minnesota Veterans Homes Board

Proposed Emergency Rules Relating to Veterans Homes Admissions, Discharges, Cost of Care Calculations, and Maintenance Charges

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the Minnesota Veterans Homes Board (Board) intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes*, section 198.003 (1988), as amended by *Laws of Minnesota, 1989*, Chapter 84. The Board, in adopting the rule, is following the procedures set forth in the Administrative Procedures Act for adopting emergency rules, *Minnesota Statutes*, section 14.29 to 14.36 (1988).

All persons have 25 days after publication, or until 4:30 p.m. on Friday, October 6, 1989, to submit data and views, in writing, on the proposed emergency rule or any part or subpart of the rule. Any comments must be submitted to:

Richard Zierdt, Executive Director
Minnesota Veterans Homes Board
Veterans Service Building, Second Floor
St. Paul, Minnesota 55155
(612) 296-2073

A copy of the proposed rule is published in the *State Register.*

A free copy of the proposed emergency rules is available by contacting Richard Zierdt at the address and telephone number stated above.

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

Upon adoption of the emergency rules by the Board, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission of this material 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 a written request to Richard Zierdt at the address stated above.

The emergency rules will take effect five working days after approval by the Attorney General and be effective until December 31, 1989. The emergency rules will be continued in effect for an additional 180 days if the Board gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35 (1988).

Adoption of these rules will not result in additional spending by local and state public bodies in excess of $100,000 per year for the first two years following adoption of these rules under the requirements of *Minnesota Statutes*, section 14.11 (1988).

James G. Sieben, Chairman
Minnesota Veterans Homes Board

CERTIFICATE OF RESOLUTION
ADOPTING EMERGENCY RULE

I,James Sieben, do hereby certify that I am the Chairman of the Minnesota Vetrans Homes Board, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Vetrans Homes Board's Executive Committee,with the knowledge and consent of the Board as expressed by resolution, duly and properly called and held on the 6th day of October, 1989, that a quorum was present at said meeting, that a majority of those present voted for that resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Vetrans Homes Board (Board) hereby approves and adopts the emergency rule governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050.0010 to 9050.0900 pursuant to the authority vested in the Board by Minn. Stat. § 198.003, as ammended by Laws of Minnesota 1989, Chapter 84.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chairman is authorized to make any form changes in the rules that the Revisor of Statutes or the Attorney General requires the Board to make.

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions and Order Adopting Emergency Rule and that the Chairman is hereby authorized to sign the above-mentioned document on behalf of the Board and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of October, 1989.

Robert E. Hansen, Secretary

10/6/89
Date

James G. Sieben, Chairman

10/6/89
Date

RESOLUTION ADOPTING
EMERGENCY RULE

BE IT RESOLVED, that the Minnesota Vetrans Homes Board (Board) hereby approves and adopts the emergency rule governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minnesota Rules,Parts 9050.0010 to 9050.0900 pursuant to the authority vested in the Board by Minn Stat§ 198.003, as ammended by Laws of Minnesota 1989, Chapter 84.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chairman is authorized to make any form changes in the rules that the Revisor of Statutes or the Attorney General requires the Board to make.

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions and Order Adopting Emergency Rule adn that the Chairman is hereby authorized to sign the above mentioned document on behalf of the Board and to perform the necessary acts to provide that the rules shall have the force and effect of law.

This resolution was considered and accepted by the unanimous vote of the Minnesota Vetrans Homes Board. October 6, 1989.

STATE OF MINNESOTA
MINNESOTA VETRANS HOMES BOARD

In the matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050.0010 to 9050.0900.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

The above-entitled matter came on for decision before the Minnesota Vetrans Homes Board (Board) on the Sixth day of October, 1989. After affording all interested persons the opportunity to present written data, statements and arguments to the Board, in accordance with statutory requirements regarding the adoption of emergency rules, after considering all of the evidence adduced upon records, files and proceedings herein, the Board, being fully advised in the premises, gereby adopts the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. (1) Notice of the Minnesota Vetrans Homes Booard's intent to adopt the above-entitled emergency rule was published in the State Register on September 11, 1989 and was sent by United States Mail to all persons on the list maintained by the Board pursuant to Minn. Stat. Sec. 14.30(1988) on September 1, 1989.

(2) All persons were given the opportunity to submit comments on the rules for at least 25 days after the notice of proposed rulemaking. The 25 day comment period, as set out in the notice, expired on October 6, 1989.

3. (4) Two requests for notice of submission to the Attorney General were recieved by the Board.

4. (4) Three submissions or comments on the rule were recieved.

(3)

5. The Board finds that modifications to the proposed rules are justified by the record in this proceeding, as follows:

Regarding 9050.0040 Subp. 61 Legal Aid Society of Minneapolis Inc. (Legal Aid) has commented that the deffinition of legal representtative should be reworded to make the definition more clear.

The Board concurs with Legal Aid's comment and the rewording of deffinition as presented by Legal Aid which has been included in the rule. A clearer and more useful definition of the term "legal representative" was needed in the rule. It is reasonable to limit the deffinition of "legal representative" to those granted authority to act by a competent authority.

As regards 9050.0040 Subp. 36; Legal Aid has commented that the use of the word "discharge" to describe the movement of residents from one campus to another campus is not desireable and Legal Aid would prefer the term "transfer", to describe such a change in location for a resident.

The Board does not agree with the comment and does not propose to change the rule. A discharge for those persons leaving one campus and going to another campus operated by the Minnesota Vetrans Home Board is needed, because the facilities are separately licensed. This requirement is in keeping with the requirements of licensure by the State of Minnesota.

Regarding 9050.0050 Subp. 1, 2nd Par.; Legal Aid has commented that the six month residency requirement contained in this rule part is to restrictive and not a statutory requirement.

The Board agrees that the six month residency requirement is too restrictive and should not be an eligibility requirement for admission to a Board-operated facility and therefor removes 9050.0050

Subp. 1, 2nd Par. from the rule. This rule modification is needed to bring the rule into conformity with the Minn. Stat. 198.022.

Regarding 9050.0060 Subp.4; the Minnesota Nurses Association (MNA) has commented that a registered nurse and a social worker should be used for admission screening.

The Board does not propose to change the language of the rule, because the rule as written would allow a registered nurse and a social worker, as well as other needed staff members, to conduct the pre-admission screening. The flexibility contained in the rule is needed and reasonable for the operation of the Board-operated facilities.

Regarding 9050.0070 Subp. 3.B. Mr. Higgins has commented that "the law does not require a physician approval to be admitted into the vets home."

The Board does not agree with Mr Higgins's comment. Minn. Rules Parts 4655.1500,Subp. 1.2., 4655.4700 Subp. 1, 4655.4900 Subp. 2. 3. require that persons be admitted to a Board operated facility only if they can be given appropriate care, which must be determined by a physician. The Board does not operate any facilities which do not provide care in accordance with licensing requirements, therefor no one may be admitted who does not require a level of care as provided for in the physician's diagnosis.

Regarding 9050.0070 Subp. 3.B.; Legal Aid has made comments similar to Mr. Higgins"s, but has gone on to note that board has the authority to deny admission to a Board-operated facility only to persons according to Minn. Stat. Sec. 198.022(1).

The Board does not accept the contention that it has exceeded

its statuatory authority. Legal Aid is incorrectly claiming that eligibility, as defined in Minn. Stat. Sec. 198.022 to be the only criteria for admission to a Board-operated facility. An eligible person, as defined in Minn. Stat. Sec. 198.022 must be suitable for care at a facility in keeping with the licensure of that facility. As contained in the response to Mr Higgins's comment, it is necessary according to Minn. Health Dept. Rules Parts, 4655.1500 Subp. 1.2., 4655.4700 Subp. 1, and 4655.4900 Subp. 2. 3., to provide care in keeping with a diagnosis.

Regarding 9050.0070 Subp. 3. C.; Legal Aid has commented that this rule should be deleted,"for the same reasons as set forth in the discussion of 3.B. above."

The Board does not accept the comment for the same reasons as stated in its response to Legal Aids comment regarding 3. B. above.

Regarding 9050.0070 Subp. 3.D.E.G.J.K.; the MNA has commented that it would prefere the rule to use the term "mental health professional" instead of "psychologist or psychiatrist" in the admissions and stay criteria captioned above.

The Board does not feel that the comment and suggestion from the MNA should be followed. The Board feels that the high level of training of psychologists and psychiatrists is needed and is appropriate for making decisions and recommendations regarding the admittance and continued stay of residents in a Board-operated facility. It is reasonable to require that persons have the qualifications necessary to perform the tasks to which they are assigned.

As regards 9050.0070 Subp. 3.F.; Mr. Higgins has made comment that it will endanger some residents to follow this rule.

The Board does not agree that following this rule will endanger a resident to follow this rule. This rule is needed to insure that a resident will recieve proper care. It is reasonable to require that a resident comply with their individual care plan, because a boarding care facility cannot care for those persons who are unable to comply with their individual care plan.

As regards 9050.0070 Subp. 3.L.; Legal Aid has commented the rule has exceeded its legislative authority in the same manner as it did in 9050.0070 Subp. 3.B.

The Board in keeping with its response to comments about 9050. 0070 Subp. 3. B., does not accept the contention that it has exceeded its rulemaking authority by defining in the rules which eligible persons are suitable for care at a Board-operated facility. The Minnesota Vetrans Homes Board has no facility which is licensed to treat chemical dependensy, and as such can only admit chemically free persons for care.

As regards 9050.0070 Subp. 3.M.; Mr Higgins has commented that "Compliance is an issue that is determined by a administrative law judge."

The Board presumes the comment to mean that and administrative law judge has a role in routine admissions procedures at a Board-operated facility.

The Board does not agree with the comment. The administrative law judge does have a role in the appeals process.

As regards 9050.0070 Subp. 3.M.; Legal Aid has commented in a similar manner to its comment on 9050.0070 3.B. by noting that the Board is not allowed to make rules which determine which of those

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The Board does not accept the suggestion that the rule exceeds statuatory authority and violates state and federal laws. The claims that this rule violates the federal Fair Housing Act and the Minnesota Human Rights Act are nebulous charges unsupported by fact. This rule is needed to bring the criteria for admission to and continued stay in a Board-operated facility into compliance with Minn. Rules Parts, 4655.0400. It is reasonable for the rules to require that those persons who have a communicable disease or infection, "that poses a threat to tyhe health and safety of others" be required to seek treatment at a facility which has the resources to provide those persons proper health care, while protecting the health of other residents.

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The Board feels that it has the need and the authority to establish criteria to determine which of the eligible applicants for nursing care is suitable for that care in keeping with the state's licensing requirements. The physician's diagnosis is a key element in determining the suitability of eligible for care in the nursing home facility.

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The Board feels that this rule is similar to the other rules required the Board to determine which of the persons eligible for admission are suitable for admission to the nursing facility. Those persons who cannot reasonably be expected to comply with their individual treatment plan cannot be cared for at a Board-operated facility and should not be admitted.

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The Board does not intend to pose any threat against any resident of a Board-operated facility. The rule is needed to insure that the person who cannot be cared for at a particular facility in keeping with the person';s individual care plan is transferred to an appropriate facility or discharged from the facility.
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The Board does not accept the suggestion that it is trying to do away with the notice requirements in Minn. Stat. 144.651, Subd. 29. The notice requirements of that statute are contained in this rule. The flexibility granted by Minn. law and this rule are needed for the operation of the Minnesota Vetrans Homes Board's facilities and the care and treatment of the residents. It is reasonable for this rule to contain the notice requirement flexibility contained Minn. Stat. Sec. 144.651, Subd. 29.

As regards 9050.0100 Subp. 5.; Legal Aid has commented that due process should apply to tranfers of residents in an emergency situation, "even if after the fact."

The Board does not intend to remove a residents right of appeal of a transfer. An emergency, as defined in 9050.0040 Sub. 39. requires prompt response from the facility and cannot be subject to the regular appeals process. Nothing in 9050.0100 Subp. 5 should be construed to preclude an appeal after the resident's life threatening medical condition ceases.

As regards 9050.200 Subp. 2.B. Legal Aid has commented that the rule contains the following language which is redundant, "or if it is contrary to the expressed preference of the resident".

The Board agrees with the comment and the modification as proposed. The modification is needed, because 9050.0200 Subp. 2.B. states that a discharge is involuntary if it is without mutual

consent of the resident and the rule does not require a clarification from the phrase to be deleted.

As regards 9050.200 Subp. 3.A. Legal Aid has commented that the wording of this section does not clearly express the Board's intention to discharge those residents who do not comply with the financial obligations contained in this rule.

The Board agrees with the substance of the comment and accepts the modification as proposed. This modification is needed to clarify the intent of the Board. It is reasonable that the resident be in compliance with the maintenance charge as agreed to in the admission agreement.

As regards 9050.0200 Subp. 3.E.; Legal Aid has commented that the the reliance upon a resident's spouse for information and correct statements on various required forms in addition to the resident's legal representative, may prove unworkable and burdensome.

The Board agrees with Legal Aid's comment that a resident's spouse, who is not a resident's legal representative, need not be required to give information and fill out the required forms which are a condition of the residents continued stay at the facility. The deletion of the word "spouse" is needed to make the intent of the rule clear and to avoid future problems which might arise from the actions of a spouse who is not the legal representative of a resident.

As regards 9050.0200 Subp. 4; Legal Aid has commented that this "section should be revised to provide for a reasonable gaurenteed minimum prior notice in all circumstances of at least 7 days."

The Board does not agree with the comment from Legal Aid regarding a minimum 7 day notice in situations which are outside the facility's

control. The administrator needs to retain the right to appropriately shorted the notice period for situations which are outside of the facility's control, including situations which affect the welfare of the resident or other residents. It is reasonable to grant the administrator the necessary flexibility to discharge persons for their own benifit or the benifit of other residents. The resident retains the right to appeal the discharge, even if retro-actively, and will recieve a notice as required in this rule and Minn. Stat. Sec. 144.651 Subd. 29.

As regards 9050.0200 Subp. 5.; Legal Aid has commented that "Notice of Involuntary Discharge should include a statement of the resident's right to appeal the discharge and the appeal process."

The Board agrees with the comment and modifies 9050.0200 Subp. 5 by creating letter "D. State that the resident has the right to appeal the discharge and a description of the appeal procedures." The modification of the rule is needed to make the notice of involuntary discharge more complete and to reflect the Board's interest in fully informing the residents of their rights to appeal.

As regards 9050.0200 Subp. 6.; Legal Aid has recommended that the rule be modified to delete confusing and duplicative language regarding residents who are absent for 96 hours without notice.

The Board agrees with the comment and the modifications as proposed by Legal Aid. The Board also agrees that Legal Aid's comment requesting the substitution of "reconsideration" instead of "reinstatement" properly meet the intent of the Board. These related modifications are needed to clarify the intent of rule as it applies to those persons who are absent from the facility for more than 96

hours without notice.

As regards 9050.0210 Subp. 2. a. 1.; the MNA has commented that a resident discharge conference should be allowed to take place with a registered nurse.

The Board acknowledges the validitiy of the MNA's assertion that "discharge planning falls within the scope of nursing practice", but sees no need to change the existing system which utilizes a social worker for discharge planning. The unique complex social problems which are typical of many of the residents in a board operated facility are better addressed by a qualified social worker carrying out discharge planning activities.

As regards 9050.0220; Mr. Higgins has commented that he would like an explanation of the specific method of appeal to the office of administrative hearings.

The Board has reviewed Mr. Higgins's comment and finds the citiations contained in the rule part he commented on to be adequate to answer his question. The Board finds no need to reiterate the Administrative Procedures Act, which was properly referenced in this rule part.

As regards 9050.0300 Subp. 2.G.; Mr. Higgins has asked to be advised of "the process the Home will use to accelerated the review process when there is an emergency."

The Board advises Mr. Higgins that in the event of an emergency the staff will take the appropriate measures to speedily review the resident who is endangering himself, other residents or staff.

As regards 9050.0500 Subp. 4.; Mr. Higgins has commented that residents cannot determine their individual cost of care and cannot

know if the cost of their services exceeds the price that they pay for those services.

The Board does not agree with the premise that the Minn. Rules, Parts 4655.1600 requires an itemization of every treatment accepted or refused and the cost of every service. In determining the cost of care, Board-operated facilities follow the guidelines required by by the Vetrans Administration (VA) as contained in MI PartI, Chapter 3.27-3.28, Section V. These VA rules require that the costs Mr.Higgins refers to be aggregated and then divided to determine a per diem to be paid to the facility by the VA. The Board needs to calculate the cost of care of a resident in the manner prescribed by the VA so that can recieve the financial assistance needed to defer part of the cost of the residents's stay.

As regards 9050.0600 Subp. 1.B.; Legal Aid has recommended the following modification to clarify the rule by adding, "property which" in the proper place.

The Board agrees with the comment and makes the modification as proposed. This modification is needed to clarify the intent of the rule.

As regards 9050.0600 Subp. 1.E.;Legal Aid has commented on the rule's treatment of funds derived from tort settlements, which are structured to be paid out over a period of time. The comment asks that funds which are available in the future be considered as "legally available" at such time as they are actually available to the resident.

The Board concurs with the comment and modifies the rule as follows "If the settlement is structured to be paid over a period of time, the

facility financial staff shall evaluate the property as those funds become available to the resident." The change is needed to make the term "available" have a consistent meaning in this rule part. It is reasonable to treat those funds which are actually available to the resident as "available funds".

As regards 9050.0600 Subp. 2. F.; Legal Aid has recommended the following recommendation to clarify the rule as follows: insert "which" in the appropriate place.

The Board agrees that the proposed modification is needed to make the meaning of the rule clearer, and make the modification as proposed.

As regards 9050.0600 Subp. 3.B. Legal Aid has recommended that language be added to clarify the inent of the rule regarding prepaid burial arrangements.

The Board agrees with the comment from Legal Aid and the proposed modification as submitted, which is as follows:
"B. The value of a prepaid burial account, burial contract, or burial trust up to $2,500 for persons who are already residents of a Board-operated facility when the investment is made. If the investment is made by the person prior to admission to a Board-operated facility, the entire amount of the investment should be excluded." This modification to the rule is needed to make the intent of the drafters clear, as regards the exclusion of prepaid burial accounts, burial contracts, or burial trusts that are made before the person is admitted to a Board-operated facility. These funds are not available to a resident and should be excluded from consideration.

As regards 9050.0650 Subp. 2.B.; Legal Aid has commented that "the Homes does not intend to look at the inent of a transfer if it is

to a spouse or children."

The Board concurs that it does not wish to look at transfers to dependent children or spouses, and threfor adds the following phrase to the rule as indicated, "except for transfers permitted under Subp. 2.B.". This modification to the rule is needed to make the rule consistent throughout. It is reasonable, because it is a need-based standard, such that transfer to a dependent is permitted, while transfer simply to preserve funds is not permitted.

As regards 9050.0900 Subp. 3.; Legal Aid has commented that there is an internal inconsistency in the rule.

The Board accepts the comment and clarifies the rule by deleting following sentence from the last paragrapgh of 9050.0900 Subp. 3: "Failure to comply with items A to E results in a determination that the applicant or resident can pay the full cost of care." The failure of a resident to complete and sign forms will cause the discharge procedure to begin, however the discharge procedure can be stopped or reconsidered by the administrator based upon the review of the report of the finance department.

CONCLUSIONS

1. The Minnesota Vetrans Homes Board duly acquired and has jurisdiction over this proceeding.

2. The Board published and served due, timely and adequate notice of the intent to adopt the emergency rule without a public hearing.

3. All relevant legal and procedural requirements of statute have been complied with.

4. the modifications to the proposed emergency rule are supported by the record and do no result in a substantial change in the proposed

ORDER

(3) NOW, THEREFORE, IT IS ORDERED that the attached emergency rule, Minn. Rules pts. 9050.0010 to 9050.0900 governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, are adopted pursuant to the authority vested in the Minnesota Vetrans Homes Board by Minn. Stat. § 198.003, as ammended by Laws of Minnesota 1989, Chapter 84.

MINNESOTA VETRANS HOMES BOARD

James G. Sieben
Chairman of the Minnesota Vetrans
Homes Board
October 6, 1989

STATE OF MINNESOTA
MINNESOTA VETRANS HOMES BOARD

In the matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minnesota Rules, Parts 9050.0010 to 9050.0900.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

The above-entitled matter came on for decision before the Minnesota Vetrans Homes Board (Board) on the Sixth day of October, 1989. After affording all interested persons the opportunity to present written data, statements and arguments to the Board, in accordance with statutory requirements regarding the adoption of emergency rules, after considering all of the evidence adduced upon records, files and proceedings herein, the Board, being fully advised in the premises, gereby adopts the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Vetrans Homes Booard's intent to adopt the above-entitled emergency rule was published in the State Register on September 11, 1989 and was sent by United States Mail to all persons on the list maintained by the Board pursuant to Minn. Stat. Sec. 14.30(1988) on September 1, 1989.

All persons were given the opportunity to submit comments on the rules for at least 25 days after the notice of proposed rulemaking. The 25 day comment period, as set out in the notice, expired on October 6, 1989.

3. Two requests for notice of submission to the Attorney General were recieved by the Board.

4. Three submissions or comments on the rule were recieved.

5. The Board finds that modifications to the proposed rules are justified by the record in this proceeding, as follows:

Regarding 9050.0040 Subp. 61 Legal Aid Society of Minneapolis Inc. (Legal Aid) has commented that the deffinition of legal representtative should be reworded to make the definition more clear.

The Board concurs with Legal Aid's comment and the rewording of deffinition as presented by Legal Aid which has been included in the rule. A clearer and more useful definition of the term "legal representative" was needed in the rule. It is reasonable to limit the deffinition of "legal representative" to those granted authority to act by a competent authority.

As regards 9050.0040 Subp. 36; Legal Aid has commented that the use of the word "discharge" to describe the movement of residents from one campus to another campus is not desireable and Legal Aid would prefer the term "transfer", to describe such a change in location for a resident.

The Board does not agree with the comment and does not propose to change the rule. A discharge for those persons leaving one campus and going to another campus operated by the Minnesota Vetrans Home Board is needed, because the facilities are separately licensed. This requirement is in keeping with the requirements of licensure by the State of Minnesota.

Regarding 9050.0050 Subp. 1, 2nd Par.; Legal Aid has commented that the six month residency requirement contained in this rule part is to restrictive and not a statutory requirement.

The Board agrees that the six month residency requirement is too restrictive and should not be an eligibility requirement for admission to a Board-operated facility and therefor removes 9050.0050

Subp. 1, 2nd Par. from the rule. This rule modification is needed to bring the rule into conformity with the Minn. Stat. 198.022.

Regarding 9050.0060 Subp.4; the Minnesota Nurses Association (MNA) has commented that a registered nurse and a social worker should be used for admission screening.

The Board does not propose to change the language of the rule, because the rule as written would allow a registered nurse and a social worker, as well as other needed staff members, to conduct the pre-admission screening. The flexibility contained in the rule is needed and reasonable for the operation of the Board-operated facilities.

Regarding 9050.0070 Subp. 3.B. Mr. Higgins has commented that "the law does not require a physician approval to be admitted into the vets home."

The Board does not agree with Mr Higgins's comment. Minn. Rules Parts 4655.1500,Subp. 1.2., 4655.4700 Subp. 1, 4655.4900 Subp. 2. 3. require that persons be admitted to a Board operated facility only if they can be given appropriate care, which must be determined by a physician. The Board does not operate any facilities which do not provide care in accordance with licensing requirements, therefor no one may be admitted who does not require a level of care as provided for in the physician's diagnosis.

Regarding 9050.0070 Subp. 3.B.; Legal Aid has made comments similar to Mr. Higgins"s, but has gone on to note that board has the authority to deny admission to a Board-operated facility only to persons according to Minn. Stat. Sec. 198.022(1).

The Board does not accept the contention that it has exceeded

its statuatory authority. Legal Aid is incorrectly claiming that eligibility, as defined in Minn. Stat. Sec. 198.022 to be the only criteria for admission to a Board-operated facility. An eligible person, as defined in Minn. Stat. Sec. 198.022 must be suitable for care at a facility in keeping with the licensure of that facility. As contained in the response to Mr Higgins's comment, it is necessary according to Minn. Health Dept. Rules Parts, 4655.1500 Subp. 1.2., 4655.4700 Subp. 1, and 4655.4900 Subp. 2. 3., to provide care in keeping with a diagnosis.

Regarding 9050.0070 Subp. 3. C.; Legal Aid has commented that this rule should be deleted,"for the same reasons as set forth in the discussion of 3.B. above."

The Board does not accept the comment for the same reasons as stated in its response to Legal Aids comment regarding 3. B. above.

Regarding 9050.0070 Subp. 3.D.E.G.J.K.; the MNA has commented that it would prefere the rule to use the term "mental health professional" instead of "psychologist or psychiatrist" in the admissions and stay criteria captioned above.

The Board does not feel that the comment and suggestion from the MNA should be followed. The Board feels that the high level of training of psychologists and psychiatrists is needed and is appropriate for making decisions and recommendations regarding the admittance and continued stay of residents in a Board-operated facility. It is reasonable to require that persons have the qualifications necessary to perform the tasks to which they are assigned.

As regards 9050.0070 Subp. 3.F.; Mr. Higgins has made comment that it will endanger some residents to follow this rule.

The Board does not agree that following this rule will endanger a resident to follow this rule. This rule is needed to insure that a resident will recieve proper care. It is reasonable to require that a resident comply with their individual care plan, because a boarding care facility cannot care for those persons who are unable to comply with their individual care plan.

As regards 9050.0070 Subp. 3.L.; Legal Aid has commented the rule has exceeded its legislative authority in the same manner as it did in 9050.0070 Subp. 3.B.

The Board in keeping with its response to comments about 9050. 0070 Subp. 3. B., does not accept the contention that it has exceeded its rulemaking authority by defining in the rules which eligible persons are suitable for care at a Board-operated facility. The Minnesota Vetrans Homes Board has no facility which is licensed to treat chemical dependensy, and as such can only admit chemically free persons for care.

As regards 9050.0070 Subp. 3.M.; Mr Higgins has commented that "Compliance is an issue that is determined by a administrative law judge."

The Board presumes the comment to mean that and administrative law judge has a role in routine admissions procedures at a Board-operated facility.

The Board does not agree with the comment. The administrative law judge does have a role in the appeals process.

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The Board does not accept the arguement that it must accept persons who are beyond the facility's ability to provide care. As stated earlier the facility must comply with the terms of its Minnesota Dept. of Health licenses, by accepting only those persons it can properly care for. It is reasonable to assume that a demonstrated history of compliance in a prior placement would be followed by similar compliance at a Board-operated facility.

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The Board concurs with the comment and modifies the rule as follows "If the settlement is structured to be paid over a period of time, the

facility financial staff shall evaluate the property as those funds become available to the resident." The change is needed to make the term "available" have a consistent meaning in this rule part. It is reasonable to treat those funds which are actually available to the resident as "available funds".

As regards 9050.0600 Subp. 2. F.; Legal Aid has recommended the following recommendation to clarify the rule as follows: insert "which" in the appropriate place.

The Board agrees that the proposed modification is needed to make the meaning of the rule clearer, and make the modification as proposed.

As regards 9050.0600 Subp. 3.B. Legal Aid has recommended that language be added to clarify the inent of the rule regarding prepaid burial arrangements.

The Board agrees with the comment from Legal Aid and the proposed modification as submitted, which is as follows:
"B. The value of a prepaid burial account, burial contract, or burial trust up to $2,500 for persons who are already residents of a Board-operated facility when the investment is made. If the investment is made by the person prior to admission to a Board-operated facility, the entire amount of the investment should be

excluded." This modification to the rule is needed to make the intent of the drafters clear, as regards the exclusion of prepaid burial accounts, burial contracts, or burial trusts that are made before the person is admitted to a Board-operated facility. These funds are not available to a resident and should be excluded from consideration.

As regards 9050.0650 Subp. 2.B.; Legal Aid has commented that "the Homes does not intend to look at the inent of a transfer if it is

to a spouse or children."

The Board concurs that it does not wish to look at transfers to dependent children or spouses, and threfor adds the following phrase to the rule as indicated, "except for transfers permitted under Subp. 2.B.". This modification to the rule is needed to make the rule consistent throughout. It is reasonable, because it is a need-based standard, such that transfer to a dependent is permitted, while transfer simply to preserve funds is not permitted.

As regards 9050.0900 Subp. 3.; Legal Aid has commented that there is an internal inconsistency in the rule.

The Board accepts the comment and clarifies the rule by deleting following sentence from the last paragrapgh of 9050.0900 Subp. 3: "Failure to comply with items A to E results in a determination that the applicant or resident can pay the full cost of care." The failure of a resident to complete and sign forms will cause the discharge procedure to begin, however the discharge procedure can be stopped or reconsidered by the administrator based upon the review of the report of the finance department.

CONCLUSIONS

1. The Minnesota Vetrans Homes Board duly acquired and has jurisdiction over this proceeding.

2. The Board published and served due, timely and adequate notice of the intent to adopt the emergency rule without a public hearing.

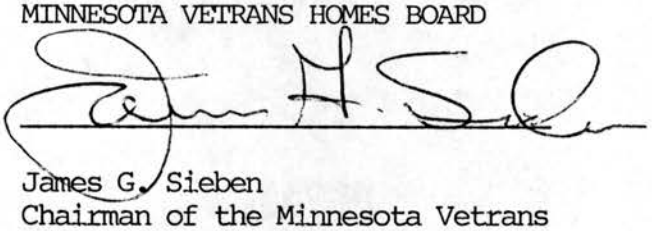
3. All relevant legal and procedural requirements of statute have been complied with.

4. the modifications to the proposed emergency rule are supported by the record and do no result in a substantial change in the proposed

ORDER

NOW, THEREFORE, IT IS ORDERED that the attached emergency rule, Minn. Rules pts. 9050.0010 to 9050.0900 governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, are adopted pursuant to the authority vested in the Minnesota Vetrans Homes Board by Minn. Stat. § 198.003, as ammended by Laws of Minnesota 1989, Chapter 84.

MINNESOTA VETRANS HOMES BOARD



James G. Sieben
Chairman of the Minnesota Vetrans
Homes Board
October 6, 1989

STATE OF MINNESOTA
MINNESOTA VETRANS HOMES BOARD

In the Matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minn. Rules, Parts 9050.0010 to 9050.0900

NOTICE OF SUBMISSION OF EMERGENCY RULES TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat.Sec. 14.32 (1988):

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney General on this date, October 20th 1989, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received, and other required documents also have been submitted to the Attorney General.

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rules. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address on the issue of legality of the rule or the lagality of the specific parts or subparts of the rules. The Attorney General standards for review are set forth in Minnesota Rules, pt. 2010.1000. You may recieve a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Administrative Law Division
525 Park
St. Paul, Mn. 55103
612-690-1875

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

Robert Klukas
Minnesota Vetrans Homes Board
20 W. 12th St.
St. Paul, Mn., 55155

Robert Klukas

Dated: 10-20-89

Robert Klukas

STATE OF MINNESOTA
MINNESOTA VETERANS HOMES BOARD

In the Matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minn. Rules, Parts 9050.0010 to 9050.0900

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Robert Klukas, being duly sworn says:

That on the 23rd day of October 1989, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission of Emergency Rule to the Attorney General by depositing in the United States mail a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been sent to the Attorney General.

Robert Klukas

Subscribed and sworn to before me
this day 23rd Day of October, 1989

Notary Public, Ramsey Co, Minn

KIMBERLY R. LeTOURNEAU
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 22, 1993

Emergency Rule - Veterns
MN Rules Parts 9050.0010 to 9050.0900

Statutory Authority - 198.003

Chapter 84 - gives authority to adopt emergency rules necessary to implement this Chapter
198.022 - deals with admissions
198.045 " discharges
* 198.045? transfer ?
198.007 Evaluation and Compl Review
198.03 subd 2 Cost of Care and Maintenance Charges

* = could not find anything specifically for transfers

Findings of Fact, Conclusions

J (3) ... indication ... of any changes made - they did receive 3 submissions or comments ... no indication ... they took them into consideration ... and made some changes.

Rules
9050.0210 subd 4 D
"The Time for the reconsideration proceeding must be set by the administrator" - to open. Time for reconsideration should be the same for everyone. How can you extend the time for reconsideration when it is an unknown

P.47 9050.0560 Subpart 1, B Time of Determination

The amount of maintence charge must be determined if

B.... change in financial status of the spouse of the applicant or resident

P.46 9050.0550 Subpart 5

Property and income of the spouse of the applicant or resident must not be considered an available resource for payment of a maintenance charge

Conflict between the two. If spouses property and income are not considered a resource why would you calculate the maintence if the spouse's financial status changed? Isn't property and income financial status

9050.0600 Subp 2 C, D

P.50 Why would income from rental property be excluded? Why would real property that a person operates a business on

57 9050.0710 Sub 4 Rental Income

I don't understand why they are considering rental income self-employment earnings when effort is given while it is not considered income when no effort is given. Why the distinction?

Time 25 day adoption
25 days Is stated counting from
Sept 12 to and including Oct 6

Sept 11 = publication in State Reg.
Oct 6 date adopted
exactly 25 days

STATE OF MINNESOTA
MINNESOTA VETERANS HOMES BOARD

In the Matter of the Proposed Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minn. Rules, Parts 9050.0010 to 9050.0900	AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT EMERGENCY RULE AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Robert Klukas, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. Section 14.30(1988) that their names be placed on the Minnesota Veterans Homes Board's rulemaking mailing list is accurate, complete, and current as of this 1st day of September 1989.

That on the 1st day of September 1989, at the City of Minneapolis, county of Hennepin, State of Minnesota, the attached Notice of Intent to Adopt Emergency Rules was mailed by depositing in the United States Mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Robert Klukas
Rules Writer
Minnesota Veterans Homes Board

Subscribed and sworn to before me
this day, October 20, 1989

Notary Public

TERRENCE LOGAN
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES FEBRUARY 20, 1993

October 10, 1989

Patricia Notle, Legal Assistant
Public Finance Division
404 Capitol Office Building
525 Park Street

Re: In the Matter of Proposed Emergency Rule Governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges, Minn Rules, Parts 9050.0010 to 9050.0900

On October 6, 1989, the Minnesota Vetrans Homes Board adopted the above-captioned emergency rule governing Admissions, Discharge, Transfer, Utilization and Compliance Review, Cost of Care Calculations and Maintenance Charges. Enclosed for your review are the following:

1. Emergency rule as adopted(original and three copies).

2. Findings of Fact, Conclusions, and Order Adopting Emergency Rule (two copies).

3. Certificate and Resolution Adopting Emergency Rule.

4. Notice of Intent to Solicit Outside Opeinion as it appeared in the State Register November 28, 1988.

5. There were no written comments recieved pursuant to Notice of Intent to Solicit Outside Opinion.

6. Certificate of Authorizing Resolution.

7. Notice of Intent to Adopt Emergency Rule and rule as proposed as it appeared in the State Register on September 11, 1989.

8. Comments recieved during the comment period and Affidavit Regarding Comments Recieved.

9. Notice of Intent to Adopt Emergency Rule,as mailed.

10. Affidavit of Mailing of the Notice of Intent to Adopt Emergency Rule and Certificate of Mailing List.

11. Emergency Rule as proposed.

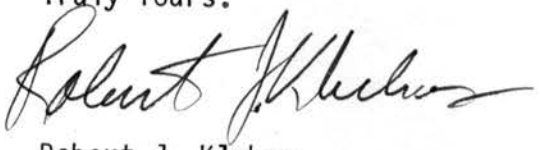
12. Declaration of Counsel.

13. Notice of submission of Emergency Rules to the Attorney General.

14. Affidavit of Mailing of Notice of Submission of Emergency rule to the Attorney General.

14. Affidavit of Mailing of Notice of Submission of Emergency Rule to the Attorney General

Truly Yours.



Robert J. Klukas

Received 11:35
NOV 3, 1989

November 2, 1989

Martha Casserly, Esq.
Office of the Attorney General
Administrative Law Division
525 Park
St. Paul, Mn., 55103

Dear Ms. Casserly:

On behalf of the Minnesota Vetrans Homes Board, I would like to take this opportunity to respond to Legal Aid Society of Minneapolis Inc.'s letter of October 31, 1989 regarding the Emergency Rules, Parts 9050.0010 to 9050.0900. The Minnesota Vetrans Homes Board (Board) would like to point out that most of the criticism leveled against the rule by Legal Aid may stem from Legal Aid's failure to apply the ammendments to Minnesota Statutes 1988 Sec. 198.003; 198.007; 198.022; 198.03 and 198.32 which are contained in Laws of Minnesota for 1989, Chapter 84. The application of the 1989 ammendments to the Rules Parts 9050.0070 Subp. 3.B.C.L.M.N. and 9050.0070 Subp. 4.B.D. are within the statutory authority established by Minnesota Laws 1989, Chapter 84, Sections 198.007 and 198.022(3). In addition, the above described Rules Parts are necessary and reasonable to keep Board operated facilities within the rules of the Minnesota Department of Health. The statute cited above establishes a requirement for admission and continued stay at a Board-operated facility, that the facility must be capable of meeting the health care needs of the resident in keeping with the facility's licenses.

Legal Aid has commented that Minnesota Rules, Parts 9050.0100 Subp. 2. should be reworded to "provide for a gaurenteed minimum prior notice of at least seven days." The Board rejects the comment and

asserts that the notice requiremnts of Minnesota Statutes 144.651, Subd. 29.(1988) are fully met in this rule part. In addition, Merwin Peterson, the Board's Agency Attorney General has submitted the following comments to me for inclusion in this response:

":With respect to resident's hearing rights under L.K. v. Gregg, 380 N.W. 2d 145 (Minn. App. 1987):

1. That case was not a class action.

2. The hearing rights issue was not briefed by the parties and the Court of Appeals relied on a case whose relevant principle had been overruled by O'Bannon v. Torun Court Nursing Center, 447 U.S. 778 (1980).

3. The Minnesota Supreme Court in L.K. v. Gregg, 425 N.W. 2d 813, 820-821, indicated that the law in L.K. v. Gregg I, should not be followed."

In addition to whatever case law may be applicable, the Board wishes to retain the flexibility of notice allowed by the statute cited above, because the resident's own or other residents's welfare may be best served by a prompt transfer which is in keeping with the resident's medical treatment program.

Legal Aid has asked that residents be accorded certain appeal rights in 9050.0100 Subp. 5 regarding emergency transfers. The Board does not intend to prohibit an appeal of an emergency transfer, if the appeal of the emergency transfer decision is taken after the emergency has passed. "Emergency" should be given the meaning in this rule part that is put forth in 9050.0040 Subp. 39. The Board can see no useful purpose in devising a rule that would use the transfer appeal procedure in the event of a resident experiencing a life threatening medical

condition which must be immediately diagnosed or treated. The Board does not operate a facility which is licensed to provide the kind of care required in a medical emergency and must therefore immediately transfer a resident to an appropriate health care facility.

Legal Aid has suggested that 9050.0200 Subp 4. be changed to include a minimum seven day notice period for any involuntary discharge. The Board needs to retain the flexibility of notice period allowed by Minnesota Statutes Sec. 144.651, Subd. 29 for those involuntary discharge situations which are outside of the facility's control. A seven day notice period for residents who pose a hazard to other residents, or whose psychiatric or medical condition can not be adequately cared for at the facility could create a situation which would be hazardous to a dischargees own health or the health and safety of other residents.

The Board sent the Rules Parts 9050.0010 to 9050.0900 to you for review in the belief that they were carrying out their mandate as contained in Minnesota Laws for 1989 Chapter 84. Comments on the rules were recieved and given due consideration. The rules as they were delivered to you incorporated certain reasonable and needed modifications proposed by Legal Aid, but did not include other proposed modifications which the Board felt were unneeded or unreasonable. The Board looks forward to your approval of the rules as submitted to you.

Very truely yours.

Robert Klukas

Robert Klukas
Minnesota Vetrans Homes Board of Directors

Office of the Revisor of Statutes
Administrative Rules

Craig E. Lindeke
Senior Assistant Revisor
296-0946

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

October 20, 1989

Ms. Jane Larson Anderson
Minnesota Veterans Home Board
5101 Minnehaha Avenue South
Minneapolis, MN 55417

RE: File No. 1529E

Dear Ms. Anderson:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Craig Lindeke/Joe Sueker

Craig E. Lindeke

LAW OFFICES OF
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC.
300 MINNESOTA BUILDING
FOURTH AND CEDAR STREETS
ST. PAUL, MINNESOTA 55101
(612) 222-5863

MN VETERANS HOMES

OCT 02 1989

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September 28, 1989

Mr. Richard Zierdt
Executive Director
Minnesota Veterans Homes Board
Veterans Service Building, 2nd Floor
St. Paul, MN 55155

RE: Rule Making

Dear Mr. Zierdt:

I would like to register for the purpose of receiving notice of all rule making hearings pursuant to Minn. Stat. §14.14. In addition, I would like to receive notice of the submission of your Proposed Emergency Rules Regarding Veterans Homes Admissions, Discharges, Cost of Care Calculations, and Maintenance Charges to the Attorney General for approval pursuant to Minn. Stat. §14.32.

Very truly yours,

James A. Lee, Jr.
Attorney at Law

mk

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of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

DOWNTOWN OFFICE
222 GRAIN EXCHANGE BUILDING
323 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415
(612) 332-1441

MANAGING ATTORNEYS
Gail M. Kaba
Margaret A. Russell

SUPERVISING ATTORNEYS
M. Francesca Chervenak
Jean A. Lastine

ATTORNEYS
Constance S. Baillie
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Matilda Madden
Doris Slaughter

October 6, 1989

MN VETERANS HOMES

OCT 06 1989

BOARD

Richard Zierdt
Executive Director
Minnesota Veterans Homes Board
Veteran Service Bldg. 2nd Flr.
St. Paul, MN 55155

RE: Proposed Emergency Rules Governing the Veterans Home

Dear Mr. Zierdt:

Enclosed with this letter are my comments regarding the emergency rules your Board has proposed. I met with several people last week who were involved in drafting these rules, including Stephen O'Connor who is on your Board. Some of my comments refer to and incorporate my discussion with that group.

I hereby request that you notify me of the date of submission of the proposed emergency rules to the Attorney General. I also request that you send me a copy of the rules upon their adoption.

Thank you for your attention to these requests.

Sincerely,

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

Francesca Chervenak

M. Francesca Chervenak
Attorney at Law

MFC:db

Enclosure

United Wa
Agency

TO: Minnesota Veterans Homes Board

FROM: M. Francesca Chervenak
Attorney at Law
Legal Aid Society of Minneapolis

RE: Comments to Veterans Home Proposed Emergency Rules

DATE: October 6, 1989

9050.0040 Subp. 61

This section defines "legal representative" which is used throughout the rule and seems to mean someone who can act on another's behalf. There are several problems with the definition. First, it is a confusing definition and does not specify that the representative must have the authority to take the particular action he is attempting to take. For example, a person could have a guardian of his estate only which -- means that the guardian could not pursue transfer/discharge procedures on behalf of a resident.

Second, the examples at the end are confusing and do not add to the definition. All residents/applicants to the Home would be adults and there is no such thing as a "custodian" of an adult. Also, the examples given imply that they are all representatives with broad powers when that is not the case. A "representative payee" only has the authority to receive income and use it on behalf of a resident's needs. Neither a payee nor a power of attorney would ever have the legal authority to request a transfer for a resident, (9050.0100 Subp. 1.B.) or agree or disagree to a voluntary discharge. (9050.0200 Subp. 2).

The examples at the end of the definition should be eliminated and the definition itself be reworded as follows:

> " 'Legal representative' means an individual who has the legal authority to take a particular action on behalf of an applicant or resident. The legal authority can be granted by statute, by a court, or by federal or state regulations."

9050.0040 Subp. 36

This section defines "discharge." Apparently, "discharge" is to include someone who is being moved from the campus of one board-operated facility to another -- whether to the same or a different level of care. In the past, the Home had referred to such moves as "transfers." Therefore, for the sake of clarity, this situation should be included in the definition.

> The definition should be as follows:
> "Discharge" means a termination of residence in the nursing home or boarding care home that is documented in the discharge summary signed by the attending physician. A discharge includes the movement of a resident

> from the campus of one board-operated facility to another, whether to the same or to a different level of care. For purposes of this definition, a discharge does not include; etc.

9050.0050 Subp. 1, 2nd ¶

This section defines a resident of Minnesota as one who has been continually present in the state for six months prior to the date of application for admission to the Home. This paragraph should be deleted from the rules for several reasons.

First, under Minn. Stat. 198.022 Subp. 2 and 3 one can be admitted to the Home if one is a Minnesota resident prior to the date of admission. The common and accepted interpretation of Minnesota resident is one who is actually in the state and who has the intent to reside in the state. Therefore, under the statute, has long as one is a resident of Minnesota the day before one applies to the Home, that person can be admitted. Requiring six months of residency prior to admission is a different, more restrictive, admissions requirement which is invalid.

Second, requiring a six month durational requirement for residency is illegal. The U.S. Supreme Court in *Shapiro v. Thompson* has struck down such requirements as unconstitutional in that they restrict the freedom of travel.

Third, the 6 month residency requirement is contrary to the Minnesota Unitary Residence and Financial Responsibility Act at Minn. Stat. 256G. That Act governs, among others, state nursing homes. It specifically provides that "state residence coincides with residence in any Minnesota county and that "no waiting period is required before securing county or state residence." See Minn. Stat. 256G.03 Subd. 1 and 2.

9050.0070 Subp. 3.B.

This section states that an applicant to the Home must have a medical or psychiatric diagnosis from an attending doctor indicating placement in the facility is a medical necessity. This criteria should be deleted because it goes beyond the statue and is unreasonable.

Minn. Stat. §198.022(1) says applicants must be "unable by reason of wounds, disease, old age or infirmity to properly maintain themselves." The requirement of "medical necessity" is a different, more restrictive standard that goes beyond the statute.

Specifying that the statement of medical necessity come from only an "attending physician" is also unreasonable as many indigent applicants would not have a primary, treating physician. If this section is left in, a statement of medical necessity by any physician should be sufficient.

9050.0070 Subp. 3.C.

This admissions criteria should also be deleted for the same reasons as set forth in the discussion of 3.B. above.

9050.0070 L.

This section requires that anyone with a history of chemical abuse or a diagnosis of chemical dependency must have completed an inpatient chemical dependency program and be chemically free. "Chemically free" means 6 months of non-use, or use with no dependency symptoms prior to admission and continued non-use during residence.

This admissions criteria should be deleted for a number of reasons. First, it imposes an additional admissions criteria not provided for in Minn. Stat. 198.022 and thus it goes beyond the scope of rulemaking. Second, it is a discrimination based on disability and thus violates both the Minnesota Human Rights Act and the federal Fair Housing Act.

This criteria is also vague and unreasonable. There is no definition provided for "history of chemical abuse." It requires that a person have completed an in-patient residential treatment or rehabilitation (again defined as "residential") program. It is unreasonable to mandate that treatment be in-patient when an outpatient program or AA attendance may have been sufficient for the person. This admission criteria is also unreasonable in mandating 6 months of non-use prior to admission. It is likely that an applicant/resident needs a board and care facility controlled environment to <u>not</u> <u>use</u> - especially if the person is in, or has just completed, a treatment program.

9050.0070 Subp. 3.M.

This admissions criteria says the applicant must be able to comply with Home rules which is demonstrated by a documented history of compliance in a prior placement. The persons I met with last week who worked on the rules agreed this criteria is unnecessary and should be eliminated.

This is an additional admissions criteria that is not found in Minn. Stat. 198.022 and this goes betond the scope of rulemaking. The critiera is also unclear -- is the rule to address capacity or willingness? An <u>ability</u> to comply is not the same as having complied in the past. Also, facilities generally only document non-compliance with rules -- so a "documented history of compliance" would probably not exist.

9050.0070 Subp. 3.N.

This section says that in order to be admitted or allowed to stay at the Home, the person must be free of any reportable communicable disease (including AIDS). My understanding from the group from the Veterans Home that I met with on the rules was that this means

no one could be admitted or could stay who had one of the diseases or conditions listed in Minn. Rules 4605.7040.

This admissions criteria should be deleted from the rules. First, because it is an illegal discrimination based on a disability and thus violates the Minnesota Human Rights Act as well as the federal Fair Housing Act. Second, it is an additional admissions criteria (or a restriction on admissions) which is not provided for in the statute 198.022 and thus goes beyond the scope of rulemaking.

9050.0070 Subp.4.B.

This section requires that an applicant for a nursing home facility must have a medical or psychiatric diagnosis which makes their placement a medical necessity. Again, this is a different and more restrictive criteria than provided for in the statute ("unable to properly maintain themselves by reason of disease, old age, or infirmity") and thus goes beyond the scope of rulemaking.

9050. Subp. 4.D.

In order to be admitted to a nursing home facility this section requires the person have demonstrated a history of compliance with an individual treatment plan. Once again, this imposes an additional admissions criteria not provided for in statute 198.022 and thus goes beyond the scope of rulemaking.

9050.0100 Subp. 2.

This section addresses the notice to be given when a patient is being transferred. It implies that no prior notice needs to be given in situations outside the facility's control (i.e. to accommodate newly-admitted residents).

Minn. Stat. 144.651 Subd. 29 which is referred to in the rule only says the notice period can be shortened in situations outside the facility's control - not done away with altogether.

To not provide for prior notice would also be contrary to the *L.K. v. Gregg* decision which says one is to be given the opportunity for a contested case hearing prior to being transferred from a facility. Obviously, such an opportunity is not possible without prior notice.

This section should be reworded to provide for a guaranteed minimum prior to notice of at least 7 days.

9050.0100 Subp. 5

This sections says a resident cannot appeal a transfer decision based on an emergency. Obviously, it may not be possible to provide a pre-transfer appeal in such cases. However,

due process still applies to such cases and the resident must be given an opportunity to appeal--even if after the fact.

9050.0200 Subp. 2.B.

This section should be revised to leave out "or if it is contrary to the expressed preference of the resident." This language adds nothing to this section which already says a discharge is involuntary if it is without the resident's consent.

9050.0200 Subp. 3.A.

This provides that discharge procedures must be instituted for <u>any</u> failure or refusal to comply with the admissions agreement. This is overly broad and unreasonable -- providing for discharge no matter how slight the infraction. The group that I met with from the rules committee indicated that this section was meant to address only failures or refusals to comply with financial obligations. If that is the case, the section should be revised to read:

> "A ... The resident or resident's legal representative fails or refuses to comply with payment obligations set forth in the admissions agreement as provided for in 9050.0040 Subp. 5.C.

9050.0200 Subp. 3.E.

This section states a resident will be discharged if their <u>spouse</u> refuses to provide information or releases. This seems unreasonable -- why should a spouse's refusal affect a resident's stay (one could certainly envision situations where the couple is estranged and a spouse could be quite uncooperative)? The word "spouse" should be deleted from this section.

9050.0200 Subp. 4

This section implies that if a situation is outside the facility's control (i.e. another resident's welfare), <u>no</u> prior notice of involuntary discharge need be given.

This is contrary to Minn. Stat. 144.651 Subd. 29 which allows for a <u>shortened</u> notice period in these circumstances -- but doesn't take away the notice obligation. This section is also contrary to <u>*L.K. v. Gregg*</u> which states residents are entitled to contested case hearings prior to discharge -- which, by necessity, demands prior notice. Thus, the section should be revised to provide for a reasonable guaranteed minimum prior notice in all circumstances of at least 7 days.

9050.0200 Subp. 5

This should be revised to include "**D.** include the resident's right to appeal the discharge and the appeal procedures."

Basic concepts of due process, as well as the *L.K. v. Gregg* decision require the inclusion of appeal rights and procedures within a prior notice. In addition, Minn. Stat. 144.651 Subd. 29 provides "the notice shall include the resident's right to contest the action."

9050.0200 Subp. 6.

The first paragraph adds nothing to the rules and is confusing. Therefore, it should be deleted. Subp. 3.D. of this rules already says absence for 96 hours without notice is grounds for discharge. By referring to these perons as "exceptions" and referring to "immediate institutions of involuntary discharge procedures" implies these people will be treated differently in terms of notice or appeal procedures. The group I met with assured me that this is not the case, and the notice and appeal procedures will be the same. If that is so, this section is only misleading and should be deleted.

The second paragraph refers to a "reinstatement" hearing but does not describe what that is. I understand that what was meant here was "reconsideration hearing"as set forth in 9050.0220 Subp. 4. Therefore, "reinstatement" should be changed to "reconsideration."

9050.0600 Subp. 1.B.

The first sentence of the second paragraph does not make sense as written. The sentence should be revised to read:

> "The facility financial staff must consider as available property that property which a person has failed..." etc.

9050.0600 Subp. 1.E.

This section says that if a person has a tort settlement which is structured to paid out over a period of time, its value shall be counted as the discounted net present value of all funds that will be deposited over time. This means that if a person has a $10,000 tort settlement that pays him $2,000 a year for 5 years, that person could not be admitted to the Home because their assets exceed the $3,000 limit -- even though the money actually available to him to meet his needs is only $2,000. This provision is unreasonable and contradicts the earlier provisions of this section which says property is only counted which is "legally available."

9050.0600 Subp. 2.F.

This section should be revised to read: "Other real property which must be excluded..." etc.

9050.0600 Subp. 3.B.

This section does not make sense as written. Suggested revised language which seems to reflect the intent of the drafters would be as follows.:

> "B. The value of a prepaid burial account, burial contract, or burial trust up to $2,500 for persons who are already residents of a board-operated facility when the investment is made. If the investment is made by the person prior to admission to a board-operated facility, the entire amount of the investment should be excluded regardless of amount invested or value."

9050.0650

Subp. 2B permits a transfer to one's spouse or children prior to admission, but the last paragraph of Subp. 1 says that a transfer for purposes of preserving an estate for heirs is a "fraudulent transfer." My understanding from the group I met with on these rules, however, is that the Homes does not intend to look at the "intent" of a transfer if it is to a spouse or children. Therefore, to prevent confusion and misinterpretation, the language of the last paragraph in Subp. 1 should be revised to read:

> "Except for transfers permitted under Subp. 2.B., a transfer for purposes of preserving an estate..., etc.

9050.0900 Subp. 3

This section says that a failure to complete and sign forms, releases, authorizations, or to provide information, etc will result in a determination that a resident/applicant can pay the full cost of his care. However, 9050.0200 Subp. 3.E.2. says a failure to provide information or releases will result in discharge. These provisions are obviously not consistent and need to be revised. As stated earlier, to be able to discharge a resident for any failure to provide releases or information on the part of the resident or spouse is unreasonable and overly broad.

/db

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LAW OFFICES

of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

DOWNTOWN OFFICE
222 GRAIN EXCHANGE BUILDING
323 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415
(612) 332-1441

MANAGING ATTORNEYS
Gail M. Kaba
Margaret A. Russell

SUPERVISING ATTORNEY
M. Francesca Chervenak
Jean A. Lastine

ATTORNEYS
Constance S. Bailie
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Dorinda L. Wider

LEGAL ASSISTANTS
Matilda Madden
Doris Slaughter

October 31, 1989

Martha Casserly, Esq.
The Office of the Attorney General
Administrative Law Division
525 Park
St. Paul, MN 55103

RE: Emergency Rules Relating to The Minnesota Veterans Homes

Dear Ms. Casserly:

I am writing to submit the following comments concerning the legality of the emergency rules recently submitted by you to the Minnesota Veterans Homes Board, Minn. Rules 9050.0010, *et. seq.* [Emergency]. Based on these comments, I am asking that you disapprove of the emergency rules as proposed by the agency because they are illegal. I am requesting that you send me a copy of your decision in this matter.

9050.0040 Subp. 36

This section defines "discharge." Apparently, "discharge" is to include someone who is being moved from the campus of one board-operated facility to another -- whether to the same or to a different level of care. This is a change from the Home's longstanding practice of referring to such moves as "transfers." Therefore, in order to avoid confusion and misunderstanding by residents, this situation should be included in the definition.

The definition should be as follows:
"Discharge" means a termination of residence in the nursing home or boarding care home that is documented in the discharge summary signed by the attending physician. A discharge includes the movement of a resident from the campus of one board-operated facility to another, whether to the same or to a different level of care. For purposes of this definition, a discharge does not include; etc.

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9050.0070 Subp. 3.B.

This section states that an applicant to the Home must have a medical or psychiatric diagnosis from an attending doctor indicating placement in the facility is a medical necessity. This admissions criteria should be deleted because it conflicts with the admissions criteria set out in the statute and is unreasonable.

Minn. Stat. §198.022(1) states applicants must be "unable by reason of wounds, disease, old age or infirmity to properly maintain themselves." The requirement of "medical necessity" is a different, more restrictive standard that goes beyond the statue and therefore exceeds the agency's rulemaking authority.

Specifying that the statement of medical necessity come from only an "attending physician" is unreasonable and unnecessary as many indigent applicants would not have a primary, treating physician. (See 9050.0040 Subp. 11) It also has no reasonable relationship to statutory purposes. If this section is left in, a statement of medical necessity by <u>any</u> physician should be sufficient.

9050.0070 Subp. 3.C.

This section adds another admissions criteria that the applicant's attending doctor document their need for boarding care services. Again, this criteria conflicts with, and goes beyond, the statute where the applicant need only be "unable by reason of wounds, disease, old age or infirmity to properly maintain themselves." The agency is exceeding its statutory rulemaking authority here. Again, the requirement that the information only come from an <u>attending physician</u> is unreasonable and unnecessary and discriminates against those who do not have a primary, treating physician.

9050.0070 L.

This section requires that anyone with a history of chemical abuse or a diagnosis of chemical dependency must have completed an inpatient chemical dependency program and be chemically free. "Chemically free" means 6 months of non-use, or use with no dependency symptoms prior to admission and continued non-use during residence.

This admissions criteria should be deleted for a number of reasons. First, it imposes an additional, more-restrictive admissions criteria not provided for in Minn. Stat. 198.022. It therefore exceed the agency's statutory authority and grants the agency discretion beyond that permitted by its enabling legislation.

Second, this criteria conflicts with the statutes governing the Veterans Home because persons who have a history of chemical abuse or a diagnosis of chemical dependency may nonetheless be "unable by reason of wounds, disease, old age or infirmity to properly maintain themselves" and thus be statutorily entitled to admission to the Home.

Third, the criteria discriminates against those with the disease of alcoholism/drug dependency by requiring them to meet an additional, baseless admissions criteria others must not meet. It is a discrimination based on a disability and thus violates the Minnesota Human Rights Act (Minn. Stat. §363.01 *et. seq.*); The Rehabilitation Act of 1973 [see e.g. *Nisperos v. Acting Commissioner of Immigration and Naturalization Service*, D.C. N. Calif., 58 L.W. 2179 (10/3/89)], and the federal Fair Housing Act.

Fourth, this admissions criteria has no reasonable relationship to statutory purposes and grants the agency discretion beyond that permitted by its enabling legislation. No definition is provided for "history of chemical abuse" which thus gives the agency the authority to interpret that phrase as broadly and arbitrarily as it chooses. The criteria also mandates that a person have completed an inpatient residential treatment or rehabilitation program (a rehabilitation program is also defined as "residential"). It is unreasonable to mandate that treatment have been inpatient when an outpatient program or AA attendance may have been sufficient for the applicant. Finally, this criteria is unreasonable in requiring 6 months of non-use prior to admission. It is likely that an applicant/resident needs the controlled living environment of a board and care facility to not use -- especially if the person is in, or has just completed, a treatment program.

9050.0070 Subp. 3.M.

This admissions criteria says that the applicant must be able to comply with Home rules which is demonstrated by a documented history of compliance in a prior placement. The persons from the agency I met with who worked on the rules agreed this criteria is unnecessary and should be eliminated. The requirement clearly has no reasonable relationship to statutory purposes.

This is an additional admissions criteria that is not found in Minn. Stat. 198.022 and this goes beyond the scope of the agency's rulemaking authority. The criteria is also unclear -- is the rule to address capacity or willingness? An ability to comply is not the same as having complied in the past. Finally, the criteria is unreasonable. Facilities only document non-compliance with rules -- so a "documented history of compliance" would probably not exist.

9050.0070 Subp. 3.N.

This section says that in order to be admitted or allowed to stay at the Home, the person must be free of any reportable communicable disease (including AIDS). My understanding from the group from the Veterans Home that I met with on these rules was that this means no one could be admitted to the Home or could remain in the Home who had any one of those diseases or conditions listed in Minn. Rules 4605.7040. The group said that this admissions criteria is justified by the rules governing the Department of Health. That is not true. Minn. Rule 4605.7040 simply lists the diseases/conditions that must be reported to the Department of Health.

This admissions criteria should be deleted from the rules. First, because it is an illegal discrimination based on disability and thus violates the Minnesota Human Rights Act, the Rehabilitation Act of 1973, and the federal Fair Housing Act.

Second, the rules imposes an additional, more restrictive admissions criteria not provided for in the statute 198.022 and clearly exceeds the agency's statutory authority.

Third, the rule grants the agency discretion beyond its statutory powers to deny admission to veterans otherwise eligible under the statute simply for having diseases/conditions such a botulism, Lyme disease, gonorrhea, lead poisoning, etc. This rule bears no reasonable relationship to the statutory purposes of the Veterans Home and thus it is illegal.

9050.0070 Subp. 4.B.

This section requires that an applicant for a nursing home facility must have a medical or psychiatric diagnosis which makes their placement a medical necessity. Again, this is a different and more restrictive criteria than provided for in the statute ("unable to properly maintain themselves by reason of disease, old age or infirmity") and thus it conflicts with the statute and exceeds the statutory authority conferred on the agency.

9050.0070 Subp. 4.D.

In order to be admitted to a nursing hone facility this section requires the person have demonstrated a history of compliance with an individual treatment plan prescribed by the attending physician. Once again, this imposes an additional admissions criteria not provided for in statute 198.022 and thus exceeds the agency's statutory authority. In addition, the rule requires that the compliance be with a plan of an "attending physician" and thus unreasonably discriminates against those who do not have an attending physician.

9050.0100 Subp. 2.

This section addresses the notice to be given when a patient is being transferred. It provides for no prior notice to be given in situations outside the facility's control (i.e. to accommodate newly-admitted residents). Minn. Stat. 144.651 Subd. 29 which is cited to in the rule does not support the agency's position. In fact, it supports the position that at lease some prior notice must be given because it says the notice period can be shortened in situations outside a health facility's control - not done away with altogether.

To not provide for reasonable prior notice of transfer would clearly deny constitutional due process to residents. Under the decision in *L.K. v. Gregg*, 380 N.W.2d 145 (Minn. App. 1986), the Court of Appeals determined that in order to provide due process the Home must give residents an opportunity for a contested case hearing prior to transferring them from a facility. Obviously, such an opportunity is impossible without prior notice.

The emergency rule is also unreasonable in not providing a guaranteed minimum prior notice. There is no reason why, in the situations listed as beyond the facility's control, the facility could not give some prior notice. Clearly residents are entitled to, and would expect, some reasonable prior notice -- particularly if they are being transferred to a different location such as a non-board operated facility or program. This section should be reworded to provide for a guaranteed minimum prior notice of at least seven days.

9050.0100 Subp. 5.

This section says a resident cannot appeal a transfer decision based on an emergency. Obviously, it may not be possible to provide a pre-transfer appeal in such cases. However, under *L.K. V. Gregg*, *supra*, due process must still be provided in such cases and therefore the resident must be given an opportunity to appeal -- even if it is after the transfer has occurred. As written, the rule conflicts with the law.

In addition, to not provide an opportunity for appeal in such cases is unreasonable and has no reasonable relationship to statutory purposes. Residents have a right to not be arbitrarily transferred from the Home (Minn. Stat. 144.651, Subd. 29). They therefore have the right to contest a transfer decision. Even if a circumstance is labeled an emergency, that is not sufficient to deny the resident's right to contest a transfer decision which may be arbitrary or inappropriate.

9050.0200 Subp. 4.

This section provides that if a situation is outside the facility's control (i.e. another resident's welfare), no prior notice of involuntary discharge need be given.

This section is illegal as written and should be revised to provide for a guaranteed minimum prior notice of at least seven days for all the reasons set forth earlier under 9050.0100 Subp. 2.

For all the foregoing reasons, I request that you disapprove of the proposed emergency rules as illegal. Thank you for your attention to these comments.

Sincerely,

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

Francesca Chervenak

M. Francesca Chervenak
Attorney at Law

MFC:db

cc: Robert Klukas

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Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103