


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

**STATE OF MINNESOTA**

# OFFICE MEMORANDUM

DATE: June 24, 1991

TO: KATHY McDONOUGH
Department of Human Services
444 Lafayette Road

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Assessment of Nursing Home Residents

The above-referenced rule has been approved as to its legality by the Attorney General on June 20, 1991.

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 the 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:sc

cc: Julie Harris
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Permanent Rules Relating to Assessment of Nursing Home Residents

Rules as Adopted

9549.0059 RESIDENT ASSESSMENT.

[For text of subpart 1, see M.R.]

Subp. 2. **Semiannual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to D.

[For text of items A and B, see M.R.]

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide additional information to the Department of Health if the Department of Health requests the information in order to determine a resident's classification.

[For text of item D, see M.R.]

[For text of subps 3 to 9, see M.R.]

APPROVED AS TO FORM AND LEGALITY

June 20 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 21 1991

Joan Anderson Growe
Secretary of State

3:19

MJC

# RULE REVIEW CHECKLIST

File No. 1831
DATE RECEIVED 6-10-91
REVIEW DATE 6-19-91
DUE DATE 6-24-91
(DIS)APPROVED 6-20-91 mjc
WITHDRAWN

Docket No. 05.0009.0881
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 6-12-91
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE 6-21-91
RETURNED TO AGENCY 6-24-91

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✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
January 28, 1991 Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

Notice of Intent to Adopt Rule
256B.41 subd 1 Statutory Authority
Small Business Statement
Expenditure of public money statement
Signature not signed Call

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
March 6, 1991 Dated 30/25 days before adoption
Notice attached indicates it is attached

✓ Copy of rule or summary attached

✓ Publication in State Register
March 11, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
April 15, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Julie Harris Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Stat. Authority 256B.41 subd 1

The commissioner shall establish by rule, procedures for determining rates for care of residents of nursing homes which qualify as vendors of medical assistance ...

not signed - Notice of Intent
No Billing NJ

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

Rec 6-10-91

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Kathy McDonough Kathy McDonough
Rules and Bulletins Division

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Assessment of Nursing Home Residents, Minnesota Rules, part 9549.0059

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

Official documents in this submitted material include:

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

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

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

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

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

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

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

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

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

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

There were no requests to be notified of submittal of the rule to the Attorney General.

If you have any questions on this submitted material, please call me at 297-4997.

# Department of Human Services

## Mental Health Division

### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rules Governing Facilities that Serve Emotionally Disturbed Children

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose amendments to *Minnesota Rules*, parts 9545.0900 to 9545.1090. Informally known as DHS Rule 5, the rule parts govern facilities licensed to serve emotionally disturbed children.

Adoption of the rule is authorized by *Minnesota Statutes*, section 245A.09, subdivision 1, which requires the commissioner to adopt rules to govern the operation, maintenance, and licensure of programs subject to licensure under chapter 245A.

Rule 5 establishes criteria for the minimum level of care that a residential treatment program for emotionally disturbed children must provide. Amendments proposed will include the changes necessary to bring Rule 5 standards and requirements into conformity or compliance with *Minnesota Statutes*, sections 245.826 (use of restrictive techniques and procedures) and 245.487 to 245.4887 (the Minnesota comprehensive children's mental health act), and chapter 245A (the human services licensing act).

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Joan Sykora, Mental Health Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3828. Oral statements will be received during regular business hours over the telephone at (612) 296-7905 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: Monday 14 January 1990

Alice Week
Department of Human Services Rules Division

# Department of Human Services

## Long Term Care Management Division

### Notice of Solicitation of Outside Information or Opinions Regarding a Proposed Amendment to DHS Rule, Part 9549.0059, Subpart 2C, Governing Medical Assistance; Nursing Home Payment Rate Determination; Semiannual Assessments of Residents by Nursing Homes

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose an amendment to the Medical Assistance rule governing Nursing Home Payment Rate Determination, Part 9549.0059, Subpart 2C. This Rule is authorized by *Minnesota Statutes*, section 256B.41, subd. 1, which permits the agency to establish procedures for determining rates for care of residents of nursing homes that qualify as vendors for medical assistance. The procedures must be based on methods the agency finds are adequate to provide for the costs that must be incurred for the care of residents in efficiently and economically operated nursing homes.

Part 9549.0059, Subpart 2C currently requires nursing homes to submit assessment forms, residents' plans of care and the nursing home's daily census to the Department of Health on a semiannual basis. The proposed change would delete the words "the residents plans of care" in the second sentence of 9549.0059, Subpart 2C. Subpart 2C provides that a nursing home must submit any additional information requested by the Department of Health to determine a resident's classification. The proposed change would eliminate the procedure of routinely submitting resident's plans of care that are not utilized. The Rule would still allow for the resident's plans of care to be submitted at the Department of Health's request.

The State Department of Human Services requests that all interested or affected persons or groups participate. Statements of information and comment may be made orally or in writing. Written statements should be addressed to: Kathy McDonough, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816. Oral statements will be received during regular business hours over the telephone at (612) 297-4997 and in person at the above address. All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of

Intent to Adopt without a Hearing is published in the *State Register.* Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the amendment is adopted.

Kathy McDonough
Rulemaker

# Department of Jobs and Training

## Office of Economic Opportunity

### Notice of Public Hearing on the State Delivery Plan for FY 1991 Weatherization Assistance for Low-Income Persons Program Grant

The Department of Jobs and Training, Office of Economic Opportunity is conducting a public hearing, required by the United States Department of Energy, on the state Delivery Plan for the **FY 1991 Weatherization Assistance for Low-Income Persons Program** grant.

NOTICE IS HEREBY GIVEN that a public hearing will be held on February 13, 1991 in the 7th floor conference room of the American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. The hearing will begin at 9:30 a.m. and continue until all interested and affected persons have an opportunity to participate. Oral and/or written testimonies may be submitted at the hearing. In addition, written testimony will be accepted by the Department until 4:30 p.m., February 15, 1991. Additional written testimony may be submitted to:

Roger Williams
Minnesota Department of Jobs and Training
Economic Opportunity Office
670 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-5752

Copies of the proposed plans are available upon request.

# Department of Labor and Industry

## Labor Standards Division

### Notice of Correction to Prevailing Wage Rates

The prevailing wage rate certified June 11, 1991 for labor classifications 103—Laborer, Landscaping for Highway/Heavy construction in the following counties has been corrected, Carver and Dakota.

Copies of the corrected certifications may be obtained by contacting the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155, or calling (612) 296-6452.

Ann Clayton Commissioner
Department of Labor and Industry

# Metropolitan Council

### Notice of Preliminary Schedule for Amending the *Metropolitan Development and Investment Framework* (MDIF) Chapter of the *Metropolitan Development Guide*

The Metropolitan Council has established a preliminary schedule for amending the *Metropolitan Development and Investment Framework* (MDIF) to incorporate changes in the policies for the rural area:

- Metropolitan and Community Development Committee Review of Draft Amendments for Public Hearing Purposes—March 1991
- Council Review and Approval of Draft Amendments for Public Hearing Purposes—April 1991
- Public Hearings—June 1991
- Adoption of Amendments to the MDIF—July 1991

Department of Human Services

In the Matter of the Proposed
Amendment to the Rule of the
the State Department of Human Services
Governing Long Term Care Management,
Semiannual Assessments of Residents,
In the Medical Assistance Program,
Minnesota Rules, Part 9549.0059,
Subpart 2C.

NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, §§ 14.22 to 14.28. The statutory authority to adopt the rule is in Minnesota Statutes, § 256B. 41, subd.1.

(2) All persons have 30 days or until 4:30 p.m. on April 10, 1991 in which to submit comment in support of or in opposition to the proposed amendment. Comment is encouraged. (3) Each comment should identify the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, the reason for the request and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, §§ 14.131 to 14.20.

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

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road.
St. Paul, MN 55155-3816
(612) 297-4997

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

(11) Minnesota Rules, part 9549. 0059 establishes the procedures used by the Department of Health, Quality Assurance and Review (QA&R) team to determine the rates paid by medical assistance for the care of

nursing home residents. The proposed amendment would eliminate the requirement, under subpart 2C, that nursing homes submit the residents' plans of care at the semi-annual assessment. The QA&R team does not utilize the plans of care. There is a cost involved in copying, mailing, and storing the unused documents. This amendment would result in a cost savings for both the state and for nursing homes.

A free copy of the proposed amendment is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7494

A copy of the Rule may also be viewed at any of the 87 county welfare or human serices agencies in the state of Minnesota.

(12) A Statement of Need and Reasonableness that describes the need for and the reasonableness of the proposed amendment and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Kathy McDonough at the above address upon request.

(13) Adoption of this amendment will not result in additional spending by local public bodies but rather will result in a cost savings for the state.

(9) If no Hearing is required, upon adoption of the rule, the rule and required supporting documents will be submitted to the Attorney General for review as to legality. Any person may request notification of the date of 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 Nancy Bishop at the above address.

Date:

_____

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

DATE: June 13, 1991

TO: Patricia Nolte
Public Finance Division
525 Park St., Suite 500

FROM: Kathy McDonough KMc
Rules & Bulletins Division

SUBJECT: Amendment to Rule 50; Part 9549.0059, subpart 2C

Enclosed please find a copy of the Notice of Intent to Adopt a Rule Without a Public Hearing, signed by Commissioner Steffen.

ATTY GENERAL

17 JUN 91 11: 03

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Department of Human Services

In the Matter of the Proposed Amendment to the Rule of the the State Department of Human Services Governing Long Term Care Management, Semiannual Assessments of Residents, In the Medical Assistance Program, Minnesota Rules, Part 9549.0059, Subpart 2C.

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Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, §§ 14.22 to 14.28. The statutory authority to adopt the rule is in Minnesota Statutes, § 256B. 41, subd.1.

All persons have 30 days or until 4:30 p.m. on April 10, 1991 in which to submit comment in support of or in opposition to the proposed amendment. Comment is encouraged. Each comment should identify the reason for the comment, and any change proposed.

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

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

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road.
St. Paul, MN 55155-3816
(612) 297-4997

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

Minnesota Rules, part 9549. 0059 establishes the procedures used by the Department of Health, Quality Assurance and Review (QA&R) team to determine the rates paid by medical assistance for the care of

nursing home residents. The proposed amendment would eliminate the requirement, under subpart 2C, that nursing homes submit the residents' plans of care at the semi-annual assessment. The QA&R team does not utilize the plans of care. There is a cost involved in copying, mailing, and storing the unused documents. This amendment would result in a cost savings for both the state and for nursing homes.

A free copy of the proposed amendment is available upon request from:

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444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7494

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Date: 2-13-91

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment to the Rule of the State Department of Human Services Governing Long Term Care Management, Semiannual Assessments of Residents, In the Medical Assistance Program, Minnesota Rules, Part 9549.0059, Subpart 2C

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Nancy Bishop, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 6th day of March, 1991.

That on the 6th day of March, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Nancy L. Bishop

Subscribed and sworn to before me this 6th day of March, 1991.

Jean D. Storm

JEAN D. STORM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES JAN 31, 1995

Department of Human Services

In the Matter of the Proposed
Amendment to the Rule of the
the State Department of Human Services
Governing Long Term Care Management,
Semiannual Assessments of Residents,
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Comments or written requests for a public hearing must be submitted to:

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road.
St. Paul, MN 55155-3816
(612) 297-4997

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Date: 2-13-91

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment to the Rule of the State Department of Human Services Governing Long Term Care Management, Semiannual Assessments of Residents, In the Medical Assistance Program, Minnesota Rules, Part 9549.0059, Subpart 2C

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 6th day of March, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- The 87 Minnesota County Human Services Agencies
- All nursing homes in the State of Minnesota who receive Medical Assistance reimbursement from the Department of Human Services

Nancy L. Bishop

Subscribed and sworn to before me

this 6th day of March, 1991

Jean D. Storm

JEAN D. STORM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 22, 1997

Department of Human Services

In the Matter of the Proposed
Amendment to the Rule of the
the State Department of Human Services
Governing Long Term Care Management,
Semiannual Assessments of Residents,
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Comments or written requests for a public hearing must be submitted to:

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road.
St. Paul, MN 55155-3816
(612) 297-4997

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nursing home residents. The proposed amendment would eliminate the requirement, under subpart 2C, that nursing homes submit the residents' plans of care at the semi-annual assessment. The QA&R team does not utilize the plans of care. There is a cost involved in copying, mailing, and storing the unused documents. This amendment would result in a cost savings for both the state and for nursing homes.

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Date: 2-13-91

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

or appeals in writing to the state under *Minnesota Statutes*, section 256.045, on or before the tenth day after the decision is communicated to the enrollee by the health plan to reduce, suspend, or terminate services the enrollee had been receiving on an ongoing basis, and the treating plan physician or another plan physician has ordered the services at the present level and is authorized by the contract with the health plan to order the services, the health plan must continue to provide services at a level equal to the level ordered by the plan physician until written resolution of the complaint is made by the health plan or a decision on the appeal is made by the human services referee. If the resolution is adverse, in whole or part, to the enrollee, the enrollee must be notified of the right to a state appeal. If the enrollee appeals a health plan's written resolution within ten days after it is issued, services must be continued pending a decision by the human services referee. A resolution is made or issued on the date it is mailed or the date postmarked, whichever is later. For the purposes of this subpart, "plan physician," where appropriate, includes a plan dentist, mental health professional, chiropractor, or osteopath, nurse practitioner, or nurse midwife.

Subp. 7. **State ombudsperson.** The commissioner shall designate a state ombudsperson to help enrollees resolve health plan service related problems. Upon an enrollee's request, the ombudsperson shall investigate the enrollee's case and shall attempt to resolve the problem in an informal manner by serving as an intermediary between the enrollee and the health plan. If the ombudsperson is unable to obtain a resolution of the problem, the ombudsperson shall explain to the enrollee what his or her complaint and appeal options are, how to file a complaint or appeal, and how the complaint or appeal process works. The ombudsperson must be available to help the enrollee file a written complaint or appeal request. The ombudsperson must notify the appropriate health plan of a state appeal within three working days after the state appeal is filed.

Subp. 8. **Record keeping and reporting requirements.** The health plan must maintain a record of all written complaints from enrollees, actions taken in response to those complaints, and the final disposition of the complaints. The health plan must report this information to the commissioner on a semiannual basis.

REPEALER. *Minnesota Rules*, parts 9500.1451, subparts 2, 3, 5, 11, 12, and 18; 9500.1459, subparts 2, 3, and 4; and 9500.1463, subparts 1 and 2, are repealed.

# Department of Human Services

## Proposed Permanent Rules Relating to Assessment of Nursing Home Residents

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

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, §§ 14.22 to 14.28. The statutory authority to adopt the rule is in *Minnesota Statutes*, § 256B.41, subd.1.

All persons have 30 days or until 4:30 p.m. on April 10, 1991 in which to submit comment in support of or in opposition to the proposed amendment. Comment is encouraged. Each comment should identify the reason for the comment, and any change proposed.

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

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

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4997

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

*Minnesota Rules*, part 9549.0059 establishes the procedures used by the Department of Health, Quality Assurance and Review (QA&R) team to determine the rates paid by medical assistance for the care of nursing home residents. The proposed amendment would eliminate the requirement, under subpart 2C, that nursing homes submit the residents' plans of care at the semi-annual assessment. The QA&R team does not utilize the plans of care. There is a cost involved in copying, mailing, and storing the unused documents. This amendment would result in a cost savings for both the state and for nursing homes.

A free copy of the proposed amendment is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7494

A copy of the Rule may also be viewed at any of the 87 county welfare or human services agencies in the state of Minnesota.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and the reasonableness of the proposed amendment and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Kathy McDonough at the above address upon request.

Adoption of this amendment will not result in additional spending by local public bodies but rather will result in a cost savings for the state.

If no Hearing is required, upon adoption of the rule, the rule and required supporting documents will be submitted to the Attorney General for review as to legality. Any person may request notification of the date of 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 Nancy Bishop at the above address.

Natalie Haas Steffen
Commissioner

### Rules as Proposed

**9549.0059 RESIDENT ASSESSMENT.**

[For text of subpart 1, see M.R.]

Subp. 2. **Semiannual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to D.

[For text of items A and B, see M.R.]

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms~~, the residents' plans of care,~~ and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide additional information to the Department of Health if the Department of Health requests the information in order to determine a resident's classification.

[For text of item D, see M.R.]

[For text of subps 3 to 9, see M.R.]

# Minnesota Pollution Control Agency

## Proposed Rules Governing Open Burning Restrictions and Permitting Requirements, *Minnesota Rules* Parts 7005.0705 to 7005.0815

### Notice of Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) will hold a public hearing in the above-entitled matter at the Minnesota Pollution Control Agency Boardroom, 520 Lafayette Road, St. Paul, Minnesota, commencing at 9:00 a.m. on April 16, 1991. Additional days will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

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

2/8/91

I would agree with suspending sending copies of the care plans with semi annual assessments since they are not used.

It certainly is a waste of money for everyone for something that isn't useful.

Thank You
Bonnie Trusten

A.L. VADHEIM MEMORIAL HOSPITAL
SUNRISE MANOR
240 WILLOW STREET, TYLER, MINNESOTA 56178

# TYLER HOSPITAL CORPORATION

OFFICE: 507-247-5521

March 11, 1991

Kathy McDonough
Dept of Human Services
Rules and Bulletins Divisions
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. McDonough;

In am writing in regards to the proposed amendment to Minnesota Rules, part 9549.0059 to eliminate the requirement under part 2C that plans of care be submitted at the semi-annual assessment.

This would have my total support. A sensible elimination of unneeded paperwork to save money is always welcome.

Keep up the good work in this regard. More reductions could be possible.

Thank you,

Pamela J. Gilchrist

Pamela J. Gilchrist
Administrator

PJG/mam

Cedar Pines Health Care Facility
An Equal Opportunity Employer
2739 Cedar Avenue South • Minneapolis, Minnesota 55407 • 724-5491

March 12, 1991

Department Human Services

Re: Proposed amendment to eliminate the requirement that nursing homes submit copies of all careplans at time of semi-annual assessment.

We are very pleased about this amendment — overjoyed. We have enjoyed doing semi-annual assessments but have found copying all care plans to be too time consuming. They have been a burden of time and money. Thank you for proposing this amendment.

Bette Stacy RN
Director of Nursing Services

St.Otto's
CareCenter

March 11, 1991

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road
St. Paul, Minnesota 55155-3816

Dear Ms. McDonough,

The intent of this letter is to formally support the rule change proposed to part 9549.0559 subpart 2C.

The change that we support states that nursing homes will no longer be required to submit copies of the resident's plan of care at the time of the facility's semi-annual assessment.

Sincerely,

Mary Cordts

Mary Cordts
Administrator

/mlh

**920 S.E. Fourth St. • Little Falls, MN 56345 • 612-632-9281**
An affiliate of Franciscan Sisters Health Care, Inc., Little Falls, MN

WOODLAND ACRES

Health Care Center • 100 Buffalo Hills Lane • Brainerd, MN 56401 • 829-1429
Retirement Center • 200 Buffalo Hills Lane • Brainerd, MN 56401 • 829-1429

March 15, 1991

Kathy McDonough
Department of Human Services
Rules and Bulletins Division
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms McDonough,

In response to the Notice to Change Minnesota Rules, part 9549.0059, sub 2C we would like to commend efforts on the Department's part to eliminate the expense and labor to provide non-utilized plans of care. Any cost savings are greatly appreciated and assist in efforts to provide quality care to residents.

Thank you.

Sincerely,

Scot Allen
Administrator

SA:jm

St. Lucas CONVALESCENT & GERIATRIC CARE
Division of St. Luke's Health and Welfare Association, Inc.

503 EAST DIVISION STREET • FARIBAULT, MINNESOTA 55021
Phone: (507) 334-4314 Fax: (507) 334-6880

February 18, 1991

Kathy McDonough
Dept. of Human Services
Rules and Bulletins Div.
444 Lafayette Rd.
St. Paul, MN 55155-3816

Dear Kathy,

I'm writing in regards to the proposed amendment on deleting the residents plans of care forms being sent on semiannual reviews.

I do agree that these forms should not be sent as many of our care plans don't address every item on a QAR form. Our care plans are derived from the MDS (minimum data set) form. That alerts us to problems that have to be addressed in a plan of care.

I feel the Department of Health should request information if they question items on the QAR form, especially the clinically monitoring and behavior area. We have them on our plan of care but we use special behavior charting forms on a daily basis that gives a more thorough item on what is going on with this resident. Our clinically monitoring is listed in the medication sheets, decubiti sheets, and physician progress notes.

I whole heartedly support your proposal to delete sending the plan of card for the semi-annual reviews. I have worked in the LTC area for 19 years and have had these forms since they have been established.

Sincerely yours,

Betty Judd RN

Betty Judd R.N.
Director of Quality Assurance

BJ:icm

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of the Department of Human Services Rule Governing Long Term Care Management, Nursing Home Rate Determination, Semiannual Assessments of Residents, In the Medical Assistance Program, Minnesota Rules, Part 9549.0059, Subpart 2C

STATEMENT OF NEED AND REASONABLENESS

## INTRODUCTION

Minnesota Rules, part 9549.0059 establishes the procedures used by the Department of Health Quality Assurance and Review (MDH/QA&R) team to determine the rates paid by medical assistance for the care of nursing home residents. Subpart 2C provides that nursing homes must submit the assessment forms, residents' plans of care, and the nursing home's daily census, to the Department of Health on a semi-annual basis. The assessments are used to classify residents into a payment class. This amendment,if adopted, would eliminate the requirement that the nursing home must submit the residents plans of care semi-annually. If the amendment is adopted, the rule would still allow the MDH/QA&R team to have access to the residents' plans of care, through the reconsideration process, if it was deemed necessary. The proposed amendment would result in a cost savings for both the department and nursing homes.

## STATUTORY BACKGROUND

The medical assistance program in Minnesota is the joint federal-state program that implements the provisions of Title XIX of the Social Security Act by providing for the medical needs of low income or disabled persons and families of dependant children. (See United States Code, title 42, section 1396a, hereafter abbreviated as 42 U.S.C. 1396a). Code of Federal Regulations, Title 42, section 431.10, (hereafter abbreviated as 42 CFR 431.10), requires a state to designate a single state agency to supervise the administration of a state's medical assistance program. The Department of Human Services has been so designated in Minnesota Statutes, section 256B.04,subdivision 1. Furthermore, 42 CFR 431.10 requires the state agency so designated to make rules and regulations that it will follow in administering the State Plan. The State Plan is the comprehensive written commitment of the department to administer and supervise medical assistance program according to federal requirements. Correspondingly, Minnesota Statutes, section 256B.04, subdivision 2 requires the Commissioner of Human Services to

establish "uniform rules and regulations, not inconsistent with the law" to ensure that the medical assistance program will be carried out in efficient, economic, and impartial manner. Further justification for the rules is found in Minnesota Statutes, section 256B.04, subdivision 4, which states, in part, that the department shall cooperate with the federal government ... "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program ... ". Thus, authority for the rules is derived from both federal and state law. It is through proposing an amendment to these rules and publishing a Notice of Solicitation of Outside Opinion and a Notice of Intent to Adopt a Rule Without a Hearing in the State Register that the public, all interested parties, and all persons affected by the rules are afforded the opportunity to comment upon the procedures and standards the department uses to carry out the mandates.

Rules to administer Minnesota's medical assistance program are necessary because they set out uniform standards which can be objectively applied. Furthermore, these rules inform the public and affected persons of the medical assistance requirements that a provider must meet to receive medical assistance payment for health service to a recipient.

Part 9549.0059, Subpart 2, sets forth the guidelines for conducting semi-annual assessments of residents by nursing homes. The guidelines must be consistent with federal regulations, Minnesota Statutes, and previously promulgated rules governing the administration of the Minnesota Medical Assistance Program.

Historical Perspective

A public hearing was held on March 7, 1985 regarding proposed rules relating to nursing home payment rate determination. As a result of the hearing parts 9549.0010 to 9549.0080 were promulgated. On June 10, 1985 the department adopted the present rules. Part 9549.0050 to 9549.0059 were reserved for a proposed rule to be promulgated at a later date.

On January 7 and 8, 1987, a public hearing was held relating to parts 9549.0050 to.0059. On April 27, 1987 the permanent rules were adopted. Procedures for assessment and classification of residents by the Department of Health in accordance with parts 9549.0050 to 9549.0059 are found in parts 4656.0010 to 4656.0090. The purpose of the rule is to implement a case mix reimbursment system to establish operating cost payment rates for nursing homes based on the condition and needs of the residents in each nursing home. Payment to nursing homes are based on eleven resident classes. Ongoing assessments of residents' needs is required to determine which of the eleven resident classes each resident belongs.

9549.0059, Subp. 2, Semiannual assessments by nursing homes.

The purpose of the semiannual assessments is to assist in setting payment rates for nursing homes participating in the medical assistance program. The amendment to subpart 2C is necessary

because currently the rule requires nursing homes to provide the residents' plans of care at the semiannual assessment. When this part of the rule was promulgated in 1987 the Department believed the residents' plans of care best reflected the residents' current needs. The Department has found that the residents' plans of care are not utilized. The information contained in the plans of care is available in the medical plan of care. Further, residents and nursing homes can request an administrative reconsideration if they disagree with the classification they receive from the department. This proposed amendment would result in a cost savings for both the Department and nursing homes because of the expense involved in mailing, handling and storing the unused documents.

## SMALL BUSINESS CONSIDERATIONS

In preparing this rule amendment, the Department has noted the statutory requirement that when an agency proposes an amendment to an existing rule the impact on small business must be considered. Minn. Stat. § 14.115.

The Department believes this rule falls into the exception in the statute which states that this requirement does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing homes, long term care facilities, providers of medical care, and residential care facilities. Minn. Stat. § 14.115, subd.7(3).

## EXPERT WITNESSES

The Department expects this amendment to be noncontroversial. If this amendment should be heard in public hearing the Department does not intend to have outside expert witnesses testify on its behalf.

2-13-91
Date:

George J. Steffen
for NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

Department of Human Services

Proposed Permanent Rules Relating to Assessment of Nursing Home Residents

Rules as Proposed

9549.0059 RESIDENT ASSESSMENT.

[For text of subpart 1, see M.R.]

Subp. 2. **Semiannual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to D.

[For text of items A and B, see M.R.]

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms~~,~~ ~~the residents' plans of care,~~ and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide additional information to the Department of Health if the Department of Health requests the information in order to determine a resident's classification.

[For text of item D, see M.R.]

[For text of subps 3 to 9, see M.R.]



Approved by Revisor

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Assessment of Nursing Home Residents

**AGENCY:** Department of Human Services

**MINNESOTA RULES:** Chapter 9549

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

In the Matter of the Adoption of the Rule of the State Department of Human Services Governing Assessment of Nursing Home Residents

DECLARATION OF COUNSEL

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

Julie K. Harris 6/4/91
Special Assistant
Attorney General 98-T810-0881

Dated:

**STATE OF MINNESOTA**

**DEPARTMENT OF HUMAN SERVICES**

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Long Term Care Management, Nursing Home Assessments, Minnesota Rules, Part 9549.0059, Subpart 2C

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

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on March 11, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on March 6, 1991. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency. (7) No requests for notice of submission to the attorney general were received by the agency.

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

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

(8) The above-captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Long Term Care Management, Nursing Home Assessment, is adopted this 15th day of April, 1991, pursuant to authority vested in me by Minnesota Statutes, § 256B.04, subdivision 2.

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

6-9-91

P-

While you at it, getting legisl. I'd like copies of the EPB bills the gov. supposedly vetoed → but DFLers say its law.

I dont Know the bill #s, nor how many (I think there was one, but maybe 2)

Could you call Jeanne Olson @ EPB & get the bill ~~#~~ number(s). Then get the bills from the House or Senate

P HF 635
SF

Thanks
Marty

Ethical Practices