

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

1947

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS, MINNESOTA RULES, PARTS 9553.0010 TO 9553.0080.

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Minnesota Rules, Parts 9553.0010 to 9553.0080 establish procedures for determining payment rates for intermediate care facilities for persons with mental retardation or related conditions (hereinafter referred to as ICFs/MR, facilities, or providers) participating in the Medical Assistance program. These rules apply to ICF/MR providers including state operated community-based residential facilities. They do not apply to the State's seven regional treatment centers.

BACKGROUND

Minnesota Rules, Parts 9553.0010 to 9553.0080 were adopted in 1986 and were last amended in April 1988. These proposed amendments were developed through meetings with representatives of the provider industry and the Association of Residential Resources in Minnesota (ARRM), a provider organization, as part of a lawsuit settlement.

As part of the settlement agreement, the Department agreed to initiate rulemaking to implement three noncontroversial rule amendments and to submit a notice of intent to adopt a rule without a public hearing within 30 days of the execution of the settlement agreement.

The settlement agreement also provides that the Department will, within 45 days following the effective date of the settlement agreement, form a rule advisory committee consisting of Department of Human Services staff, providers and representative of other interested groups, to consider other revisions to 9553.0010 to 9553.0080. Amendments stemming from those meetings will involve a separate rulemaking effort, and will not be a part of this rulemaking effort.

STATUTORY AUTHORITY FOR RULE

Statutory authority to promulgate the rule is Minnesota Statutes, section 256B.501.

SMALL BUSINESS CONSIDERATION IN RULEMAKING

Under Minnesota Statutes, section 14.115, subdivision 7, clause (3), the small business consideration in rulemaking does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals,

providers of medical care, day care centers, group homes, and residential care facilities, but not including businesses regulated under chapter 216B or 237. Since the proposed amendments govern payment rates (standards and costs) for intermediate care facilities for persons with mental retardation or related conditions, the requirements under Minnesota Statutes, section 14.115 do not apply to this rule.

IMPACT ON AGRICULTURAL LANDS

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land in this state to comply with additional statutory requirements. The amendments to the rule governing payment rates for intermediate care facilities for persons with mental retardation or related conditions have no impact on agricultural land and, therefore, the additional statutory provisions do not apply.

FISCAL NOTE

The amendments to the rule will <u>not</u> have a fiscal impact on state and local spending of more than $100,000 in either of the first two years following promulgation of the amendments.

RULE AMENDMENTS

PART 9553.0035 DETERMINATION OF ALLOWABLE COSTS

Subp. 8. **Capitalization.** The amendment to this subpart is necessary to authorize the expensing, rather than capitalizing, of assets of $200 or less. For costs incurred after September 30, 1992, a capital asset shall not be capitalized when the unit cost of that capital asset is $200 or less. The date of September 30, 1992, is used because October 1 is the earliest probable date that the rule amendment can be adopted. October 1 is also the beginning of a new rate year.

The amendment to item A is necessary to establish a standard for the expensing, rather than capitalization, of minor equipment on a per unit basis. The proposed standard relieves ICFs/MR from maintaining accounting information on minor equipment acquisitions by allowing the expensing of that equipment. The amendment eliminates the need to keep records on minor equipment purchases for 5 years.

Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, that the Department would propose an amendment to allow for the expensing, rather than capitalization, of assets which cost $200 or less. The standard is reasonable because it establishes a more immediate standard for repayment of minor equipment purchases. An asset expensed can not be capitalized and depreciated. This principle avoids duplications of payment. It is reasonable to allow providers to expense acquisitions of this dollar amount to reduce the expense of accounting for these costs by eliminating the need to keep records on those minor assets for their useful life.

It is reasonable to set a dollar amount for determining whether an asset should be expensed rather than capitalized because the establishment of a dollar figure provides a standard for deciding when to expense or capitalize a capital asset. It is reasonable to use the unit cost of a capital asset because the purchase cost of a unit can be most easily determined. The use of the term "unit cost" clarifies that the standard is to be applied on each individual asset purchase rather than on an aggregate basis. A capital asset must not, however, be broken down into its components in order to be expensed. A repair to another capital asset would not be broken into its component parts; i.e., materials and labor to repair a wall, television, or car, for example. Repairs of this nature to capital assets continue to be governed by subpart 8, item B.

PART 9553.0040 REPORTING BY COST CATEGORY

Subpart 1. **Program Operating Costs**

The amendment to item G is necessary to classify insurance expense for program vehicles as program costs. Disputes have arisen under the existing rule about whether the correct classification of insurance expenses for vehicles used for program purposes is the Administrative category or the Program category. Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, to amend the rule so that insurance expenses for facility owned vehicles may be classified in the Program category to the extent the vehicle is used to transport residents for program purposes.

Vehicle insurance is a necessary cost in the operation of a motor vehicle used to transport residents for program purposes. Therefore, it is reasonable to classify such expenses for facility owned vehicles, to the extent the vehicle is used to transport residents for program purposes, in the Program category and to exclude the insurance expense from the Administrative category.

Subp. 3. Item F. **Administrative operating costs.**

The amendment to item F is necessary to implement the change identified under Subpart 1, item G. Because subpart 1 is being amended to allow insurance expense for program vehicles to be considered a program cost, it is necessary and reasonable to amend this item to include subpart 1 as an exclusion to the language in this item.

PART 9553.0050. DETERMINATION OF TOTAL OPERATING PAYMENT RATE.

Subp. 3. **One time adjustment to program operating cost payment rate.**

The amendment to item A, subitem (2) is necessary to update the code cite to reflect the most current issue of Title 42 of the Code of Federal Regulations, October 1991. Since providers must comply with the Code of Federal Regulations, it is reasonable to cite the most recent year of publication under this subpart.

The amendment to item A, subitem (4) is necessary to update the code cite of Title 42 of the Code of Federal Regulations (CFR) and to correct a citation reference (Title 42 CFR 483.470 (j) rather than section 442.508). The CFR cite governing standards for impractical evacuation capability is now located under 42 CFR 483.470 (j).

The amendment to item D, subitem (4) is necessary to limit to 12 months the period in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance. The new provision will be effective for one time adjustments granted after September 30, 1992. This amendment provides uniformity as to the period of time that an efficiency incentive or capital debt reduction is offset because of an approved one time rate adjustment.

Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, to limit to 12 months the period in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance. At present, the amount of time in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance can vary depending on when the one time rate adjustment is granted. It is reasonable to provide a uniform period in which these offsets occur so there is no incentive or disincentive for implementing a one time rate adjustment at any specific time, and so providers are affected uniformly. This amendment is effective October 1, 1992, because it is the earliest probable date that the rule amendment will be effective. This is necessary in order to avoid a retroactive rule which would sacrifice federal financial participation for the retroactive period. It also coincides with the beginning of a new rate year which will permit the Department to implement the change in its rate setting systems efficiently.

The amendment to item F is necessary to clarify the period of time in which a one time rate adjustment shall remain in effect and to clarify when a fiscal and program review of a one time rate adjustment will be conducted. These amendments clarify that the one time adjustment will be paid for at least a 21 month period and that this period must include one full reporting year. The program and fiscal review will be conducted following the 12 month period which includes a full reporting year (see attachment A). It is necessary to specify the length of time for a one time adjustment so that providers understand how the settle up will work. It is reasonable to include in the review of the one time rate adjustment the period of time beginning with the effective date of the one time adjustment and ending with the 12 month period which includes a full reporting year, rather than 12 months because the full period of time better represents the spending of (costs incurred by) providers. By reviewing the period of time beginning with the effective date of the one time adjustment and ending with the 12 month period which includes a full reporting year, providers will have at least 12 months to adjust their spending to utilize the one time adjustment. Therefore, it is reasonable to base

review of the one time adjustment and settle up on the longer period of time in which the one time adjustment has been in effect.

PART 9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE

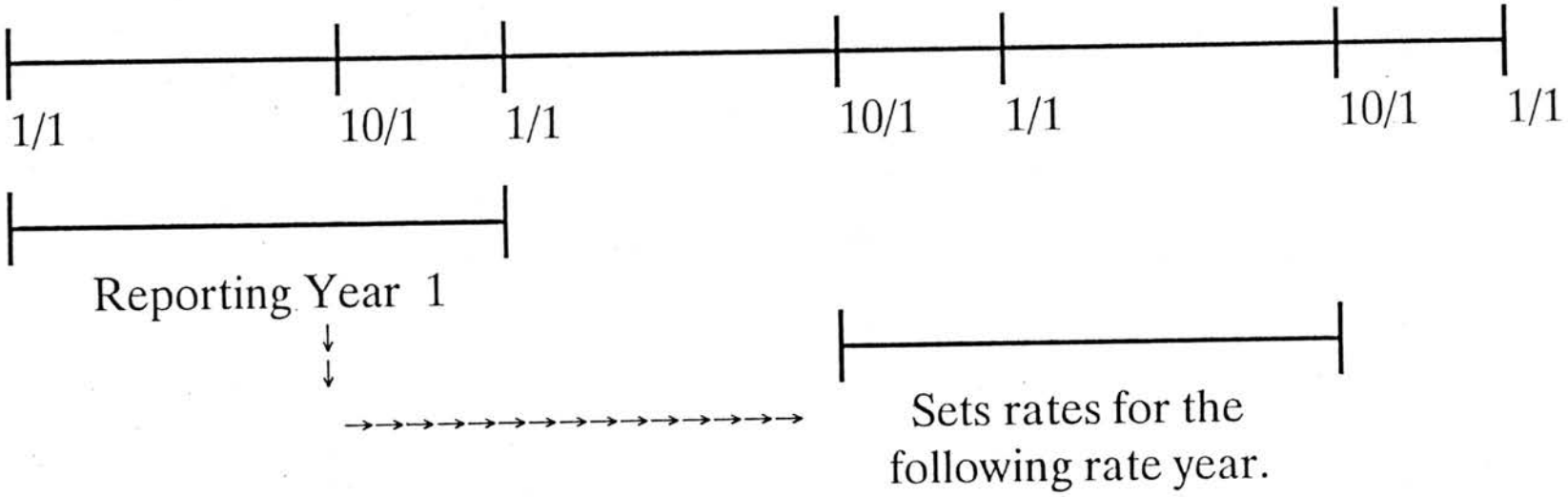
Subpart 1. **Depreciation**

The amendment to item A, subitem (4) simply references the items under part 9553.0035, subpart 8. The amendment is necessary to comply with the language of the lawsuit settlement between the Department of Human Services and representatives of the provider industry. The settlement language states that the Department will amend Minnesota Rules, Part 9553.0060, subp. 1 (1991) to permit the expensing, rather than capitalization, of assets which cost $200 or less. After review of the rule, the Department determined that part 9553.0035, subpart 8, [Capitalization] would be the most appropriate place to amend the rule as dictated by the settlement. Because the settlement language requires amendment of this rule part, language has been added to identify the items under part 9553.0035, subpart 8 which direct the reader to the language that addresses the expensing, rather than capitalization, of assets which cost $200 or less.

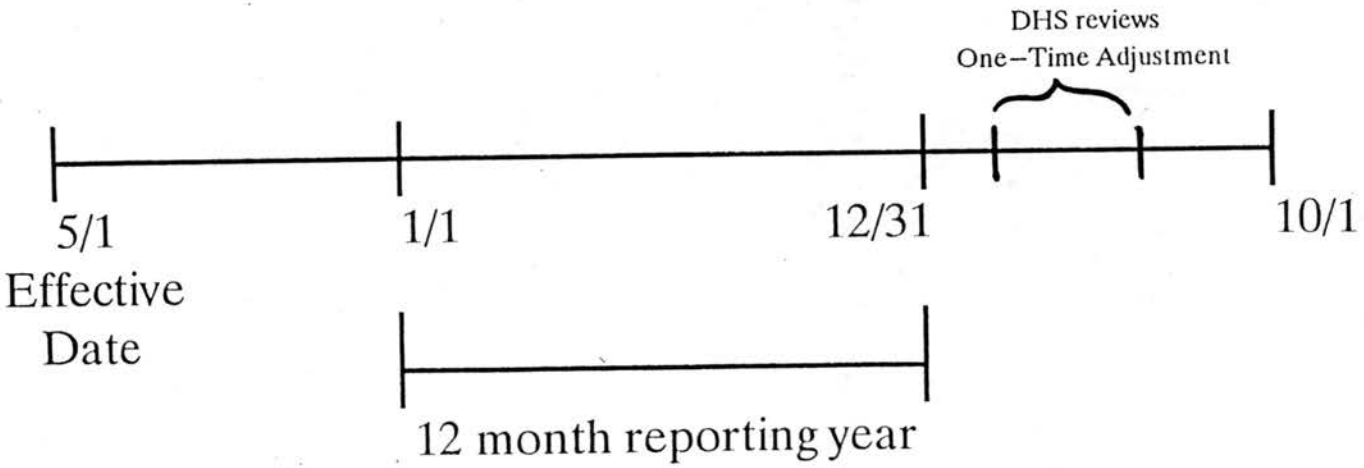
DATE: 6-8-92

George J. Steffen
for NATALIE HAAS STEFFEN
Commissioner

Rule 53 Timeline



Sample One–Time Adjustment Period



AVK
9/11/92

RULE REVIEW CHECKLIST

File No. 1947
DATE RECEIVED 9-8-92
REVIEW DATE 9-17-92
DUE DATE 9-22-92
(DIS)APPROVED 9-18-92
WITHDRAWN _____

Docket No. 05 0009 0881
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 9-11-92
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 9-18-92
RETURNED TO AGENCY 9-18-92

✓ Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ 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.501 Statutory Authority
no statement Small Business Statement
DO but have fiscal note Expenditure of public money statement
June 8, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ have a statement Small Business Statement
_____ Fees - § 16A.128 - different amendment because of settlement language

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
June 17, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
June 22, 1992 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
Sept 3, 1992 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)

Department of Human Services

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

Rules as Adopted

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than $500. For costs incurred after September 30, 1992, a capital asset listed on the depreciation guidelines shall not be capitalized when the unit cost of that capital asset is $200 or less.

[For text of items B to D, see M.R.]

[For text of subps 9 to 16, see M.R.]

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. **Program operating costs.** The direct costs of program functions must be reported in the program operating cost category. These costs include:

[For text of items A to F, see M.R.]

G. the operating costs and vehicle insurance expense of a facility owned vehicle except staff compensation costs, or reimbursement for mileage for use of a personal vehicle, to the extent that the vehicle is used to transport residents for program purposes;

[For text of items H to K, see M.R.]

[For text of subp 2, see M.R.]

Subp. 3. **Administrative operating costs.** The costs listed in this subpart are included in the administrative operating cost category:

[For text of items A to E, see M.R.]

F. insurance except as in subparts 1 and 6;

[For text of items G to V, see M.R.]

[For text of subps 4 to 6, see M.R.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

[For text of subps 1 and 2, see M.R.]

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

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

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

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442, as amended through October 1, 1991, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

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

(4) The commissioner has approved, under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145, a Class A facility's plan to substantially modify the

facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section 483.470(j), as amended through October 1, 1991. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

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

D. The commissioner shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one time adjustment to the program operating cost payment rate in accordance with subitems (1) to (5).

[For text of subitems (1) to (3), see M.R.]

(4) For one time adjustments approved after September 30, 1992, the subtraction described in subitem (3) shall in no event extend beyond one year.

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

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

F. The one time adjustment to the facility's total payment rate shall remain in effect for at least a 21-month period. At the end of the first full reporting year which occurs during the one time adjustment period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

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

(2) If the facility implements the plan specified in item C, subitem (4) and the actual costs incurred during the

one time adjustment period ending with the 12-month period which includes a full reporting year are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

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

[For text of items G and H, see M.R.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

[For text of subitems (1) to (3), see M.R.]

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to part 9553.0035, subpart 8, items A to D, subject to the limitations in subitem (6) and item C, and must be depreciated according to this subpart. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital

asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

[For text of subitems (5) to (7), see M.R.]

[For text of items B to E, see M.R.]

[For text of subps 2 to 7, see M.R.]

APPROVED AS TO FORM AND LEGALITY

9-18 19 92

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Amy V. Kirkseth
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 18 1992

Joan Anderson Growe
Secretary of State

9:15 AM

PB

STATE OF MINNESOTA

Office of the Attorney General

TO : JIM SCHMIDT
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN

DATE : September 18, 1992

FROM : AMY V. KVALSETH AVK
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

The above-referenced rule has been approved as to its legality by the Attorney General on September 18, 1992.

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.

Enclosures
cc: Julie K. Harris
William Brown, Chief Judge
MaryAnn Hruby

AVK:jj.rules.ba9

Stat Authority 256 B. 501

The commissioner shall adopt rules to implement this section. The commissioner shall consult with provider groups, advocates, and legislators to develop these rules.

end of comment period July 22, 1992

left a message with Julie to get billing rate

The Minnesota
State Register

Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 22 June 1992

Volume 16, Number 52

Pages 2765-2972

A. Violations of a minor nature involving willing cooperation to correct the situation and gain compliance must result in a written warning being issued and a personal contact to assure future compliance.

B. Violations of a minor nature but with little or no cooperation on the part of the responsible party or parties must result in a civil penalty of $250.

C. Violations with prior knowledge, of a serious nature, or involving direct defiance of board orders must result in a civil penalty of $500.

D. Repeat violations, extremely severe violations, or direct threats to human health must result in a civil penalty of $1,000 and the county attorney must be contacted in regard to a possible criminal complaint.

1719.4300 REVOCATION OF OR REFUSAL TO ISSUE A PERMIT.

The board shall refuse to issue or shall revoke a permit under this chapter if the plant or trucks are operated in such an unsanitary manner as to endanger the health of domestic animals and fowl of this state or any other state, or if there is a serious or dangerous violation of *Minnesota Statutes*, section 35.82, or a rule adopted by the board under that statute.

1719.4400 NOTICE OF REFUSAL TO ISSUE PERMIT.

A notice of refusal to issue a permit must be in writing stating the reasons for the refusal and must be served personally or mailed by certified letter to the applicant.

1719.4500 NOTICE OF REVOCATION OF PERMIT.

A notice of revocation of permit must be in writing stating reasons for the revocation and must be effective not less than 30 days after service or mailing unless, in the judgment of the board, the health of domestic animals or fowl is endangered, in which case the revocation may be effective upon receipt by the permittee. The notice must be served personally or mailed by certified letter to the permittee at the permittee's last known address.

1719.4600 APPEALS.

Any owner or operator may appeal a refusal of the board to issue a permit or a permit revocation. A notice of appeal must be filed with the board within 30 days of receipt of the notice of refusal to issue a permit or of a revocation. The board shall then promptly set a date for a hearing before a majority of the board or before a hearing officer appointed for that purpose. An appeal does not stay a revocation. The appealing party must be promptly notified in writing of the date set for the hearing. The hearing must be conducted in the manner provided by *Minnesota Statutes*, chapter 14.

REPEALER. *Minnesota Rules*, parts 1720.0010; 1720.0020; 1720.0030; 1720.0040; 1720.0050; 1720.0060; 1720.0070; 1720.0080; 1720.0090; 1720.0100; 1720.0110; 1720.0120; 1720.0130; 1720.0140; 1720.0150; 1720.0160; 1720.0170; 1720.0180; 1720.0190; 1720.0200; 1720.0210; 1720.0220; 1720.0230; 1720.0240; 1720.0250; 1720.0260; 1720.0270; 1720.0280; 1720.0290; 1720.0300; 1720.0310; 1720.0340; 1720.0350; 1720.0360; 1720.0370; 1720.0380; 1720.0390; 1720.0400; 1720.0410; 1720.0420; 1720.0430; 1720.0440; 1720.0450; 1720.0460; 1720.0470; 1720.0480; 1720.0490; 1720.0500; 1720.0510; 1720.0520; 1720.0530; 1720.0540; 1720.0550; 1720.0560; and 1720.0570, are repealed.

Department of Human Services

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

Notice of Intent to Adopt a Rule Without a Public Hearing

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

All persons have 30 days or until 4:30 pm. on July 22, 1992, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Jim Schmidt
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3816
(612) 296-7815

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

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

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road, St. Paul
Minnesota 55155-3816
(612) 296-7454

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.

The proposed amendments will: provide for the expensing, rather than capitalizing, of assets of $200 or less; classify insurance costs for program vehicles as a program cost; and limit to 12 months the period in which the amount paid to a provider for a one-time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance.

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

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop at the address above.

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

Dated: 8 June 1992

Natalie Haas Steffen
Commissioner

Rules as Proposed

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than $500. For costs incurred after September 30, 1992, a capital asset listed on the depreciation guidelines shall not be capitalized when the unit cost of that capital asset is $200 or less.

[For text of items B to D, see M.R.]

[For text of subps 9 to 16, see M.R.]

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.

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. **Program operating costs.** The direct costs of program functions must be reported in the program operating cost category. These costs include:

[For text of items A to F, see M.R.]

G. the operating costs and vehicle insurance expense of a facility owned vehicle except staff compensation costs, or reimbursement for mileage for use of a personal vehicle, to the extent that the vehicle is used to transport residents for program purposes;

[For text of items H to K, see M.R.]

[For text of subp 2, see M.R.]

Subp. 3. **Administrative operating costs.** The costs listed in this subpart are included in the administrative operating cost category:

[For text of items A to E, see M.R.]

F. insurance except as in ~~subpart~~ subparts 1 and 6;

[For text of items G to V, see M.R.]

[For text of subps 4 to 6, see M.R.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

[For text of subps 1 and 2, see M.R.]

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

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

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

(2) The federal government has issued a deficiency order under *Code of Federal Regulations*, title 42, section 442, as amended through October 1, ~~1986~~ 1991, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

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

(4) The commissioner has approved, under *Minnesota Statutes*, section 252.28 and parts 9525.0015 to 9525.0145, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the *Code of Federal Regulations*, title 42, section ~~442.508~~ 483.470(j), as amended through October 1, ~~1986~~ 1991. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

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

D. The commissioner shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one time adjustment to the program operating cost payment rate in accordance with subitems (1) to ~~(4)~~ (5).

[For text of subitems (1) to (3), see M.R.]

(4) For one time adjustments approved after September 30, 1992, the subtraction described in subitem (3) shall in no event extend beyond one year.

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

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

F. The one time adjustment to the facility's total payment rate shall remain in effect for at least a ~~12 month~~ 21-month period. At the end of the ~~12 month~~ first full reporting year which occurs during the one time adjustment period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item C, subitem (4), the commissioner shall recover the total

amount paid under this subpart in accordance with part 9553.0041, subpart 13 and shall disallow any costs incurred by the facility in establishing future payment rates.

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

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

[For text of items G and H, see M.R.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

[For text of subitems (1) to (3), see M.R.]

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to part 9553.0035, subpart 8, items A to D, subject to the limitations in subitem (6) and item C, and must be depreciated according to this subpart. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

[For text of subitems (5) to (7), see M.R.]

[For text of items B to E, see M.R.]

[For text of subps 2 to 7, see M.R.]

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Department of Education

Adopted Permanent Rules Relating to Elementary Staff Preparation Time

Rules as Adopted

3500.1400 ELEMENTARY SCHOOL STAFF.

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.

Department of Human Services

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

Rules as Proposed

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than $500. <u>For costs incurred after September 30, 1992, a capital asset listed on the depreciation guidelines shall not be capitalized when the unit cost of that capital asset is $200 or less.</u>

[For text of items B to D, see M.R.]

[For text of subps 9 to 16, see M.R.]

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. **Program operating costs.** The direct costs of program functions must be reported in the program operating cost category. These costs include:

[For text of items A to F, see M.R.]

G. the operating costs <u>and vehicle insurance expense</u> of a facility owned vehicle except staff compensation costs, or reimbursement for mileage for use of a personal vehicle, to the extent that the vehicle is used to transport residents for program purposes;

[For text of items H to K, see M.R.]

Approved by Revisor

[For text of subp 2, see M.R.]

Subp. 3. **Administrative operating costs.** The costs listed in this subpart are included in the administrative operating cost category:

[For text of items A to E, see M.R.]

F. insurance except as in ~~subpart~~ subparts 1 and 6;

[For text of items G to V, see M.R.]

[For text of subps 4 to 6, see M.R.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

[For text of subps 1 and 2, see M.R.]

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

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

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

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, section 442, as amended through October 1, ~~1986~~ 1991, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

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

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

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by Revisor _____

9525.0145, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section ~~442.508~~ 483.470(j), as amended through October 1, ~~1986~~ 1991. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

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

D. The commissioner shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one time adjustment to the program operating cost payment rate in accordance with subitems (1) to ~~(4)~~ (5).

[For text of subitems (1) to (3), see M.R.]

(4) For one time adjustments approved after September 30, 1992, the subtraction described in subitem (3) shall in no event extend beyond one year.

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

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

F. The one time adjustment to the facility's total payment rate shall remain in effect for at least a ~~12-month~~ 21-month period. At the end of the ~~12-month~~ first full reporting year which occurs during the one time adjustment period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

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

(2) If the facility implements the plan specified

Approved by Revisor _____

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

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

[For text of items G and H, see M.R.]

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

[For text of subitems (1) to (3), see M.R.]

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to part 9553.0035, subpart 8, items A to D, subject to the limitations in subitem (6) and item C, and must be depreciated according to this subpart. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred

Approved
by Revisor _____

without regard to when during that reporting year the capital asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

[For text of subitems (5) to (7), see M.R.]

[For text of items B to E, see M.R.]

[For text of subps 2 to 7, see M.R.]

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

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

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9553

The attached rules are approved for publication in the State Register

Sandra Glass-Sirany
Assistant Revisor

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 Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Minnesota Rules, parts 9553.0010 to 9553.0080

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:

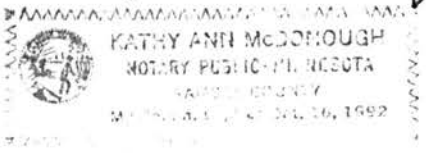
I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 17th day of June, 1992.

That on the 17th day of June, 1992, 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 17th day of June, 1992.

Kathy Ann McDonough



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 Payment Rates For Intermediate Care Facilities For Persons With Mental Retardation or Related Conditions, Minnesota Rules, Part 9553.0010 to 9553.0080

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

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

All persons have 30 days or until 4:30 p.m. on July 22, 1992, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Jim Schmidt
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3816
(612) 296-7815.

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

A free copy of the rule is available upon request from:
Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road, St. Paul
Minnesota 55155-3816
(612) 296-7454.

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.

The proposed amendments will: provide for the expensing, rather than capitalizing, of assets of $200 or less; classify insurance costs for program vehicles as a program cost; and limit to 12 months the period in which the amount paid to a provider for a one-time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Bishop at the address above upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop at the address above.

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

Date: 6-8-92

George J. Steffen

NATALIE HAAS STEFFEN
Commissioner

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 Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Minnesota Rules, parts 9553.0010 to 9553.0080

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 17th day of June, 1992, 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

Nancy L. Bishop

Subscribed and sworn to before me

this 17th day of June, 1992

Kathy Ann McDonough

KATHY ANN McDONOUGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 16, 1992

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 Payment Rates For Intermediate Care Facilities For Persons With Mental Retardation or Related Conditions, Minnesota Rules, Part 9553.0010 to 9553.0080

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

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

All persons have 30 days or until 4:30 p.m. on July 22, 1992, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

A free copy of the rule is available upon request from:
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Department of Human Services
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(612) 296-7454.

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.

The proposed amendments will: provide for the expensing, rather than capitalizing, of assets of $200 or less; classify insurance costs for program vehicles as a program cost; and limit to 12 months the period in which the amount paid to a provider for a one-time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Bishop at the address above upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop at the address above.

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

Date: 6-8-92

George J. Steffen

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Payment Rates For Intermediate Care Facilities For Persons With Mental Retardation or Related Conditions, Minnesota Rules, Parts 9553.0010 to 9553.0080

FISCAL NOTE

I. ESTIMATED COSTS

	State	County
FY 1993	$ 0	$ 0
FY 1994	$ 48,100	$ 5,300
FY 1995	$ 79,000	$ 8,800
TOTAL	$ 127,100	$ 14,100

II. BACKGROUND INFORMATION ON THE RULE

1. PURPOSE OF THE RULE. The purpose of the rule is to implement changes to Minnesota Rules, parts 9553.0010 to 9553.0080.

2. STATUTORY AUTHORITY.

Statutory authority to promulgate the rule is provided under Minnesota Statutes, section 256B.501.

3. REASON FOR RULE.

The rule amendments are necessary to comply with the terms of the partial settlement agreement signed by the Department and the Association of Residential Resources in Minnesota (ARRM).

III. METHODOLOGY FOR ESTIMATING COSTS

Exhibits A and B contain the Department's estimate of the fiscal impact on the State's Medical Assistance budget. Exhibit A details the computations and assumptions used to determine the approximate annual cost of each proposed amendment. Exhibit B converts this annual cost to both state fiscal year and state share for the Medical Assistance.

1. Part 9553.0040, Subp. 1. Program operating costs.

Vehicle insurance as a program cost: Of the three proposed rule amendments, two were determined to have a predictable impact on the State's Medical Assistance budget. The amendment relating to the inclusion of vehicle insurance with those operating costs permitted to be program costs was determined to have no fiscal impact. The reason

for this is that the amendment is consistent with a recent contested case decision.

2. Part 9553.0035, Subp. 8. Capitalization.

This amendment permits capital assets under $200 to be expensed in the year of purchase rather than capitalized and depreciated over its useful life as is currently required. There are approximately 325 facilities that will be filing cost reports annually. No precise data on the number of purchases under $200 exist. Also, provider behavior is likely to change since this change will permit a more immediate recovery of such expenditures (i.e., over the next rate year following the reporting year of occurrence).

In determining the expected annual cost of the change, the Department estimated there would annually be on average 10 purchases of $150 each per facility. The fiscal note is based on capital assets purchases after September 30, 1992. Therefore, one-fourth of the estimated annual cost was used in the determination of the state fiscal impact in FY 1994. Inflation is assumed to be 5 percent per year to account for increases in the cost of capital assets. Also, since these costs will be included in the maintenance cost category, only facilities with efficiency incentives near or above the $2.00 maximum will receive a rate effect. That proportion is approximately 25 percent.

3. Part 9553.0050, Subp. 3. One time adjustment to program cost payment rate.

This change will limit the offset of incentives and allowances to 12 months for new one time adjustment granted after September 30, 1992. Based on review of Department records, it was determined that between 25 and 45 facilities apply for and receive one time adjustments annually. For purposes of this fiscal note, the Department estimated 35 facilities. It was also estimated that the average offset of allowance was $1.25 per resident day, and that the average facility capacity was 9 beds. Under current rules, the minimum and maximum offset period is 21 and 32 months respectively. Therefore, the average number of months for which the offset will no longer occur is 14.5 months. Assuming a month of 30 days, this means that 435 days on average will be the number of days of lost offset.

See Exhibits A and B attached for detailed fiscal estimates.

DATED: 6-8-92

George J. Steffen

NATALIE HAAS STEFFEN
for Commissioner

EXHIBIT A

FISCAL NOTE FOR RULE 53 AMENDMENTS

1) CHANGE IN CAPITALIZATIONS - UNDER $200Ø

ESTIMATED # OF FACILITIES	=	325
AVG. # OF PURCHASES @ $200 or LESS	=	1Ø
AVG. PURCHASE PRICE PER PURCHASE	=	$15Ø
PROJECTED ANNUAL COST	=	$487,5ØØ
FACTOR COST FOR MAX. E/I (#3)	=	$121,875
ANNUAL DEPR. - USEFULL LIFE=5YRS	=	$97,5ØØ
NET ANNUAL COST	=	$24,375

ASSUMPTIONS: 1) ONLY 25 PERCENT OF FIRST YEAR COST WILL BE IN RATES EFFECTIVE 1Ø/1/93.
2) DEPRECIATION IS CURRENTLY REIMBURSED SO IT NEEDS TO BE DEDUCTED.
3) CURRENT PROPORTION OF FACILITIES RECEIVING THE MAXIMUM E/I = 25.Ø%
4) ASSUMED AN INFLATION RATE OF 5 PERCENT.

2) E/I AND CDRA OFFSET LIMITED TO 1 YEAR

EST. # OF FAC. WITH ONE-TIME ADJS.	=	35		MONTHS	
AVG. E/I & CDRA OFFSET (PER DIEM)	=	$1.25		MIN (21-12)=	9
AVG. # OF DAYS OF OFFSET LOST	=	435	=	MAX (32-12)=	2Ø
AVG. FACILITY SIZE (# OF BEDS)	=	9			
NET ANNUAL COST	=	$171,281		29 / 2	14.5
				X 3ØDAYS/MONTH	435

ASSUMPTIONS:
1) NO COST TO MA FOR FIRST 12 MONTHS AFTER EFFECTIVE DATE.
2) BETWEEN 25 TO 45 FACILITIES RECEIVE ONE-TIME ADJ'S ANNUALLY.
3) OFFSETS ESTIMATED TO BE $1.25.
4) ASSUMED NO INFLATION ON THIS AMENDMENT.
5) ESTIMATED THE AVERAGE FACILITY SIZE TO BE 9 BEDS.

3) PROGRAM VEHICLE OPERATING COST INCLUDES INSURANCE

SINCE RECENT COURT CASE AGREES WITH THE PROPOSED AMENDMENT, THE ANNUAL COST IS ESTIMATED TO BE = $Ø

EXHIBIT B

FISCAL NOTE FOR RULE 53 AMENDMENTS

TOPIC:
1) CHANGE IN CAPITALIZATIONS - UNDER $200
2) E/I AND CDRA OFFSET LIMITED TO 1 YEAR
3) PROGRAM VEHICLE OPERATING COST INCLUDES INSURANCE

	F.Y. 1992	F.Y. 1993	F.Y. 1994	F.Y. 1995
MA GRANTS ADMINISTRATIVE COST	$0	$0	$53,451	$87,681

EXPLANATIONS AND COMPUTATIONS:

MA PERCENTAGES

	F.Y. 1992	F.Y. 1993	F.Y. 1994	F.Y. 1995
STATE SHARE	41.24%	41.17%	41.02%	41.67%
COUNTY SHARE	4.58%	4.57%	4.56%	4.63%
FEDERAL SHARE	54.18%	54.26%	54.43%	53.70%

MA COSTS AND ALLOCATIONS

	F.Y. 1992	F.Y. 1993	F.Y. 1994	F.Y. 1995
STATE SHARE	$0	$0	$48,104	$78,913
COUNTY SHARE	$0	$0	$5,347	$8,768
FEDERAL SHARE	$0	$0	$63,829	$101,695
STATE BUDGET	$0	$0	$53,451	$87,681

MA ANNUAL COST/SAVINGS			EST. ANNUAL INFLATION
	FY 1992	= $0	N/A
	FY 1993	= $0	N/A
	FY 1994	= $117,269	5.0%
	FY 1995	= $189,376	5.0%

MA OCCUPANCY PERCENTAGE = 99.0%

EST. ANNUAL COST - CHANGE 1) = $24,375
CHANGE 2) = $171,281
CHANGE 3) = $0

		PERCENT MONTHS IN PERIOD *		
		FY 1993	FY 1994	FY 1995
EFFECTIVE DATES	(RATE EFFECT) = 10/1/93 *	0.00%	66.67%	100.00%

* PLUS ONE MONTH FOR PAYMENT DELAY

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 Payment Rates For Intermediate Care Facilities for Persons With Mental Retardation or Related Conditions, Minnesota Rules, Parts 9553.0035, 9553.0040, 9553.0050, and 9553.0060	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 June 22, 1992 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 June 17, 1992. (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. No requests for notice of submission to the attorney general were received by the agency. (7)

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

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as Payment Rates For Intermediate Care Facilities for Persons With Mental Retardation or Related Conditions, is adopted this 3rd day of September, 1992, pursuant to authority vested in me by Minnesota Statutes, section 256B.501.

(9)

for NATALIE HAAS STEFFEN
Commissioner

CARLTON COUNTY HUMAN SERVICES CENTER

1215 AVENUE C • CLOQUET, MINNESOTA 55720

Telephone 218-879-4583
1-800-642-9082

W. Pinsonnault, Director

TO: Jim Schmidt
Rules & Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

FROM: Russ Rowenhorst
Carlton County Social Service Supervisor

DATE: July 6, 1992

RE: Comments - Payment rates for ICF/MR facilities

Benefits

- expedite reimbursing in comparison to past
- should be less financial hardship to vendors
- vehicle insurance included - is step in the right direction, it is a program cost because there is more focus on "getting into the community"
- 21 month vs. 12 month time adjustment will indicate more clearly longer term financial needs and reduce cash flow concerns

Disadvantage

- 21 months could be too long to adjust rate if initially set to low, depends on vendor and DHS

Summary

- Overall supported

William K. Pinsonnault
Director of Human Services

WKP:db

In the Matter of the Adoption of the Rule of the State Department of Human Services Relating to Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9553.0035, 9553.0040, 9553.0050, and 9553.0060

DECLARATION OF COUNSEL

I, Julie K. 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 ~~4040~~ 0881 ANK.

Dated: 8/28/92

Julie K. Harris
Special Assistant
Attorney General

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

June 17, 1992

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness governing Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Minnesota Rules, parts 9553.0010 to 9553.0080.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 296-7815.

Sincerely,

Jim Schmidt

Jim Schmidt
Rules and Bulletins Division

Encl.