

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

10 Working days
Emergency Rule

MJM
1-4-93

RULE REVIEW CHECKLIST

File No. 1989
DATE RECEIVED 12-30-92
REVIEW DATE
DUE DATE 1-14-93
(DIS)APPROVED 1-11-93
WITHDRAWN

Docket No. 05 0009 1300
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 1/4/93
REVISOR (DIS)APPROVED 1-5-93
FILED W/SEC. OF STATE 1-11-93
RETURNED TO AGENCY 1-11-93

✓ 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
1992 Laws Chap 513 Statutory Authority Article 7, section 2, subd 2
no statement Small Business Statement
Statement Intident't appl Expenditure of public money statement
11-3-92 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
November 5, 1992 Dated 30/25 days before adoption
___ Notice attached indicates it is attached
___ Copy of rule or summary attached

✓ Publication in State Register
November 9, 1992 Date 30/25 days before adoption

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

___ Resolution Adopting
___ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
December 29, 1992 Date

___ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Dick Wefler Name of SAAG representing agency

___ Notice of Submission to Attorney General (if applicable)

___ Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA

Office of the Attorney General

TO : ANNE KANE
Minnesota Department of Health
Division of Health Resources
393 North Dunlap Street
St. Paul, MN

DATE : January 11, 1993

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Emergency Rule Relating to Nursing Home and Certified Boarding Care Home Construction Projects

The above-referenced rule has been approved as to its legality by the Attorney General on January 11, 1993.

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: Richard A. Wexler
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.rules.bf7

Department of Health

Adopted Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects

Rules as Adopted

4655.1100 [Emergency] SCOPE.

Parts 4655.1100 to 4655.1150 [Emergency] govern the process for the commissioner of health's approval of nursing home and certified boarding care home construction projects according to Minnesota Statutes, section 144A.071, subdivision 2.

4655.1110 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4655.1100 to 4655.1150 [Emergency], the terms in subparts 2 to 16 have the meanings given them.

Subp. 2. **Appraised value.** "Appraised value" has the meaning given it in part 9549.0020, subpart 5.

Subp. 3. **Attached fixtures.** "Attached fixtures" has the meaning given it in part 9549.0020, subpart 6.

Subp. ~~3.~~ 4. **Attached hospital.** "Attached hospital" means a hospital that is under common ownership and operation with a nursing home or certified boarding care home and shares with that facility the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

Subp. ~~4.~~ 5. **Buildings.** "Buildings" has the meaning given it in part 9549.0020, subpart 7.

Subp. ~~5.~~ 6. **Capital assets.** "Capital assets" has the meaning given it in Minnesota Statutes, section 256B.421, subdivision 16.

Subp. ~~6.~~ 7. **Certified boarding care home.** "Certified boarding care home" means a facility licensed under parts 4655.0090 to 4655.1060 and 4655.1200 to 4655.9900, and certified to participate in medical assistance under United States Code, title 42, sections 1396 to 1396p as amended through July 18,

Approved by Revisor MEO

1984.

Subp. ~~7.~~ 8. **Commissioner.** "Commissioner" means the commissioner of the Department of Health or the commissioner's representative.

Subp. ~~8.~~ 9. **Completion date.** "Completion date" means the date on which a certificate of occupancy is issued for a construction project, or if a certificate of occupancy is not required, the date on which the construction project is available for facility use.

Subp. ~~9.~~ 10. **Construction project.** "Construction project" means:

A. A capital asset addition to, or replacement of, a nursing home or certified boarding care home that results in new space or the remodeling of or renovations to existing facility space.

B. The remodeling or renovation of existing facility space the use of which ~~use~~ is modified as a result of the project described in item A. This existing space must be ~~usable~~ used for its intended function as designated on the construction plans on completion of the project described in item A.

C. Capital asset additions or replacements that ~~have occurred or will~~ occur within 12 months ~~of~~ before or after the completion date of the project described in item A.

D. Additions, replacements, renovations, or remodeling projects or portions of projects that ~~are considered a phased project with a completion date~~, despite occurring more than 12 months before or after the completion date of ~~the~~ a construction project ~~described in item A~~, are considered phased projects.

Subp. ~~10.~~ 11. **Hospital.** "Hospital" means an acute care institution licensed under Minnesota Statutes, sections 144.50 to 144.58.

Subp. ~~11.~~ 12. **Land improvement.** "Land improvement" has the meaning given it in part 9549.0020, subpart 28.

Subp. ~~12.~~ 13. **Licensee.** "Licensee" has the meaning given it in part 4655.0100, subpart 7.

Approved
by Revisor _____

Subp. ~~13.~~ 14. **Nursing home.** "Nursing home" means a facility licensed according to Minnesota Statutes, chapter 144A.

Subp. ~~14.~~ 15. **Phased project.** "Phased project" means ~~a construction project where~~ additions, replacements, renovations, or remodeling projects, or portions of those projects that are completed more than 12 months before or after each other and:

A. that are included in a single construction contract ~~was~~ entered into by the facility unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision;

B. ~~the subdivisions of the total project have~~ which are additions to a contiguous or common foundation, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision; or

C. ~~the intended function of project space added, replaced, renovated, or remodeled must be completed to its~~ whose intended function ~~and must not be~~ as designated on the construction plans is dependent on future capital asset ~~additions or replacements~~ expenditures of that or other facility space, unless those future capital asset additions or replacements occur more than 36 months after the completion date of that construction project.

A phased project is eligible for reimbursement if the total cost of the aggregate of all phases does not exceed the maximum threshold specified in Minnesota Statutes, section 144A.071, subdivision 2. If the total project construction costs of the aggregate of all phases exceeds the maximum threshold, only those project construction costs up to the maximum threshold are eligible for reimbursement.

Subp. ~~15.~~ 16. **Project construction costs.** "Project construction costs" means the cost of the facility capital asset additions, replacements, renovations, or remodeling projects; construction site preparation costs; and related soft costs. Project construction costs also include the costs of remodeling or renovation of existing facility space modified as a result of the construction project.

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Subp. ~~16.~~ 17. **Soft costs.** "Soft costs" means costs capitalized as part of the project relating to implementation of the proposal, including:

A. sales taxes on materials;

B. contractor's overhead and profit;

C. architect and engineering fees;

D. construction period interest;

E. permits, zoning, and construction financing;

F. feasibility, economic, and demographic studies;

G. legal, accounting, and consulting fees relating to creation of the development; and

H. cost of designing the improvements.

4655.1120 [Emergency] SUBMISSION OF COST INFORMATION.

Before approval of final construction plans for a nursing home or certified boarding care home construction project, the licensee shall submit to the commissioner an itemized statement of the project construction costs.

If the construction project includes a capital asset addition, replacement, remodeling, or renovation of space such as hospital, apartments, or shared or common areas, the facility must submit to the commissioner an allocation of capital asset costs, soft costs, and debt information prepared according to parts 9549.0010 to 9549.0080.

If the construction project is anticipated to be completed in phases, the project construction cost information submitted under this part shall include the costs for all phases of the project.

Project construction cost estimates shall be prepared by a contractor or architect and other participants in the development of the project.

4655.1130 [Emergency] REIMBURSEMENT LIMITS.

The acceptance or determination of project construction costs under parts 4655.1100 to 4655.1150 [Emergency] is not binding for reimbursement. Actual reimbursement of these costs is determined according to parts 9549.0010 to 9549.0080 and

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by Revisor _____

Minnesota Statutes, section 256B.431.

4655.1140 [Emergency] CONSTRUCTION PROJECT APPROVAL.

The commissioner shall not approve a construction project where costs exceed $500,000, or 25 percent of the nursing home's or certified boarding care home's appraised value, whichever is less, unless the project meets the exemption requirements in Minnesota Statutes, section 144A.071, subdivision 2. This approval is in addition to the approvals of construction plans and specifications required under chapter 4660.

4655.1150 [Emergency] FINAL APPROVAL.

Before conducting the final inspection of the construction project required by part 4660.0100 and issuing final clearances for use, the licensee shall provide to the commissioner the total project construction costs of the construction project, or that phase of the construction project. If total costs are not available, the most recent cost figures shall be provided. Final cost figures shall be submitted to the commissioner when available. The commissioner shall provide a copy of this information to the Department of Human Services.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Jan 11 1993

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 11 1993

Joan Anderson Growe 11:25 AM

Secretary of State RA

between a supervising licensed psychologist and a supervised psychological practitioner must occur on a one-to-one basis at a ratio of at least one hour of supervision for the initial 20 or fewer hours of psychological services delivered per month and no less than one hour a month. The consultation must be at least one hour in duration. For each additional 20 hours of psychological services delivered per month, an additional hour of supervision must occur. However, if more than 20 hours of psychological services are provided in a week, no time period of supervision beyond one hour per week is required, but supervision must be adequate to assure the quality and competence of the services. Supervisory consultation must include discussions on the nature and content of the practice of the psychological practitioner, including but not limited to a review of a representative sample of psychological services in the supervisee's practice.

(b) Supervision of an applicant for licensure as a licensed psychologist must include at least two hours of regularly scheduled face-to-face consultations a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis. The remaining hour may be with other mental health professionals designated by the supervisor. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for persons preparing for licensure on a part-time basis.

Sec. 33. Minnesota Statutes 1991 Supplement, section 148.925, is amended by adding a subdivision to read:

Subd. 3. **WAIVER.** An applicant for licensure as a licensed psychologist who entered supervised employment before August 1, 1991, may request a waiver from the board of the supervision requirements in this section.

Sec. 34. **CONSOLIDATION OF REGULATION OF HOME CARE SERVICES AND RESIDENTIAL CARE HOMES.**

The commissioner of health, in consultation with the commissioner of human services, shall submit a report to the legislature by November 1, 1992, on the advisability and feasibility of consolidating licensure and regulation of home care services and residential care homes into one activity with the goal of avoiding contradictory or duplicative regulation and allowing flexibility for creative service development by regulating services rather than institutions. If the commissioner determines that consolidation of the two systems is feasible and desirable, the commissioner shall submit recommendations for changes in laws and regulations that are necessary to consolidate the systems. In developing the report and recommendations, the commissioner shall consider methods of enforcing physical plant and fire safety standards that are appropriate to congregate living settings and that reflect the needs and characteristics of different populations served in residential care homes. The commissioner shall also consider the need to modify home care rules to allow a social model for providing services as an alternative to a medical model for certain supportive services provided in residential care homes and home care settings. The commissioner of health shall consult with the commissioner of human services regarding the impact of changes on costs and payment mechanisms.

Sec. 35. **EFFECTIVE DATES.**

Sections 1, 2, and 3 are effective July 1, 1993. The remaining sections are effective the day following final enactment.

ARTICLE 7

MEDICAL PROGRAMS

Section 1. **[144.0505] COOPERATION WITH COMMISSIONER OF HUMAN SERVICES.**

The commissioner shall promptly provide to the commissioner of human services upon request information on hospital revenues, nursing home licensure, and health maintenance organization revenues specifically required by the commissioner of human services to operate the provider surcharge program.

Sec. 2. Minnesota Statutes 1990, section 144A.071, subdivision 2, is amended to read:

Subd. 2. **MORATORIUM.** The commissioner of health, in coordination with the commissioner of human services, shall deny each request by a nursing home or boarding care home, except an intermediate care facility for the mentally retarded, for addition of new certified beds or for a change or changes in the certification status of existing beds except as provided in subdivision 3. The total number of certified beds in the state shall remain at or decrease from the number of beds certified on May 23, 1983, except as allowed under subdivision 3. "Certified bed" means a nursing home bed or a boarding care bed certified by the commissioner of health for the purposes of the medical assistance program, under United States Code, title 42, sections 1396 et seq.

The commissioner of human services, in coordination with the commissioner of health, shall deny any request to issue a license under sections 245A.01 to 245A.16 and 252.28 to a nursing home or boarding care home, if that license would result in an increase in the medical assistance reimbursement amount. The commissioner of health shall deny each request for licensure of nursing home beds except as provided in subdivision 3.

In addition, the commissioner of health must not approve any construction project whose cost exceeds $500,000, or 25 percent of the facility's appraised value, whichever is less, unless the project:

(1) has been approved through the process described in section 144A.073;

(2) meets an exception in subdivision 3;

(3) is necessary to correct violations of state or federal law issued by the commissioner of health;

(4) is necessary to repair or replace a portion of the facility that was destroyed by fire, lightning, or other hazards provided that the provisions of subdivision 3, clause (g), are met; or

(5) as of May 1, 1992, the facility has submitted to the commissioner of health written documentation evidencing that the facility meets the "commenced construction" definition as specified in subdivision 3, clause (b), or that substantial steps have been taken prior to April 1, 1992, relating to the construction project. "Substantial steps" require that the facility has made arrangements with outside parties relating to the construction project and include the hiring of an architect or construction firm, submission of preliminary plans to the department of health or documentation from a financial institution that financing arrangements for the construction project have been made.

Prior to the approval of any construction project, the commissioner of health shall be provided with an itemized cost estimate for the construction project. If a construction project is anticipated to be completed in phases, the total estimated cost of all phases of the project shall be submitted to the commissioner and shall be considered as one construction project. Once the construction project is completed and prior to the final clearance by the commissioner, the total actual costs for the construction project shall be submitted to the commissioner. If the final construction cost exceeds the threshold in this subdivision, the commissioner of human services shall not recognize any of the construction costs or the related financing costs in excess of this threshold in establishing the facility's property-related payment rate.

The commissioner of health shall adopt emergency or permanent rules to implement this section or to amend the emergency rules for granting exceptions to the moratorium on nursing homes under section 144A.073. The authority to adopt emergency rules continues to December 30, 1992.

Sec. 3. Minnesota Statutes 1991 Supplement, section 144A.071, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS.** The commissioner of health, in coordination with the commissioner of human services, may approve the addition of a new certified bed or the addition of a new licensed nursing home bed, under the following conditions:

(a) to replace a bed decertified after May 23, 1983, or to address an extreme hardship situation, in a particular county that, together with all contiguous Minnesota counties, has fewer nursing home beds per 1,000 elderly than the number that is ten percent higher than the national average of nursing home beds per 1,000 elderly individuals. For the purposes of this section, the national average of nursing home beds shall be the most recent figure that can be supplied by the federal health care financing administration and the number of elderly in the county or the nation shall be determined by the most recent federal census or the most recent estimate of the state demographer as of July 1, of each year of persons age 65 and older, whichever is the most recent at the time of the request

for replacement. In allowing replacement of a decertified bed, the commissioners shall ensure that the number of added or recertified beds does not exceed the total number of decertified beds in the state in that level of care. An extreme hardship situation can only be found after the county documents the existence of unmet medical needs that cannot be addressed by any other alternatives;

(b) to certify a new bed in a facility that commenced construction before May 23, 1983. For the purposes of this section, "commenced construction" means that all of the following conditions were met: the final working drawings and specifications were approved by the commissioner of health; the construction contracts were let; a timely construction schedule was developed, stipulating dates for beginning, achieving various stages, and completing construction; and all zoning and building permits were secured;

(c) to certify beds in a new nursing home that is needed in order to meet the special dietary needs of its residents, if: the nursing home proves to the commissioner's satisfaction that the needs of its residents cannot otherwise be met; elements of the special diet are not available through most food distributors; and proper preparation of the special diet requires incurring various operating expenses, including extra food preparation or serving items, not incurred to a similar extent by most nursing homes;

(d) to license a new nursing home bed in a facility that meets one of the exceptions contained in clauses (a) to (c);

(e) to license nursing home beds in a facility that has submitted either a completed licensure application or a written request for licensure to the commissioner before March 1, 1985, and has either commenced any required construction as defined in clause (b) before May 1, 1985, or has, before May 1, 1985, received from the commissioner approval of plans for phased-in construction and written authorization to begin construction on a phased-in basis. For the purpose of this clause, "construction" means any erection, building, alteration, reconstruction, modernization, or improvement necessary to comply with the nursing home licensure rules;

(f) to certify or license new beds in a new facility that is to be operated by the commissioner of veterans' affairs or when the costs of constructing and operating the new beds are to be reimbursed by the commissioner of veterans' affairs or the United States Veterans Administration;

(g) to license or certify beds in a new facility constructed to replace a facility that was destroyed after June 30, 1987, by fire, lightning, or other hazard provided:

(1) destruction was not caused by the intentional act of or at the direction of a controlling person of the facility;

(2) at the time the facility was destroyed the controlling persons of the facility maintained insurance coverage for the type of hazard that occurred in an amount that a reasonable person would conclude was adequate;

The revisor of statutes shall change the headnote in Minnesota Statutes, section 256B.495, from "LONG-TERM CARE RECEIVERSHIP FEES" to "NURSING FACILITY RECEIVERSHIP FEES." The revisor shall change the term "nursing home" and similar terms to "nursing facility" and similar terms in Minnesota Statutes, sections 256B.41, 256B.411, 256B.421, 256B.431, 256B.432, 256B.433, 256B.47, 256B.48, and 256B.50.

Sec. 137. **EFFECTIVE DATES.**

Section 39 is effective January 1, 1993.

Section 60 is effective the day following final enactment.

Sections 9, 15, 16, 18 to 21, 25, 27, 46, 82, 123, and 124 are effective October 1, 1992.

Section 42 is effective July 1, 1992, and applies to transfers or payments made on or after that date.

Section 130 is not effective in the event that the health right program is not enacted into law prior to October 1, 1992. In the event the health right program is not enacted into law prior to October 1, 1992, the percentage increase in reimbursement rates scheduled to be effective October 1, 1992, and provided for in section 131 shall not be effective, and the commissioner shall implement, effective October 1, 1992, the rate increases provided in Minnesota Statutes, section 256B.74, subdivision 2 and 5.

Section 28 is effective for admissions occurring on or after October 1, 1992.

The provisions of section 44 relating to prior authorization of drugs are effective for all drugs added to the list of drugs requiring prior authorization on or after July 1, 1992.

ARTICLE 8

ASSISTANCE PAYMENTS

Section 1. **[149.10] CREMATION; UNCLAIMED REMAINS.**

Any funeral director, or other person or establishment licensed under this chapter, may arrange for proper disposal after one year of cremains unclaimed by family or next of kin.

Sec. 2. Minnesota Statutes 1991 Supplement, section 256.031, subdivision 3, is amended to read:

Subd. 3. **AUTHORIZATION FOR THE DEMONSTRATION.** (a) The commissioner of human services, in consultation with the commissioners of

education, finance, jobs and training, health, and planning, and the director of the higher education coordinating board, is authorized to proceed with the planning and designing of the Minnesota family investment plan and to implement the plan to test policies, methods, and cost impact on an experimental basis by using field trials. The commissioner, under the authority in section 256.01, subdivision 2, shall implement the plan according to sections 256.031 to 256.0361 and Public Law Numbers 101-202 and 101-239, section 8015, as amended. If major and unpredicted costs to the program occur, the commissioner may take corrective action consistent with Public Law Numbers 101-202 and 101-239, which may include termination of the program. Before taking such corrective action, the commissioner shall consult with the chairs of the senate health and human services committee, the house health and human services committee, the health and human services division of the senate finance committee and the human resources division of the house appropriations committee, or, if the legislature is not in session, consult with the legislative advisory commission.

(b) The field trials shall be conducted as permitted under federal law, for as many years as necessary, and in different geographical settings, to provide reliable instruction about the desirability of expanding the program statewide.

(c) The commissioner shall select the counties which shall serve as field trial or ~~control~~ comparison sites based on criteria which ensure reliable evaluation of the program.

(d) The commissioner is authorized to determine the number of families and characteristics of subgroups to be included in the evaluation.

(i) A family that applies for or is currently receiving financial assistance from aid to families with dependent children; family general assistance or work readiness; or food stamps may be tested for eligibility for aid to families with dependent children or family general assistance and may be assigned by the commissioner to ~~an experimental~~ a test or a ~~control~~ comparison group for the purposes of evaluating the family investment plan. A family found not eligible for aid to families with dependent children or family general assistance will be tested for eligibility for the food stamp program. If found eligible for the food stamp program, the commissioner may randomly assign the family to a test group, comparison group, or neither group. Families assigned to ~~an experimental~~ a test group receive benefits and services through the family investment plan. Families assigned to a ~~control~~ comparison group receive benefits and services through existing programs. A family may not select the group to which it is assigned. Once assigned to a group, ~~a~~ an eligible family must remain in that group for the duration of the project.

(ii) To evaluate the effectiveness of the family investment plan, the commissioner may designate a subgroup of families from the ~~experimental~~ test group who shall be exempt from section 256.035, subdivision 1, and shall not receive case management services under section 256.035, subdivision 6a. Families are eligible for services under section 256.736 to the same extent as families receiving AFDC.

SF-00006-05 (4/86)

DEPARTMENT : Health

STATE OF MINNESOTA

Office Memorandum

DATE : December 30, 1992

TO : Patty Nolte
Attorney General's Office
Public Finance Division
525 Park St., Room 500

RECEIVED
DEC 30 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
Paul, MN 55103

FROM : Anne Kane Anne Kane 12-30-92

PHONE : 643-3666 FAX: 643-2593

SUBJECT : Attorney General's Review of Emergency Rule of the Minnesota Department of Health Governing Nursing Home Construction Projects, parts 4655.1100 to 4655.1150.

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0400 for your review of an emergency rule for the above entitled matter.

Official documents in this submitted material include:
1. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

2. The notice of intent to adopt an emergency rule as mailed.

3. The affidavit of mailing the notice of intent to adopt an emergency rule. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.30, is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list.

4. A photocopy of the notice of intent to adopt the emergency; rule as published in the State Register.

5. Four copies of the emergency 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.

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

7. All written requests, notice, or comments on the rule received by the agency except requests solely for copies of the rule.

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

9 . The notice of submission of the rule to the attorney general, is not included since no requests were received.

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

Stat Auth
attached

end of comment period Dec 4, 1992

180 day comment period article 7
authority 1992 MN Laws Sec 2, subd 2
The commissioner of health shall adopt
emergency ... The authority to adopt
emergency rules continues to December 30, 1992
- we received the rules on December 30

- authority granted by statute
Section 2 (end of article 7 attached)
not listed as August 1 -
adopted on December 29

August -	30 days
Sept	30
Oct	31
Nov	30
Dec	29
	150 day

made both deadlines

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Emergency Rule of the Minnesota Department of Health Governing Nursing Home and Certified Boarding Care Home Construction Projects, parts 4655.1100 to 4655.1150 [Emergency]

AFFIDAVIT OF MAILING NOTICE OF AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Elise Paulsen, being sworn, states:

I certify that the list of persons and associations who, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, have requested that their names be placed on the state Department of Health rulemaking mailing list is accurate, complete, and current as of this 5th day of November, 1992.

That on the 5th day of November, 1992, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of 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.

E. Elise Paulsen
(Name)

Secretary
(Title)

Subscribed and sworn to before me
this 5th day of November, 1992.

Nancy E. Baker

NANCY E. BAKER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 25, 1996

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Sandra DuVander
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Matthew Felker
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Dominic Sposeto & Assoc.
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STATE OF MINNESOTA
DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Emergency Rule of the Minnesota Department of Health Governing Nursing Home and Certified Boarding Care Home Construction Projects, parts 4655.1100 to 4655.1150 [Emergency]

AFFIDAVIT OF ADDITIONAL MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Elise Paulsen, being sworn, states:

That on the 5th day of November, 1992, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed copies of the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for United States mailing or inter-departmental mailing, a copy thereof, with postage prepaid to the licensed nursing homes and certified boarding care homes identified on the attached listing identified as Appendix A.

E. Elise Paulsen
(Name)

Secretary
(Title)

Subscribed and sworn to before me
this 5th day of November, 1992.

Nancy E. Baker

NANCY E. BAKER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 25, 1996

Appendix A

FACILITY	CITY
ABBOTT NORTHWESTERN HOSPITAL	MINNEAPOLIS
ADA MUNICIPAL HOSPITAL & C&NC	ADA
ADAMS HEALTH CARE CENTER	ADAMS
AFTENRO HOME	DULUTH
AH GWAH CHING NURSING HOME	AH GWAH CHING
AICOTA NURSING HOME	AITKIN
AL VADHEIM MEMORIAL HOSPITAL	TYLER
ALBERT LEA GOOD SAMARITAN CTR.	ALBERT LEA
AMBASSADOR HEALTH CARE CENTER	NEW HOPE
ANDREW CARE HOME	MINNEAPOLIS
ANNANDALE CARE CENTER	ANNANDALE
ANOKA MAPLE MANOR CARE CENTER	ANOKA
APPLE VALLEY HEALTH CARE CTR.	APPLE VALLEY
APPLETON MUNICIPAL HOSPITAL	APPLETON
ARLINGTON GOOD SAM CENTER	ARLINGTON
ARNOLD MEM HOSPITAL	ADRIAN
ARROWHEAD HEALTH CARE CENTER	EVELETH
ARROWHEAD HEALTH CARE CENTER	VIRGINIA
ASHWOOD HEALTH CARE CENTER	WILLMAR
ASSUMPTION HOME	COLD SPRING
AUGUSTANA HOME OF MPLS	MINNEAPOLIS
BANNOCHIE NURSING HOME	MINNEAPOLIS
BARNESVILLE CARE CENTER	BARNESVILLE
BARRETT CARE CENTER INC	BARRETT
BATTLE LAKE CARE CENTER	BATTLE LAKE
BELGRADE NURSING HOME	BELGRADE
BELTRAMI NURSING HOME	BEMIDJI
BENEDICTINE HEALTH CENTER	DULUTH
BERKSHIRE RESIDENCE	OSSEO
BETHANY COVENANT HOME	MINNEAPOLIS
BETHANY GOOD SAMARITAN CENTER	BRAINERD
BETHANY HOME	ALEXANDRIA
BETHANY HOME	LITCHFIELD
BETHANY SAMARITAN HEIGHTS	ROCHESTER
BETHEL CARE CENTER	ST PAUL
BETHESDA HERITAGE CENTER	WILLMAR
BETHESDA LUTHERAN CARE CENTER	ST PAUL
BETHESDA NH-PLEASANTVIEW	WILLMAR
BIRCHWOOD CARE HOME	MINNEAPOLIS
BIRCHWOOD HEALTH CARE CENTER	FOREST LAKE
BIRD ISLAND MANOR HCC	BIRD ISLAND
BLOOMINGTON CARE CENTER	BLOOMINGTON
BLOOMINGTON MAPLE MANOR	BLOOMINGTON
BRAINERD REG HUMAN SERV CTR	BRAINERD
BROEN MEMORIAL HOME	FERGUS FALLS
BROWNS VALLEY HEALTH CENTER	BROWNS VALLEY
BRYN MAWR HEALTH CARE CENTER	MINNEAPOLIS
BUCHANAN NURSING HOME	CHISHOLM
BUFFALO LAKE NURSING HOME	BUFFALO LAKE
BURNS MANOR NSG HOME	HUTCHINSON
BURR OAK MANOR	AUSTIN
BYWOOD EAST HEALTH CARE	MINNEAPOLIS
CAMBRIDGE HEALTH CARE CTR	CAMBRIDGE

FACILITY	CITY
CAMDEN CARE CENTER	MINNEAPOLIS
CAMILIA ROSE CONV CENTER	COON RAPIDS
CANBY COMMUNITY HEALTH SERV.	CANBY
CANNON FALLS MANOR NSG HOME	CANNON FALLS
CAREVIEW HOME INC	MINNEAPOLIS
CARLTON NURSING HOME	CARLTON
CASTLE RIDGE CARE CENTER	EDEN PRAIRIE
CEDAR PINES HEALTH CARE FAC	MINNEAPOLIS
CEDARVIEW NURSING HOME	OWATONNA
CENTRAL CARE CENTER	MINNEAPOLIS
CENTRAL HEALTH CARE	LE CENTER
CENTRAL TODD CO CARE CENTER	CLARISSA
CHAPEL VIEW CARE CENTER	HOPKINS
CHARTER HOUSE	ROCHESTER
CHATEAU HEALTHCARE CENTER	MINNEAPOLIS
CHISAGO HEALTH SERVICES	CHISAGO CITY
CHOSEN VALLEY CARE CENTER	CHATFIELD
CHRIS JENSEN NURSING HOME	DULUTH
CHRISTIAN NURSING CENTER	WILLMAR
CLARA CITY COMMUNITY NH	CLARA CITY
CLARKFIELD CARE CENTER	CLARKFIELD
CLIFTON HOUSE	MINNEAPOLIS
CLINTON GOOD SAM CENTER	CLINTON
COKATO MANOR	COKATO
COLONIAL ACRES HEALTH CARE CTR	GOLDEN VALLEY
COLONIAL MANOR NURSING HOME	LAKEFIELD
COLONIAL MANOR OF BALATON	BALATON
COMFORCARE CARE CENTER	AUSTIN
COMM MEM HOSP & HOMESTEAD NH	DEER RIVER
COMMUNITY MEM HOSP	CLOQUET
COMMUNITY MEM HOSP + C+NC	SPRING VALLEY
COMMUNITY MEMORIAL HOME	OSAKIS
COMMUNITY MEMORIAL HOSPITAL	WINONA
CONCORDIA CARE CENTER	MINNEAPOLIS
COOK CO NORTHSHORE HOSP & C&NC	GRAND MARAIS
COOK COMMUNITY HOSP	COOK
COSMOS HEALTHCARE CENTER	COSMOS
COUNTRY MANOR HC & RETIRE CNT	SARTELL
COURAGE RESIDENCE	GOLDEN VALLEY
CREST VIEW LUTHERAN HOME	COLUMBIA HEIGHTS
CRESTVIEW MANOR INC	EVANSVILLE
CRYSTAL CARE CENTER	CRYSTAL
CRYSTAL LAKE HEALTH CARE CTR	ROBBINSDALE
CUYUNA REGIONAL MEDICAL CENTER	CROSBY
DASSEL LAKESIDE COMM HOME	DASSEL
DAVID HERMAN HEALTH CARE CTR	MINNEAPOLIS
DAYTON'S BLUFF COMMUNITY C.CTR	ST PAUL
DELANO HEALTHCARE CENTER	DELANO
DIVINE PROVIDENCE COMM HOME	SLEEPY EYE
DIVINE PROVIDENCE HOSP + HOME	IVANHOE
EAGLE NURSING HOME	BLOOMINGTON
EBENEZER CAROLINE	MINNEAPOLIS

FACILITY	CITY
EBENEZER COVENANT HOME	BUFFALO
EBENEZER HALL	MINNEAPOLIS
EBENEZER RIDGES	BURNSVILLE
EBENEZER SOC LUTHER & FIELD	MINNEAPOLIS
EDGEBROOK REST CENTER INC	EDGERTON
EDINA CARE CENTER	EDINA
ELDERS HOME	NEW YORK MILLS
ELIM HOME	MILACA
ELIM HOME	PRINCETON
ELIM HOME	WATERTOWN
ELK RIVER NURSING HOME	ELK RIVER
ELLIOT NURSING FACILITY	MINNEAPOLIS
ELY BLOOMENSON COMM HOSP	ELY
EMERSON BOARDING CARE HOME	MINNEAPOLIS
EMERSON PLACE NORTH	MINNEAPOLIS
EMMANUEL HOME	LITCHFIELD
EMMANUEL NURSING HOME	DETROIT LAKES
EPISCOPAL CHURCH HOME OF MN	ST PAUL
EVELETH FITZGERALD COMM HOSP	EVELETH
EVENTIDE HOME	MOUNTAIN LAKE
EVENTIDE LUTHERAN HOME	MOORHEAD
EXCELSIOR NURSING HOME	EXCELSIOR
FAIR MEADOW NURSING HOME	FERTILE
FAIRFAX COMMUNITY HOME	FAIRFAX
FAIRMONT COMM HOSPITAL	FAIRMONT
FAIRVIEW NURSING HOME	DODGE CENTER
FALLS CARE CENTER	INTERNATIONAL FALLS
FARIBAULT MANOR HCC	FARIBAULT
FARIBAULT REGIONAL CENTER	FARIBAULT
FAUSKEE NURSING HOME INC	WORTHINGTON
FIELD CREST NURSING HOME	HAYFIELD
FIRST CHRISTIAN CHURCH RES	MINNEAPOLIS
FOLEY NURSING CENTER	FOLEY
FOSSTON MUN HOSPITAL & HOME	FOSSTON
FRANKLIN HEALTHCARE CENTER	FRANKLIN
FRANKLIN PLACE EAST	MINNEAPOLIS
FRAZEE RETIREMENT CENTER	FRAZEE
FRIDLEY CONVALESCENT HOME	FRIDLEY
FRIENDSHIP VILLAGE	BLOOMINGTON
GALTIER HEALTH CENTER	ST PAUL
GAYLORD LAKEVIEW HOME	GAYLORD
GIL MOR MANOR	MORGAN
GLEN OAKS NURSING HOME	NEW LONDON
GLENCOE AREA HEALTH CENTER	GLENCOE
GLENWOOD RET HOME INC	GLENWOOD
GOLDEN AGE HEALTH CARE CENTER	ROSEVILLE
GOLDEN CREST NURSING HOME	HIBBING
GOLDEN OAKS NURSING HOME	SO ST PAUL
GOOD SAMARITAN CENTER	CLEARBROOK
GOOD SAMARITAN CENTER	EAST GRAND FORKS
GOOD SAMARITAN CENTER	PELICAN RAPIDS
GOOD SAMARITAN CENTER	WARREN

FACILITY	CITY
GOOD SAMARITAN VILLAGE	MOUNTAIN LAKE
GOOD SAMARITAN VILLAGE	PIPESTONE
GOOD SHEPHERD LUTHERAN HOME	RUSHFORD
GOOD SHEPHERD LUTHERAN HOME	SAUK RAPIDS
GRACE HOME	GRACEVILLE
GRAND AVE REST HOME	MINNEAPOLIS
GRANDVIEW CARE CENTER	ST PETER
GRANDVIEW CHRISTIAN HOME	CAMBRIDGE
GREELEY HEALTHCARE CENTER	STILLWATER
GREEN ACRES NURSING HOME	NORTH BRANCH
GREEN LEA MANOR	MABEL
GREEN PINE ACRES NSG HOME	MENAHGA
GREENBUSH COMMUNITY HOSPITAL	GREENBUSH
GREENSVIEW NURSING HOME	BAGLEY
HALSTAD LUTHERAN MEM HOME	HALSTAD
HAMPTON CARE CENTER	MINNEAPOLIS
HARMONY COMMUNITY HOSPITAL	HARMONY
HARMONY NURSING HOME	ST PAUL
HAVEN HEALTH CENTER	RED WING
HAVEN HOMES HEALTH CENTER	HASTINGS
HAVEN HOMES OF MAPLE PLAIN	MAPLE PLAIN
HAYES RESIDENCE	ST PAUL
HAZELDEN FOUNDATION	CENTER CITY
HEALTHEAST TRANS.C.C.-MIDWAY	ST PAUL
HEALTHEAST TRANS.C.C./BETHESDA	ST PAUL
HEALTHONE ST. MARY'S	WINSTED
HENDRICKS COMM HOSP	HENDRICKS
HENNING NURSING HOME	HENNING
HERITAGE LIVING CENTER	PARK RAPIDS
HERITAGE MANOR HEALTH CARE CTR	CHISHOLM
HERITAGE OF EDINA	EDINA
HERON LAKE MUN HOSP & C&NC	HERON LAKE
HIGHLAND CHATEAU HCC	ST PAUL
HIGHLAND MANOR	NEW ULM
HILLCREST HEALTH CARE CENTER	RUSH CITY
HILLCREST HEALTH CARE CNTR	MANKATO
HILLCREST HEALTH CARE CTR	WAYZATA
HILLCREST NURSING & RET HOME	PLAINVIEW
HILLCREST NURSING HOME	RED LAKE FALLS
HILLTOP HEALTH CARE CENTER	WATKINS
HOFFMAN CARE CENTER	HOFFMAN
HOPKINS NURSING CENTER	HOPKINS
HOWARD LAKE CARE CENTER	HOWARD LAKE
INNSBRUCK HEALTHCARE CENTER	NEW BRIGHTON
INVER GROVE CARE CENTER	INVER GROVE HEIGHTS
ITASCA MEDICAL CENTER & C&NC	GRAND RAPIDS
ITASCA NURSING HOME	GRAND RAPIDS
JACKSON GOOD SAMARITAN CENTER	JACKSON
JACKSON MUNICIPAL HOSP	JACKSON
JANESVILLE NURSING HOME	JANESVILLE
JOHNSON MEMORIAL HOSP & HOME	DAWSON
JOHNSON REST HOME	FOSSTON

FACILITY	CITY
JONES-HARRISON RESIDENCE	MINNEAPOLIS
JOURDAIN/PERPICH EXT.CARE FAC.	RED LAKE
KARLSTAD MEMORIAL NSG CENTER	KARLSTAD
KELLIHER CARE CENTER	KELLIHER
KENYON SUNSET HOME	KENYON
KINGWOOD COURT GOOD SAM. CTR.	BRAINERD
KITTSON MEMORIAL HOSPITAL	HALLOCK
KNUTE NELSON MEMORIAL HOME	ALEXANDRIA
LACRESCENT HEATHCARE CENTER	LACRESCENT
LAFAYETTE GOOD SAM CENTER	LAFAYETTE
LAKE CITY NURSING HOME	LAKE CITY
LAKE CRYSTAL HEALTHCARE CTR	LAKE CRYSTAL
LAKE HAVEN MANOR	DULUTH
LAKE HAVEN NURSING HOME	WORTHINGTON
LAKE REGION HOSPITAL	FERGUS FALLS
LAKE RIDGE HEALTH CARE CENTER	ROSEVILLE
LAKESHORE INN NURSING HOME	WASECA
LAKESHORE LUTHERAN HOME	DULUTH
LAKESIDE MEDICAL CENTER	PINE CITY
LAKEVIEW CARE CENTER	CLEAR LAKE
LAKEVIEW CARE CENTER	GLENWOOD
LAKEVIEW MEMORIAL HOSPITAL	TWO HARBORS
LAKEVIEW METHODIST HCC	FAIRMONT
LAKEWOOD CARE CENTER	BAUDETTE
LASALLE CONVALESCENT HOME	MINNEAPOLIS
LEISURE HILLS HCC	HIBBING
LEISURE HILLS INC	GRAND RAPIDS
LEWISTON VILLA NURSING HOME	LEWISTON
LEXINGTON HEALTH CENTER	ST PAUL
LINDEN HEALTHCARE CENTER	STILLWATER
LITTLE SISTERS OF THE POOR	ST PAUL
LITTLEFORK MEDICAL CENTER	LITTLEFORK
LONG LAKE NURSING HOME	LONG LAKE
LONG PRAIRIE MEM HOSP + C+NC	LONG PRAIRIE
LUTHER HAVEN NURSING HOME	MONTEVIDEO
LUTHER MEMORIAL HOME	MADELIA
LUTHERAN MEMORIAL NH	TWIN VALLEY
LUTHERAN MEMORIAL RET CENTER	TWIN VALLEY
LUTHERAN RET HOME OF SO MINN	TRUMAN
LUTHERAN SENIOR CITIZENS HOME	LITTLE FALLS
LYNGBLOMSTEN CARE CENTER	ST PAUL
LYNNHURST HEALTHCARE CENTER	ST PAUL
LYNWOOD HEALTHCARE CENTER	FRIDLEY
MADISON LUTHERAN HOME	MADISON
MADONNA TOWERS INC	ROCHESTER
MAHNOMEN CO & VILLAGE HOSP	MAHNOMEN
MALA STRANA HEALTH CARE CTR	NEW PRAGUE
MANKATO HOUSE HEALTH CARE CNT	MANKATO
MANKATO LUTHERAN HOME	MANKATO
MAPLE LAWN NURSING HOME	FULDA
MAPLE MANOR NURSING HOME	ROCHESTER
MAPLETON COMMUNITY HOME	MAPLETON

FACILITY	CITY
MAPLEWOOD CARE CENTER	ST PAUL
MAPLEWOOD MAPLE MANOR CARE CTR	MAPLEWOOD
MARANATHA BAPTIST CARE CENTER	BROOKLYN CENTER
MARIAN CARE CENTER & RESIDENCE	ST PAUL
MARTIN LUTHER MANOR	BLOOMINGTON
MARY J BROWN GOOD SAM CTR	LUVERNE
MCINTOSH NURSING HOME INC	MCINTOSH
MEADOW LANE HEALTH CARE CTR	BENSON
MEADOW MANOR NURSING HOME	GRAND MEADOW
MELROSE HOSP & PINE VILLA	MELROSE
MERCY HOSPITAL + C+NC	MOOSE LAKE
MESABI HOME	BUHL
METHODIST HOSPITAL	MINNEAPOLIS
METRO CARE CENTER	MINNEAPOLIS
MIDWAY CARE CENTER	FOSSTON
MILLE LACS HOSPITAL & HOME	ONAMIA
MINN.VETERANS HOME-MINNEAPOLIS	MINNEAPOLIS
MINNEOTA MANOR HCC	MINNEOTA
MINNESOTA MASONIC HOME CARE CT	BLOOMINGTON
MINNESOTA VALLEY MEM HOSP	LE SUEUR
MINNETONKA HLTH CARE CTR INC	EXCELSIOR
MINNEWASKA LUTHERAN HOME	STARBUCK
MISSION FARMS NURSING HOME	PLYMOUTH
MN VETERANS HOME - SILVER BAY	SILVER BAY
MONTICELLO BIG LAKE COMM HOSP	MONTICELLO
MOORHEAD HEALTHCARE CENTER	MOORHEAD
MOTHER OF MERCY NURSING HOME	ALBANY
MOUNT OLIVET HOMES INC	MINNEAPOLIS
MUNICIPAL HOSP & GRANITE MANOR	GRANITE FALLS
NAEVE PARKVIEW HOME	WELLS
NEW BRIGHTON CARE CENTER	NEW BRIGHTON
NEW RICHLAND CARE CTR	NEW RICHLAND
NEW YORK MILLS COMM N H	NEW YORK MILLS
NICOLLET HEALTH CARE CENTER	MINNEAPOLIS
NIGHTINGALE NURSING HOME	WACONIA
NILE HEALTH CARE CENTER	MINNEAPOLIS
NOPEMING NURSING HOME	DULUTH
NORTH COUNTRY NSG + REHAB CNT	BEMIDJI
NORTH RIDGE CARE CENTER	NEW HOPE
NORTH ST PAUL CARE CENTER	NORTH ST PAUL
NORTHERN ITASCA C & NC UNIT	BIGFORK
NORTHERN PINES GOOD SAM CTR	BLACKDUCK
NORTHFIELD CITY HOSPITAL	NORTHFIELD
NORTHFIELD RETIREMENT CENTER	NORTHFIELD
NORTHOME NURSING HOME	NORTHOME
NORTHRIDGE RESIDENCE	ORTONVILLE
NORTHWEST MEDICAL CENTER	THIEF RIVER FALLS
OAKLAND PARK NURSING HOME	THIEF RIVER FALLS
OAKLAWN HEALTH CARE CENTER	MANKATO
OLIVIA HEALTHCARE CENTER	OLIVIA
OSSEO HEALTH CARE CENTER	OSSEO
OSTRANDER NURSING HOME	OSTRANDER

FACILITY	CITY
OTTER TAIL NURSING HOME	BATTLE LAKE
OUR LADY OF GOOD COUNSEL	ST PAUL
OWATONNA HEALTH CARE CENTER	OWATONNA
PARK AVENUE RES.HEALTHCARE CTR	MINNEAPOLIS
PARK CREST BAPTIST CARE CENTER	MINNEAPOLIS
PARK NURSING & CONV CENTER	ST LOUIS PARK
PARK POINT MANOR	DULUTH
PARK RIVER ESTATES CARE CENTER	COON RAPIDS
PARK VIEW CARE CENTER	BUFFALO
PARKVIEW HOME	BELVIEW
PARKVIEW MANOR NURSING HOME	ELLSWORTH
PAYNESVILLE COMMUNITY HOSP	PAYNESVILLE
PAYNESVILLE GOOD SAM CENTER	PAYNESVILLE
PELICAN LAKE HEALTH CARE CTR.	ASHBY
PELICAN VALLEY HEALTH CENTER	PELICAN RAPIDS
PERHAM MEMORIAL HOSP & HOME	PERHAM
PILLSBURY BOARD & CARE HOME	MINNEAPOLIS
PINE HAVEN CARE CENTER, INC.	PINE ISLAND
PIONEER HOME INC	FERGUS FALLS
PIONEER MEMORIAL CARE CENTER	ERSKINE
PIPESTONE COUNTY MEDICAL CNT	PIPESTONE
PLEASANT MANOR INC	FARIBAULT
PLEASANT VIEW GOOD SAM CENTER	ST JAMES
PRAIRIE MANOR	BLOOMING PRAIRIE
PRAIRIE VIEW HEALTHCARE CENTER	TRACY
PRESBY HOMES OF ARDEN HILLS	ARDEN HILLS
PRESBYTERIAN HMS OF ROSEVILLE	ST PAUL
PRESBYTERIAN HOMES ON LK MTKA	SPRING PARK
PRESTON CARE CENTER	PRESTON
QUEEN CARE CENTER	MINNEAPOLIS
RAMSEY NURSING HOME	ST PAUL
RED WING HEALTH CENTER	RED WING
REDEEMER RESIDENCE	MINNEAPOLIS
REGINA MEDICAL COMPLEX	HASTINGS
REGINA TERRACE	MINNEAPOLIS
REN-VILLA NURSING HOME	RENVILLE
RICHFIELD HEALTH CENTER	RICHFIELD
RIVER OAKS HEALTH CARE CTR	LAKE CITY
RIVERSIDE MEDICAL CENTER	MINNEAPOLIS
RIVERVIEW HOSPITAL & NSG HOME	CROOKSTON
RIVERWOOD HEALTH CARE CENTER	AITKIN
ROCHESTER HEALTHCARE CENTER	ROCHESTER
ROSE OF SHARON MANOR	ROSEVILLE
ROSEAU AREA HOSPITAL	ROSEAU
S.SUB.MED.CTR & SANFORD MEM NH	FARMINGTON
SACRED HEART HOSPICE	AUSTIN
SAINT ANNE HOSPICE	WINONA
SAINT JOHNS LUTHERAN HOME	ALBERT LEA
SAINT LUKES LUTHERAN HOME	BLUE EARTH
SAINT MARKS LUTHERAN HOME	AUSTIN
SAINT THERESE HOME	NEW HOPE
SAINT WILLIAMS NURSING HOME	PARKERS PRAIRIE

FACILITY	CITY
SAMARITAN BETHANY HOME	ROCHESTER
SANDSTONE AREA NURSING HOME	SANDSTONE
SAUER MEMORIAL HOME	WINONA
SEMINARY MEMORIAL HOME	RED WING
SHADY LANE NURSING HOME	WADENA
SHAKOPEE FRIENDSHIP MANOR	SHAKOPEE
SHOLOM HOME	ST PAUL
SHOLOM HOME WEST	ST LOUIS PARK
SIEMERS BOARD AND CARE	MONTGOMERY
SLAYTON MANOR	SLAYTON
SLEEPY EYE CARE CENTER	SLEEPY EYE
SOGGE GOOD SAMARITAN CTR	WINDOM
SOUTHSIDE CARE CENTER	MINNEAPOLIS
SOUTHVIEW ACRES HLTH CARE CTR	WEST ST PAUL
ST ANTHONY ELDER CTR ON MAIN	MINNEAPOLIS
ST ANTHONY HEALTH CENTER	MINNEAPOLIS
ST ANTHONY PARK HOME	ST PAUL
ST BENEDICTS CENTER	ST CLOUD
ST ELIZABETH HOSPITAL	WABASHA
ST ELIZABETH'S HEALTH CARE CTR	WABASHA
ST FRANCIS HOME	BRECKENRIDGE
ST JOHN LUTHERAN HOME	SPRINGFIELD
ST LOUIS PARK PLAZA H.C.C.	ST LOUIS PARK
ST LUCAS CARE CENTER	FARIBAULT
ST MARYS HOME	ST PAUL
ST MARYS REGIONAL HEALTH CTR.	DETROIT LAKES
ST MARYS VILLA NH	PIERZ
ST MICHAELS HOSPITAL & NH	SAUK CENTRE
ST OLAF RESIDENCE	MINNEAPOLIS
ST OTTO'S CARE CENTER	LITTLE FALLS
ST PAULS CHURCH HOME	ST PAUL
ST PETER COMM. HOSP. & H.C.C.	ST PETER
STEVENS SQUARE	MINNEAPOLIS
STEWARTVILLE NURSING HOME	STEWARTVILLE
STILLWATER MAPLE MANOR CARE CT	STILLWATER
STILLWATER RESIDENCE	STILLWATER
SUMMIT MANOR HEALTH CARE CTR	ST PAUL
SUNNYSIDE NURSING HOME	LAKE PARK
SUNRISE HOME	TWO HARBORS
SUNWOOD CARE CENTER	REDWOOD FALLS
SURF & SAND HEALTH CARE CENTER	DULUTH
TALAHI CARE CENTER	ST CLOUD
TEXAS TERRACE CONV CENTER	ST LOUIS PARK
THE LUTH HOSP & HOME-CALEDONIA	CALEDONIA
THE LUTHERAN HOME & HOPE RES	BELLE PLAINE
THE MARGARET S PARMLY RES	CHISAGO CITY
THORNE CREST RET CENTER	ALBERT LEA
THORNE-CREST SOUTH	ALBERT LEA
THREE LINKS CARE CENTER	NORTHFIELD
TRACY NURSING HOME	TRACY
TRAVERSE CO NURSING HOME	WHEATON
TREVILLA OF GOLDEN VALLEY	GOLDEN VALLEY

FACILITY	CITY
TREVILLA OF NEW BRIGHTON	NEW BRIGHTON
TREVILLA OF ROBBINSDALE	ROBBINSDALE
TRIMONT NURSING HOME	TRIMONT
TUFF MEMORIAL HOME	HILLS
TWEETEN/LUTHERAN HEALTH C. C.	SPRING GROVE
TWIN CITY LINNEA HOME	ST PAUL
TWIN RIVERS CARE CENTER	ANOKA
UNITED DISTRICT HOSP & HOME	STAPLES
UNITED HOSPITAL & NH	ST PAUL
UNIVERSITY HEALTH CARE CENTER	MINNEAPOLIS
VALLEY VIEW MANOR	LAMBERTON
VALLEY VIEW NURSING HOME	HOUSTON
VALLEYVIEW HEALTH CARE CENTER	JORDAN
VIEWCREST NURSING HOME	DULUTH
VIKING MANOR NURSING HOME	ULEN
VILLA HEALTH CARE CENTER	MORA
VILLA OF ST FRANCIS NSG HOME	MORRIS
VILLA ST VINCENT	CROOKSTON
VILLA VISTA INC	CROMWELL
VIRGINIA REG MED CTR & NH	VIRGINIA
WABASSO HEALTHCARE CENTER	WABASSO
WACONIA HEALTHCARE CENTER	WACONIA
WAITE PARK NURSING HOME INC	WAITE PARK
WALKER CITYVIEW	MINNEAPOLIS
WALKER METHODIST HEALTH CTR	MINNEAPOLIS
WALKER SOUTHVIEW	MINNEAPOLIS
WARROAD CARE CENTER	WARROAD
WATERVILLE CARE CENTER	WATERVILLE
WATKINS HOME	WINONA
WEDGEWOOD HEALTH CARE CENTER	INVER GROVE HEIGHTS
WEINER MEM MEDICAL CTR	MARSHALL
WELDWOOD HEALTH CARE CENTER	GOLDEN VALLEY
WESTBROOK GOOD SAM CENTER	WESTBROOK
WESTWOOD HEALTH CARE CENTER	ST LOUIS PARK
WHISPERING PINES GOOD SAM. CTR	PINE RIVER
WHITE BEAR LAKE CARE CENTER	WHITE BEAR LAKE
WHITE COMMUNITY HOSPITAL	AURORA
WHITEHOUSE HEALTH CARE CENTER	ROSEVILLE
WHITEWATER HEALTHCARE CENTER	ST CHARLES
WHITTIER HEALTH CENTER	MINNEAPOLIS
WILDER HEALTH CARE CENTER	ST PAUL
WILDER RESIDENCE EAST	ST PAUL
WILDER RESIDENCE WEST	ST PAUL
WINNEBAGO BAPTIST HOME	WINNEBAGO
WINTHROP CARE CENTER	WINTHROP
WOOD-DALE HOME INC	REDWOOD FALLS
WOODBURY HEALTH CARE CENTER	WOODBURY
WOODLAND GOOD SAMARITAN VILL	BRAINERD
WOODREST NURSING HOME	WALKER
WOODSIDE CONVALESCENT CENTER	ROCHESTER
WORTHINGTON REGIONAL HOSP	WORTHINGTON
YORKSHIRE MANOR HLTH.CARE FAC.	MINNEAPOLIS

FACILITY	CITY
ZUMBROTA NURSING HOME	ZUMBROTA

Minnesota Department of Health

In the Matter of the Proposed Adoption of Emergency Rule of the Minnesota Department of Health Governing Nursing Home and Certified Boarding Care Home Construction Projects, parts 4655.1100 to 4655.1150 [Emergency]

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

(1) Notice is hereby given that the Minnesota Department of Health intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Laws 1992, chapter 513, article 7, section 2, subd. 2. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules, Minnesota Statutes, sections 14.29 to 14.36.

(2) All persons have 25 days after publication in the State Register, i.e. until 4:30 p.m. on December 4, 1992, to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. (3) Any comments must be submitted to:

Anne Kane
Minnesota Department of Health
Division of Health Resources
P.O. Box 64900
St. Paul, MN 55164-0900

(4) A copy of the proposed rule is attached to this notice.

(5) A free copy of the proposed emergency rule is available by contacting Elise Paulsen at the address above or 612-643-2151.

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

(7) Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent 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 Elise Paulsen at the address above.

(8)

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

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. (9)

(12)

Date: 11/3/92

Marlene E. Marschall
Commissioner

Department of Health

Proposed Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects

Rules as Proposed (all new material)

4655.1100 [Emergency] SCOPE.

Parts 4655.1100 to 4655.1150 [Emergency] govern the process for the commissioner of health's approval of nursing home and certified boarding care home construction projects according to Minnesota Statutes, section 144A.071, subdivision 2.

4655.1110 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4655.1100 to 4655.1150 [Emergency], the terms in subparts 2 to 16 have the meanings given them.

Subp. 2. **Attached fixtures.** "Attached fixtures" has the meaning given it in part 9549.0020, subpart 6.

Subp. 3. **Attached hospital.** "Attached hospital" means a hospital that is under common ownership and operation with a nursing home or certified boarding care home and shares with that facility the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

Subp. 4. **Buildings.** "Buildings" has the meaning given it in part 9549.0020, subpart 7.

Subp. 5. **Capital assets.** "Capital assets" has the meaning given it in Minnesota Statutes, section 256B.421, subdivision 16.

Subp. 6. **Certified boarding care home.** "Certified boarding care home" means a facility licensed under parts 4655.0090 to 4655.1060 and 4655.1200 to 4655.9900, and certified to participate in medical assistance under United States Code, title 42, sections 1396 to 1396p as amended through July 18, 1984.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Health or the commissioner's

Approved by Revisor

representative.

Subp. 8. **Completion date.** "Completion date" means the date on which a certificate of occupancy is issued for a construction project, or if a certificate of occupancy is not required, the date on which the construction project is available for facility use.

Subp. 9. **Construction project.** "Construction project" means:

A. A capital asset addition to, or replacement of, a nursing home or certified boarding care home that results in new space or the remodeling of or renovations to existing facility space.

B. The remodeling or renovation of existing facility space which use is modified as a result of the project described in item A. This existing space must be usable for its intended function on completion of the project described in item A.

C. Capital asset additions or replacements that have occurred or will occur within 12 months of the completion date of the project described in item A.

D. Additions, replacements, renovations, or remodeling projects or portions of projects that are considered a phased project with a completion date more than 12 months after the completion date of the project described in item A.

Subp. 10. **Hospital.** "Hospital" means an acute care institution licensed under Minnesota Statutes, sections 144.50 to 144.58.

Subp. 11. **Land improvement.** "Land improvement" has the meaning given it in part 9549.0020, subpart 28.

Subp. 12. **Licensee.** "Licensee" has the meaning given it in part 4655.0100, subpart 7.

Subp. 13. **Nursing home.** "Nursing home" means a facility licensed according to Minnesota Statutes, chapter 144A.

Subp. 14. **Phased project.** "Phased project" means a construction project where:

A. a single construction contract was entered into by the facility;

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by Revisor _____

B. the subdivisions of the total project have a contiguous or common foundation, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision; or

C. the intended function of project space added, replaced, renovated, or remodeled must be completed to its intended function and must not be dependent on future capital asset additions or replacements of that or other facility space, unless those future capital asset additions or replacements occur more than 36 months after the completion date of that construction project.

A phased project is eligible for reimbursement if the total cost of the aggregate of all phases does not exceed the maximum threshold specified in Minnesota Statutes, section 144A.071, subdivision 2. If the total project construction costs of the aggregate of all phases exceeds the maximum threshold, only those project construction costs up to the maximum threshold are eligible for reimbursement.

Subp. 15. **Project construction costs.** "Project construction costs" means the cost of the facility capital asset additions, replacements, renovations, or remodeling projects; construction site preparation costs; and related soft costs. Project construction costs also include the costs of remodeling or renovation of existing facility space modified as a result of the construction project.

Subp. 16. **Soft costs.** "Soft costs" means costs capitalized as part of the project relating to implementation of the proposal, including:

A. sales taxes on materials;

B. contractor's overhead and profit;

C. architect and engineering fees;

D. construction period interest;

E. permits, zoning, and construction financing;

F. feasibility, economic, and demographic studies;

G. legal, accounting, and consulting fees relating to creation of the development; and

Approved
by Revisor _____

H. cost of designing the improvements.

4655.1120 [Emergency] SUBMISSION OF COST INFORMATION.

Before approval of final construction plans for a nursing home or certified boarding care home construction project, the licensee shall submit to the commissioner an itemized statement of the project construction costs.

If the construction project includes a capital asset addition, replacement, remodeling, or renovation of space such as hospital, apartments, or shared or common areas, the facility must submit to the commissioner an allocation of capital asset costs, soft costs, and debt information prepared according to parts 9549.0010 to 9549.0080.

If the construction project is anticipated to be completed in phases, the project construction cost information submitted under this part shall include the costs for all phases of the project.

Project construction cost estimates shall be prepared by a contractor or architect and other participants in the development of the project.

4655.1130 [Emergency] REIMBURSEMENT LIMITS.

The acceptance or determination of project construction costs under parts 4655.1100 to 4655.1150 [Emergency] is not binding for reimbursement. Actual reimbursement of these costs is determined according to parts 9549.0010 to 9549.0080 and Minnesota Statutes, section 256B.431.

4655.1140 [Emergency] CONSTRUCTION PROJECT APPROVAL.

The commissioner shall not approve a construction project where costs exceed $500,000, or 25 percent of the nursing home's or certified boarding care home's appraised value, whichever is less, unless the project meets the exemption requirements in Minnesota Statutes, section 144A.071, subdivision 2. This approval is in addition to the approvals of construction plans and specifications required under chapter 4660.

4655.1150 [Emergency] FINAL APPROVAL.

Approved
by Revisor _____

Before conducting the final inspection of the construction project required by part 4660.0100 and issuing final clearances for use, the licensee shall provide to the commissioner the total project construction costs of the construction project. The commissioner shall provide a copy of this information to the Department of Human Services.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4655

The attached rules are approved for publication in the State Register

Marie E. O'Neill
Assistant Revisor

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*: and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Health

Proposed Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Laws 1992*, chapter 513, article 7, section 2, subd. 2. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules, *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days after publication in the *State Register*, i.e. until 4:30 p.m. on December 4, 1992, to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Anne Kane
Minnesota Department of Health
Division of Health Resources
P.O. Box 64900
St. Paul, MN 55164-0900

A copy of the proposed rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting Elise Paulsen at the address above or 612-643-2151.

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

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews 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 Elise Paulsen at the address above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

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.

Dated: 3 November 1992

Marlene E. Marschall
Commissioner

Rules as Proposed (all new material)

4655.1100 [Emergency] SCOPE.

Parts 4655.1100 to 4655.1150 [Emergency] govern the process for the commissioner of health's approval of nursing home and certified boarding care home construction projects according to *Minnesota Statutes*, section 144A.071, subdivision 2.

4655.1110 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4655.1100 to 4655.1150 [Emergency], the terms in subparts 2 to 16 have the meanings given them.

Subp. 2. **Attached fixtures.** "Attached fixtures" has the meaning given it in part 9549.0020, subpart 6.

Subp. 3. **Attached hospital.** "Attached hospital" means a hospital that is under common ownership and operation with a nursing home or certified boarding care home and shares with that facility the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

Subp. 4. **Buildings.** "Buildings" has the meaning given it in part 9549.0020, subpart 7.

Subp. 5. **Capital assets.** "Capital assets" has the meaning given it in *Minnesota Statutes*, section 256B.421, subdivision 16.

Subp. 6. **Certified boarding care home.** "Certified boarding care home" means a facility licensed under parts 4655.0090 to 4655.1060 and 4655.1200 to 4655.9900, and certified to participate in medical assistance under United States Code, title 42, sections 1396 to 1396p as amended through July 18, 1984.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Health or the commissioner's representative.

Subp. 8. **Completion date.** "Completion date" means the date on which a certificate of occupancy is issued for a construction project, or if a certificate of occupancy is not required, the date on which the construction project is available for facility use.

Subp. 9. **Construction project.** "Construction project" means:

A. A capital asset addition to, or replacement of, a nursing home or certified boarding care home that results in new space or the remodeling of or renovations to existing facility space.

B. The remodeling or renovation of existing facility space which use is modified as a result of the project described in item A. This existing space must be usable for its intended function on completion of the project described in item A.

C. Capital asset additions or replacements that have occurred or will occur within 12 months of the completion date of the project described in item A.

D. Additions, replacements, renovations, or remodeling projects or portions of projects that are considered a phased project with a completion date more than 12 months after the completion date of the project described in item A.

Subp. 10. **Hospital.** "Hospital" means an acute care institution licensed under *Minnesota Statutes*, sections 144.50 to 144.58.

Subp. 11. **Land improvement.** "Land improvement" has the meaning given it in part 9549.0020, subpart 28.

Subp. 12. **Licensee.** "Licensee" has the meaning given it in part 4655.0100, subpart 7.

Subp. 13. **Nursing home.** "Nursing home" means a facility licensed according to *Minnesota Statutes*, chapter 144A.

Subp. 14. **Phased project.** "Phased project" means a construction project where:

A. a single construction contract was entered into by the facility;

B. the subdivisions of the total project have a contiguous or common foundation, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision; or

C. the intended function of project space added, replaced, renovated, or remodeled must be completed to its intended function and must not be dependent on future capital asset additions or replacements of that or other facility space, unless those future capital asset additions or replacements occur more than 36 months after the completion date of that construction project.

A phased project is eligible for reimbursement if the total cost of the aggregate of all phases does not exceed the maximum threshold specified in *Minnesota Statutes*, section 144A.071, subdivision 2. If the total project construction costs of the aggregate of all phases exceeds the maximum threshold, only those project construction costs up to the maximum threshold are eligible for reimbursement.

Subp. 15. **Project construction costs.** "Project construction costs" means the cost of the facility capital asset additions, replacements, renovations, or remodeling projects; construction site preparation costs; and related soft costs. Project construction costs also include the costs of remodeling or renovation of existing facility space modified as a result of the construction project.

Subp. 16. **Soft costs.** "Soft costs" means costs capitalized as part of the project relating to implementation of the proposal, including:

A. sales taxes on materials;

B. contractor's overhead and profit;

C. architect and engineering fees;

D. construction period interest;

E. permits, zoning, and construction financing;

F. feasibility, economic, and demographic studies;

G. legal, accounting, and consulting fees relating to creation of the development; and

H. cost of designing the improvements.

4655.1120 [Emergency] SUBMISSION OF COST INFORMATION.

Before approval of final construction plans for a nursing home or certified boarding care home construction project, the licensee shall submit to the commissioner an itemized statement of the project construction costs.

If the construction project includes a capital asset addition, replacement, remodeling, or renovation of space such as hospital, apartments, or shared or common areas, the facility must submit to the commissioner an allocation of capital asset costs, soft costs, and debt information prepared according to parts 9549.0010 to 9549.0080.

If the construction project is anticipated to be completed in phases, the project construction cost information submitted under this part shall include the costs for all phases of the project.

Project construction cost estimates shall be prepared by a contractor or architect and other participants in the development of the project.

4655.1130 [Emergency] REIMBURSEMENT LIMITS.

The acceptance or determination of project construction costs under parts 4655.1100 to 4655.1150 [Emergency] is not binding for reimbursement. Actual reimbursement of these costs is determined according to parts 9549.0010 to 9549.0080 and *Minnesota Statutes*, section 256B.431.

4655.1140 [Emergency] CONSTRUCTION PROJECT APPROVAL.

The commissioner shall not approve a construction project where costs exceed $500,000, or 25 percent of the nursing home's or certified boarding care home's appraised value, whichever is less, unless the project meets the exemption requirements in *Minnesota Statutes*, section 144A.071, subdivision 2. This approval is in addition to the approvals of construction plans and specifications required under chapter 4660.

4655.1150 [Emergency] FINAL APPROVAL.

Before conducting the final inspection of the construction project required by part 4660.0100 and issuing final clearances for use, the licensee shall provide to the commissioner the total project construction costs of the construction project. The commissioner shall provide a copy of this information to the Department of Human Services.

Department of Public Safety

Adopted Emergency Rules Relating to Firearms Dealers Security Standards

The rules proposed and published at *State Register*, Volume 17, Number 8, pages 410-412, August 24, 1992 (17 SR 410), are adopted with the following modifications:

Rules as Adopted

7504.0200 [Emergency] SECURITY MEASURES FOR SMALL FIREARMS DEALERS.

After business hours when the dealer's place of business is unattended, a small firearms dealer shall place all pistols that are located in the dealer's place of business in a locked safe or locked steel gun cabinet, or on a locked, hardened steel rod or cable that runs through the pistols' trigger guards.

A. The door to a safe must be recessed or flush and made of at least ~~3/16 inch thick~~ seven gauge steel. The body of a safe must be made of hot rolled steel of at least ~~one eighth inch thick~~ 12 gauge thickness. A safe must have an Underwriters Laboratory (UL) listed Group 2 combination lock.

E. The door to a gun cabinet must be ~~recessed and~~ made of at least 14 gauge steel. The door may be recessed, flush, or overlapping. If the door is flush or overlapping, it must be designed to conceal the location of the locking bolts and hinges from the

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of the Rule of the Minnesota Department of Health Governing Nursing Home and Certified Boarding Care Home Construction Projects, parts 4655.1100 to 4655.1150 [Emergency]	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

(1) Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on November 9, 1992, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on November 5, 1992.

(2) All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. (3) Four comments on the rule were received by the agency. 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:

1. The Minnesota Association of Homes for the Aging (MAHA) requested that this project rule be modified to include a definition of "appraised value" as defined in the rules of the Department of Human Services (DHS), Minn. Rules 9549.0010 to 95490080. As support for this request, MAHA indicated that the use of the DHS rule definition would clarify that the reference to "appraised value" in 4655.1140 [Emergency] refers to the reimbursement rules definition as opposed to a "market value" definition. The Department of Health agrees with this recommendation. The references to "appraised value" in both the rules as well as in the moratorium legislation, Minn. Stat. 144A.071, has been consistently interpreted to reference the rules as defined in the DHS provisions. This definition is used to clarify the threshold costs of construction projects and use of the DHS definition is reasonable and appropriate. Therefore, the Department has added the following definition to 4655.1110:

> **Sup. 2. Appraised value.** "Appraised value" has the meaning given it in part 5949.0020, subpart 5

Subsequent definition section will be renumbered.

2. Care Providers of Minnesota (CPM) requested that the Department of Health define "space" as contained in 4655.1100, subp. 9 A, B, and subp. 14 C and in 4655.1120. The Department believes that the terms as contained in the rules is self-explanatory. The term "space" refers to either new additions to a nursing home or to renovations or remodeling of existing areas in the facility. Since the rule does not seem to be ambiguous, further definition of the term is not considered necessary.

3. CPM requested a definition of the term "usable" as it appears in 4655.1100, subp. 9 B. While the Department does not believe that a definition of this term is required, it does believe that substituting the term "used" for "usable" on page 2, line 15 of the proposed draft is more precise. The Department does not consider this substitution to be a substantial change. The rule defines "construction project" to include the remodeling or renovation of existing facility space which use is to be modified as part of a construction project. The original language required that this space be "usable" for its intended function upon project completion. The proposed emergency rule was intended to insure that this space be ready for use and not to allow the facility the ability to later incur project expenses to make this space available for use. The substitution of the term "used" more specifically conveys this meaning.

4. CPM also requested that the term "intended function" as contained in 4655.1110, subp. 9 B and subp. 14 C also be defined. The proposed rule required that upon the completion of a project, the remodeled space be available for the use as designated in the construction plans. For example, if the construction plans identified that an area was to become an activity area or a physical therapy area, the rule requires that these areas be designed, constructed and used for this purpose. The rule was intended to avoid situations where a facility attempts to evade the provisions of the statute by inaccurately or intentionally identifying a use for space on the construction plans and then altering that use once a construction project is finished and incurring expenses to achieve that alteration. While the Department believes that the rule is clear as proposed, it has amended the rule to indicate that the intended function is "as designated on the construction plans." This will provide a specific frame of reference for this term.

5. CPM also suggested editorial revisions to the provisions of 4655.1110 subp. 9 B. The Department accepts those

changes and does not consider these amendments to be substantial changes. However, the Department believes that the use of the term "items" as a reference to a rule part, see 4655.1110 subp. 7 B (page 2, line 16 of the proposed rule) is the correct terminology. This rule provision will be amended as follows:

- Page 2, line 14 after "space" insert "the use of"

- Page 2, line 14 delete "use"

6. The Department also accepts the editorial changes suggested by CPM for 4655.1110, subp. 9 C. This provision will be amended as follows:

- Page 2, line 17 delete "have"

- Page 2, line 18 delete "occurred or will"

- Page 2, line 18 after "months" insert "before or after"

The Department believes that these changes will help to clarify the timing used for calculating construction projects. MAHA raised a number of issues relating to possible misinterpretations of this rule. The suggested revisions provide for a clearer description of what was intended by the proposed rule. The Department does not consider these amendments to constitute a substantial change. This amendment will also respond to concerns raised by MAHA regarding this subpart. The revised language is clear that the definition of a "construction project" also includes the capital asset additions or replacements that occur within 12 months before or after the completion of the project. For example, if a construction project is completed in July, 1993, any capital asset additions or replacements that occurred prior to this date would be considered in determining the cost of the projects and whether the statutory dollar threshold is exceeded. Similarly, if a nursing home intends to undertake a capital asset addition or replacement after July, 1993, the cost of the completed project and the future project will be evaluated to determine if the dollar threshold in the law is exceeded. Since the date of the completed construction project, in this case July, 1993, is known, the revised rule clarifies how often capital asset additions or replacements before or after that project will be treated. The Department believes that this provision is in accordance with the provisions of the statute to provide controls on nursing home property expenditures and is consistent with the property reimbursement rules

of the Department of Human Services.

7. The Department also accepts most of the editorial revisions suggested by CPM to 4655.1110, subp. 9 D. That provision incorporates a "phased project" into the "construction project" definition. The Department accepts the CPM suggested revision as providing clarification to the language in the proposed rule language. This item will be amended as follows:

> - Page 2, line 21 after "that" delete the remaining language and insert: "<u>, despite occurring more than 12 months before or after the completion date of a construction project, are considered phased projects.</u>"

8. Comments received on behalf of the Minnesota Veterans Home Board requested that the definition of "nursing home" in 4655.1110, subpart 13 be amended to limit the term to licensed and <u>certified</u> nursing homes. Since the legislation did not make such a limitation as it relates to the Commissioner's approval of construction projects, it is not possible to accept this suggested version. It should be noted that the provisions of the nursing home moratorium law apply to licensed nursing homes and it is consistent for the construction approval process to be directed to this class of facilities. The Veterans Home Board would need to seek a legislative amendment to provide for its suggested change to the rule.

9. CPM also suggests a number of clarifying and editorial changes to the definition of "phased project" as found in 4655.1100, subp. 14 A. B. and C. The Department concurs with most of these revisions and believes that the suggested changes better clarify the provisions of the proposed rule. The proposed rule established criteria for determining a "phased project" that was based both on the timing of the project and the function of various project stages. The CPM language does not alter these criteria but rather provides better clarification. Therefore, 4655.1110 subpart 14 A. B. and C. have been amended as follows:

> - Page 2, line 33 delete "a"
>
> - Page 2 delete line 34 and insert: "<u>additions, replacements, renovations or remodeling projects or portions of such projects that are completed more than 12 months before or after each other and</u>:
>
> - Page 2, line 35 before "a" insert "<u>That are included in</u>"

- Page 2, line 35 delete "was"

- Page 2 line 36 after "facility" insert: "<u>, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision;</u>"

- Page 3, line 1 delete "the subdivisions of the total project have" and insert "<u>which are additions to</u>"

- Page 3, line 5 after "C" delete the remainder of the line and line 6.

- Page 3, line 7 before "intended" insert "<u>whose</u>"

- Page 3, line 7 after "function" insert "<u>as designated on the construction plans</u>"

- Page 3, line 7 delete "and must not be" and insert "<u>is</u>"

- Page 3, line 8 delete "additions or replacements of" and insert "<u>expenditures for</u>"

10. CPM also suggested that the words "subdivisions", and "dependent" and the phrase "contiguous or common foundation" be defined. The Department believes that these terms are clear and no further definition is required.

11. CPM also suggested that the language contained in the "phased project" definition relating to reimbursement concerns (Page 3, lines 12-18) be deleted. The Department believes that this language is appropriate since it provides clarification of the legislature intent and is important to maintain within the context of this rule.

12. CPM also requested that the term "related soft cost" used in 4655.1110, subpart 15 be defined. "Soft costs" are defined in 4655.1100, subpart 16. We believe that the use of the term "related" is necessary to assure that only the "soft costs" that are related to the construction project are included.

13. The Department believes that the definition of "soft costs" in 4655.1100, subpart 16 is necessary to include in this rule. "Soft costs" are part of the cost of a construction project and must be included. The Legislature set a dollar threshold for construction costs and the Department does not believe it would be appropriate to modify the dollar amount of the threshold

by not including the soft costs within that threshold figure. Legislative change would be necessary to make such a distinction.

14. CPM requested that the term "anticipated" as used in 4655.1120 be defined. The Department believes that such a definition is not necessary. The rule requires that cost information for all phases of the project be submitted if the project is "anticipated" to be completed in phases. Since the facility will be in a position to determine the progress of a construction project and whether it will be one project or a series of projects, further definition of the term is unnecessary.

15. CPM requests that additional language be added to 4655.1140 to allow a facility to exceed the construction cost threshold if the facility agrees that cost above this amount not be included in a facility's property reimbursement. The Department believes that such a charge is not possible unless legislative modification is obtained.

16. A number of comments were made regarding the problem of obtaining final construction costs as required in 4655.1150. The Department agrees with these comments and will amend this rule as follows:

- Page 5, line 4 insert "or that phase of the construction project"

- Page 5 after line 4 insert "If total costs are not available, the most recent cost figures shall be provided. Final cost figures shall be submitted to the commissioner when available.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects as modified, is adopted this 29th day of December, 1992, pursuant to authority vested in me by Minnesota Statutes, section 144A.071, subdivision 2.

Mary Jo O'Brien
Deputy Commissioner

Minnesota Department of Health
Health Resources Division
393 North Dunlap
P.O. Box 64900
St. Paul, MN 55164-0900
(612) 643-2100

December 28, 1992

TO: Patty Nolte

FROM: Anne Kane

SUBJECT: Attached documents.

I have attached "originals" for all the documents except the four comments on the proposed rule. Mike Tripple was called out of town on a family emergency and has the originals with him. As soon as he returns (next week) we can bring the originals to your office if necessary. Thank you for your understanding.

STATEMENT OF CARE PROVIDERS OF MINNESOTA

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Division Management

December 4, 1992

Emergency Rule Comments on Proposed Department of Health Emergency Rules, Minnesota Rules, Parts 4655.1100 -- 4655.1150, Relating to Nursing Home and Certified Boarding Care Home Construction Projects.

Chairman of the Board
Larry Juhl

President
Rick E. Carter

For Further Information Contact:

Bill Bergum
(612) 854-2844



Care Providers
Of Minnesota

2850 Metro Drive • Suite 200
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December 4, 1992

Anne Kane
Minnesota Department of Health
Division of Health Resources
P.O. Box 64900
St. Paul, MN 55164-0900

Dear Ms. Kane:

Enclosed are certain specific suggestions Care Providers of Minnesota believes will improve the proposed emergency rule. Some of the changes involve better word choice or sentence structure. Other suggestions are substantive.

Note that lines 18 - 24 on page 3 are unnecessary because 4655.1130 covers the issue by cross-referencing Rule 50. Also of note, section 4655.1150 is unreasonable unless "estimated" total construction costs are sufficient. Actual subcontractor bills are often not received by the facility until weeks after the completion of the project.

Regarding the proposed 36 month hold-harmless provisions found in 4655. 1100, Subp. 14: Care Providers of Minnesota supports these only if Subp. 14 B reads ". . . are additions to a contiguous or common foundation . . . ." (Emphasis added.) Otherwise, **anything** (including interior remodeling or construction) done to a nursing facility can be defined as involving a "contiguous or common foundation" with the existing building. This would be beyond the scope of the legislation, which allows projects, up to the threshold, each 12 months. Our previous agreement with the 36 month time period was based on the concept that phased projects need to be monitored, not that non-phased projects need to be limited.

In addition to the changes proposed on the enclosed draft of the emergency rule, Care Providers of Minnesota makes the following comments:

1. 4655.1100 (Definitions). The following words or phrases need to be specifically defined:

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a. "Space," as used in 4655.1100, Subp. 9 A, B, and Subp. 14 C; and 4655.1200.
b. "Usable," as used in 4655.1100, Subp. 9 B.
c. "Intended function," as used in 4655.1100, Subp. 9 B; and Subp. 14 C.
d. "Subdivisions," as used in 4655.1100, Subp. 14 B.
e. "Contiguous or common foundation," as used in 4655.1100, Subp. 14 B.
f. "Dependent," as used in 4655.1100, C.
g. "Construction site preparation costs," as used in 4655.1100, Subp. 15.
h. "Related soft costs," as used in 4655.1100, Subp. 15.
i. "Anticipated," as used in 4655.1120.

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In addition, if "soft costs," as used in 4655.1100, Subp. 15, cannot be: 1) specifically referred to in Minnesota Rules 9549.0010 - 9549.0080; and 2) reimbursed, then such costs should not be: 1) defined by the department of health in this emergency rule; and 2) counted towards the moratorium threshold.

2. 4655.1120 (Submission of Cost Information):

Will this emergency rule be retroactive? It is unclear as to what providers are to gage current projects by. This point needs to be addressed. Due process dictates that this emergency rule be prospective, if anything.

3. 4655.1140 (Construction Project Approval):

Facilities that plan to absorb any cost over the threshold should be allowed to do so if they make a written commitment to the commissioner of human services that they will not seek an increase in its property-related payment for those costs exceeding the threshold. Legislative intent focused on Medical Assistance dollars. As currently drafted, the emergency rule would disallow a project over the threshold even though the state would not have to pay any of the costs exceeding that threshold.

4. Generally:

The emergency rule needs to explicitly limit the application its provisions, including its definitions, to the $500,000/25% of appraised value threshold. Its provisions cannot apply to the $150,000/10% of appraised value major project threshold.

Care Providers of Minnesota has some serious concerns that the proposed emergency rule, as it currently stands, goes beyond the scope of its authoritative legislation.

Additionally, it is unconstitutionally vague. If these concerns are not addressed before the emergency rule is finalized, we will obviously be prepared to address them during the 1993 legislative session. Our hope is that all efforts are made to achieve the former option.

Sincerely,

Rick E. Carter
President

cc: Larry Juhl, Chairman of the Board
Dennis Kamstra, Chairman, Public Affairs Coordinating Committee
R. Peter Madel, Jr., Chairman, Property Committee

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Department of Health

Proposed Emergency Rules Relating to Nursing Home and Certified Boarding Care Home Construction Projects

Rules as Proposed (all new material)

4655.1100 [Emergency] SCOPE.

Parts 4655.1100 to 4655.1150 [Emergency] govern the process for the commissioner of health's approval of nursing home and certified boarding care home construction projects according to Minnesota Statutes, section 144A.071, subdivision 2.

4655.1110 [Emergency] DEFINITIONS.

Subpart 1. Scope. For purposes of parts 4655.1100 to 4655.1150 [Emergency], the terms in subparts 2 to 16 have the meanings given them.

Subp. 2. Attached fixtures. "Attached fixtures" has the meaning given it in part 9549.0020, subpart 6.

Subp. 3. Attached hospital. "Attached hospital" means a hospital that is under common ownership and operation with a nursing home or certified boarding care home and shares with that facility the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

Subp. 4. Buildings. "Buildings" has the meaning given it in part 9549.0020, subpart 7.

Subp. 5. Capital assets. "capital assets" has the meaning given it in Minnesota Statutes, section 356B.421, subdivision 16.

Subp. 6. Certified boarding care home. "Certified boarding care home" means a facility licensed under parts 4655.0090 to 4655.1060 and 4655.1200 to 4655.9900, and certified to participate in medical assistance under United States Code, title 42, sections 1396 to 1396p as amended through July 18, 1984.

Subp. 7. Commissioner. "Commissioner" means the commissioner of the Department of Health or the commissioner's representative.

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Subp. 8. Completion date. "Completion date" means the date on which a certificate of occupancy is issued for a construction project, or if a certificate of occupancy is not required, the date on which the construction projects is available for facility use.

Subp. 9. Construction project. "Construction project" means:

A. A capital asset addition to, or replacement of, a nursing home or certified boarding care home that results in new space or the remodeling of or renovations to existing facility space.

B. The remodeling or renovation of existing facility space the use of which ~~use~~ is modified as a result of the project described in item A. This existing space must be usable for its intended function on completion of the project described in ~~item~~ subp. 9 A.

C. Capital asset additions or replacements that ~~have occurred or will~~ occur within 12 months before or after ~~of~~ the completion date of the project described in item A.

D. Additions, replacements, renovations, or remodeling projects or portions of projects that, despite occurring more than 12 months before or after the completion date of a project such as that described in subp. 9A, are considered phased projects, as defined below. ~~are considered a phased project with a completion date more that 12 months after the completion date of the project described in item A.~~

Subp. 10. Hospital. "Hospital" means an acute care institution licensed under Minnesota Statutes, sections 144.50 to 144.58.

Subp. 11. Land improvement. "Land improvement" has the meaning given it in part 9549.0020, subpart 28.

Subp. 12. Licensee. "Licensee" has the meaning given it in part 4655.0100, subpart 7.

Subp. 13. Nursing home. "Nursing home" means a facility licensed according to Minnesota Statutes, chapter 144A.

Subp. 14. Phased project. "Phased project" means ~~a construction project where:~~ additions, replacements, renovations

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or remodeling projects or portions of such projects that are completed more than 12 months before or after each other and:

A. that are included in a single construction contract ~~was~~ entered into by a ~~the~~ facility, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision;

B. ~~the subdivisions of the total project~~ which are additions to ~~have~~ a contiguous or common foundation, unless the completion date of a project subdivision is more than 36 months after the completion date of an earlier project subdivision; or

C. ~~the intended function of project space added, replaced, renovated, or remodeled must be completed to its~~ whose intended function ~~and must not be~~ is dependent on future capital asset additions or replacements of that or other facility space, unless those future capital asset additions or replacements occur more than 36 months after the completion date of that construction project.

~~A phased project is eligible for reimbursement if the total cost of the aggregate of all phases does not exceed the maximum threshold specified in Minnesota Statutes, section 144A.071, subdivision 2. If the total project construction costs of the aggregate of all phases exceeds the maximum threshold, only those project construction costs up to the maximum threshold are eligible for reimbursement.~~

Subp. 15. Project construction costs. "Project construction costs" means the cost of the facility capital asset additions, replacements, renovations, or remodeling projects; construction site preparation costs; and related soft costs. Project construction costs also include the costs of remodeling or renovation of existing facility space modified as a result of the construction project.

Subp. 16. Soft costs. "Soft costs" means costs capitalized as part of the project relating to implementation of the proposal, including:

A. sales taxes on materials;

B. contractor's overhead and profit;

C. architect and engineering fees:

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D. construction period interest;

E. permits, zoning, and construction financing;

F. feasibility, economic, and demographic studies;

G. legal, accounting, and consulting fees relating to creation of the development; and

H. cost of designing the improvements.

4655.1120 [Emergency] SUBMISSION OF COST INFORMATION.

Before approval of final construction plans for a nursing home or certified boarding care home construction project, the licensee shall submit to the commissioner an itemized statement of the project construction costs.

If the construction project includes a capital asset addition, replacement, remodeling, or renovation of space such as hospital, apartments, or shared or common areas, the facility must submit to the commissioner an allocation of capital asset costs, soft costs, and debt information prepared according to parts 9549.0010 to 9549.0080.

If the construction project is anticipated to be completed in phases, the project construction cost information submitted under this part shall include the costs for all phases of the project.

Project construction cost estimates shall be prepared by a contractor or architect and other licensed participants in the development of the project.

4655.1130 [Emergency] REIMBURSEMENT LIMITS.

The acceptance or determination of project construction costs under parts 4655.1100 to 4655.1150 [Emergency] is not binding for reimbursement. Actual reimbursement of these costs is determined according to parts 9549.0010 to 9549.0080 and Minnesota Statutes, section 256B.431.

4655.1140 [Emergency] CONSTRUCTION PROJECT APPROVAL.

The commissioner shall not approve a construction project where costs exceed $500,000 or 25 percent of the nursing home's or certified boarding care home's appraised value, whichever is less, unless:

A. The facility makes a written commitment to the commissioner of human services that it will not seek to receive an

increase in its property-related payment for those costs exceeding the threshold; or

B. the project meets the exemption requirements in Minnesota Statutes, section 144A.071, subdivision 2. This approval is in addition to the approvals of construction plans and specification required under chapter 4660.

4655.1150 [Emergency] FINAL APPROVAL.

Before conducting the final inspection of the construction project required by part 4660.0100 and issuing final clearances for use, the licensee shall provide to the Commissioner the total estimated project construction costs of the construction project. The Commissioner shall provide a copy of this information to the Department of Human Services.

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STATE OF MINNESOTA
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VETERANS SERVICE BUILDING
20 WEST 12TH STREET, ROOM 122
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(612) 296-2073

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November 30, 1992

Maj. Gen. James G. Sieben (Ret.)
Chairman
Hastings

Robert E. Hansen
Secretary
Mendota Hts.

Dr. Harvey C. Aaron
St. Paul

Pamela K. Barrows
Marshall

James H. Main
Chaska

Elaine R. Mathiason
Edina

Dennis E. McNeil
Luverne

Stephen J. O'Connor
Spring Valley

Dr. Robert W. Reif
White Bear Lake

Anne Kane
Minnesota Department of Health
Division of Health Resources
P.O. Box 64900
St. Paul, MN 55164-0900

Dear Ms. Kane:

The Veterans Homes Board requests that the proposed emergency rules governing nursing home and certified boarding care home construction projects be modified. The desired modification of proposed rule 4655.1100, subpart 13 is:

> Subp. 13. **Nursing Home.** "Nursing home" means a facility licensed according to Minnesota Statutes, chapter 144A and <u>certified to participate in medical assistance under United States Code, title 42, sections 1396 et.seq.</u>

Laws of Minnesota 1992, Chapter 513, Article 7, section 2, amends Minnesota Statutes, §144A.071, subdivision 2. This statute (M.S. §144A.071, subd. 2) concerns a moratorium on <u>certified</u> beds in nursing homes or boarding care facilities. In arguments before the legislature in 1988 regarding the establishment of a Veterans Home facility in Silver Bay and again in 1989 in arguments surrounding the establishment of a Veterans facility in Luverne, it was made clear by legislators that this moratorium applies only to certified beds. The 1992 amendment of 144A.071, therefore, requires approval of construction projects for facilities with certified beds.

The requested modification clarifies that only nursing homes with beds certified for medical assistance are subject to the proposed rules. This modification of the proposed rule does not result in a substantial change.

Thank you for your consideration of this request.

Sincerely,

Richard Zierdt
Executive Director

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"CARING FOR OUR NEIGHBORS"
ROSEAU AREA HOSPITAL AND HOMES

November 18, 1992

Anne Kane
Minnesota Department of Health
Division of Health Resources
PO Box 64900
St. Paul, MN 55164-0900

REFERENCE: Emergency Rule for the Minnesota Department of Health Governing Nursing Homes & Certified Boarding Care Home Construction Projects Parts 4655.1100 to 4655.1150

Dear Ms. Kane:

I wish to express a concern and present a viewpoint regarding the above entitled Emergency Rule.

In particular, the section I am concerned with deals with 4655.1150 (Final Approval), page 4, line 34 and page 5, lines 1-6.

Our concern specifically in this paragraph is the issuing of final clearances and total project costs of the construction project. We interpret this to mean that we are to submit to the Commissioner the total project construction costs when, in our particular situation, the project may not be complete. Our particular project is a phase project and when we need to move into the nursing home, the project will not be completed and we will not be able to submit final construction costs that may be outstanding due to change orders for the second phase of the project. Also, since we are hospital attached, the second phase of the project will be subject to the Medicare cost step-down formula and portions of the second phase may or may not relate to the nursing home itself.

Simply put, will this paragraph have a negative impact on our ability to occupy the nursing home under our particular situation when we will not have final total construction costs available at the time of final inspection and final clearance processes.

Thanking you in advance for your kind attention to this matter.

Yours truly,

David F. Hagen/bp

David F. Hagen, Administrator

ROSEAU AREA HOSPITAL DISTRICT
715 DELMORE DRIVE • ROSEAU, MN 56751
TELEPHONE (218) 463-2500, FAX (218) 463-1266

Minnesota Association of Homes for the Aging
2221 University Avenue SE Suite 425 • Minneapolis, Minnesota 55414 • 612/331-5571

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December 4, 1992

Anne Kane
Minnesota Department of Health
Division of Health Resources
P.O. Box 64900
St. Paul, MN 55164-0900

Dear Ms. Kane:

The Minnesota Association of Homes for the Aging is pleased to present these comments on the Proposed Emergency Rule Relating to Nursing Home and Certified Boarding Care Home Construction Projects. MAHA was a major sponsor of the legislation that has resulted in this proposed emergency rule, and our interest in the implementation of the rule regarding the moratorium is just as strong as our interests were when MAHA proposed the legislation that ultimately produced the competitive review process for moratorium exceptions.

In these comments, MAHA discusses (1) the approaches that are contained within the proposed emergency rule, and (2) our concerns about the ambiguity of specific provisions that makes it difficult to comprehend the operational effect of the proposed emergency rule.

The Approaches of the Proposed Emergency Rule

Background. The primary purpose of this regulation is to answer the question, "What is a construction project?". This question arose in the context of the legislative deliberations to reform the property reimbursement system in the 1992 legislative session. Under the bill that was enacted, there are distinct reimbursement consequences for a "construction project" that are based upon the costs of the project, but the legislature left it to the Department of Health to develop rules concerning how the costs for various remodeling, rehabilitation, and replacement or addition projects would be combined or segregated under the statute.

The legislation represents a significant shift in state policy in regards to using the moratorium statute to contain Medical Assistance costs in certified long-term care facilities. Since 1985, the moratorium statute was designed to contain costs by requiring most projects involving the licensure or certification of beds to go through the competitive review process. The new legislation abondoned the requirement that the projects must involve licensure or certification of beds and established the $500,000 threshold for review.

The approaches in the rule. The rule embodies two basic approaches to determining the answer to the question of the definition of a construction project. The first approach is temporal in nature--every capital addition within a specified period of time is considered a single project, purely because the additions occurred within the specific time frame. The second approach looks at the functional relatedness of capital additions (across a much broader period of time), and only capital additions that are related to each other are considered a single construction project, regardless of how close in time they occurred.

The first approach has been in use by the Department of Human Services until the adoption of these emergency rules. Specifically, all capital additions during the twelve months prior to the time a facility applies for a new property reimbursement rate are considered a single project. The proposed emergency rule continues this approach but also adds the second approach of functional relatedness in certain situations.

The temporal approach seems designed to permit the aggregation of projects, whether related or not, to reach a particular threshold. Facilities obviously are interested in reaching the $150,000 threshold, and the state is interested in reaching the $500,000 threshold once the facility has substantially passed the $150,000 level. The length of the time period is the crucial ingredient of this approach.

The functional relatedness test for phased projects, on the other hand, examines whether capital asset additions are related to each other even though they occur more than one year apart. Although this approach seems designed to prevent facilities from artificially separating out costs into separate projects and thereby avoid having to go through the moratorium exceptions process, as a practical matter this approach will not provide significant and effective cost containment for the state. Projects that are functionally related will generally be finished within the reasonable time frames of the temporal approach regardless of the functional relatedness provisions of the rule.

Because of this, it seems simpler to deal with cost control in a straight-forward manner by simple application of a temporal approach. For example, the rule could provide that any facility spending $500,000 for capital additions within a particular period would have to go through the moratorium exceptions process, regardless of whether the various capital additions were functionally related. Cost containment would be achieved by containing the costs, rather than regulating some other feature that is presumed to affect costs.

The Ambiguity of Specific Provisions

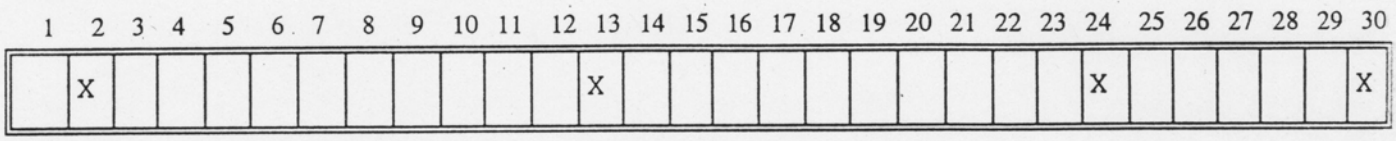
As currently drafted, the proposed emergency rule is ambiguous in several key provisions, and this ambiguity should be removed from the rule. If it is not, there will be two results. First, some

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facilities who need to make capital asset improvements will delay because the ambiguity might threaten their reimbursement. Second, other facilities will go ahead with their improvements but then be subjected to unexpected rulings from the Department of Human Services on their Medical Assistance reimbursement. The appeals process is not the best choice for removing the rule's ambiguity.

The 12-month clock. The definition in part 4655.1110, Subp. 9, item C, defines a construction project in terms of capital asset additions or replacements that "have occurred or will occur within 12 months of the completion date" of the project described in item A. The difficulty is the underlined language. In literal terms, the language is meaningless because the Department of Human Services will have absolutely no idea of whether any additional capital spending will occur in the next 12 months.

Obviously, the language is intended to provide a link between projects, but the precise nature and extent of that link is not readily apparent. Consider the calendar of events in the months identified below:



There are capital asset additions in months 2, 13, 24, and 30. From the perspective of the asset addition in month 13, the amount in month 2 must be added to the amount in month 13 to determine whether the construction project surpasses the $150,000 or the $500,000 threshold. But when the facility reaches month 24, the calculation is not so clear, provided that these additions are not part of a phased project. Here are the possibilities:

A. Once the amount in month 13 is added to month 2, month 13 is "sealed off" to the future. Hence the activity in month 24 starts a new clock, and the costs in month 30 are added to the costs in month 24. The result is that there are two projects--one covering months 2 and 13; the other, month 24 and 30.

B. Although month 2 starts a clock running, month 13 continues it, serving as the midpoint with twelve months on either side. Hence the clock includes months 2, 13, and 24. A second clock starts running with month 30.

C. Because of the particular amounts involved, either the facility or the Department of Human Services decides that month 24 should serve as the midpoint, so that the project reaches back to include month 13 and forward to month 30.

Any of these are defensible readings of the language. Consider which reading facilities and DHS would prefer under the scenarios below:

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	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Month 2	$75,000	$250,000	$250,000	$ 50,000
Month 13	$15,000	$ 50,000	$300,000	$ 75,000
Month 24	$45,000	$150,000	$100,000	$ 50,000
Month 30	$95,000	$325,000	$150,000	$ 50,000

Under scenario 1, the facility clearly would argue that the clock starts running in month 13 and reaches to month 30 (item C). DHS would argue that the clock starts in month 2 and runs either to month 13 (item A) or month 24 (item B).

Under scenario 2, DHS would want the clock to start running in month 13 and run to month 30 (item C). The facility would favor a clock that began in month 2 and ran until month 13 (item A) or month 24 (item B).

Under scenario 3, the state would favor a clock that began in month 2 and ran until month 24 (item B), but the facility would favor two clocks that covered months 2-13 and 24-30 (item A) or one clock that began in month 13 and ran through month 30 (item C).

In scenario 4, the facility would favor one clock that ran months 2-24 or 13-30 (items B and C, respectively), but DHS would favor two clocks that ran months 2-13 and 24-30 (item A).

MAHA's point here is that the language in the rule should clearly identify how the 12-month period works.

The "phased project" clock. The issue in subp. 14 is whether the 36-month clock starts running at the end of the first part of a phase or the last part. If it is the last part, does the language then provide for a "rolling" 36-month period? For example, consider otherwise qualifying asset additions in months 1, 30, 60, and 90. Does the 36-month period stop after month 37, or does continue and pick up the costs in month 60? In month 90?

The contiguous or common foundation of a phased project. The issue in subp. 14, item B, regards the meaning of the language that reads "have a continguous or common foundation" and serves as one of the definitions of a "phased project." The key is the operational definition. To illustrate the issue, MAHA has a member facility that wants to add a small wing to the nursing home, and they also plan to remodel and enlarge the dining room. The dining room will not be adjacent to the new wing, but once residents are moved into the new wing, they will be much closer to the remodeled dining room. The dining room is within the existing building, so the new wing's foundation will be contiguous to the foundation for the existing nursing home. Does that mean that the project will be considered a phased project?

In a similar vein, how does this provision apply to projects completely within the existing foundation of a nursing home? For

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example, a facility might plan on remodeling a nurses' station in the west wing, replace the furnace boiler in the basement, and convert double-occupancy resident rooms in the east wing into private rooms, all with separate construction companies and contracts. Item C does not appear to apply, but would the "foundation language" in item B apply?

How does the language in item B affect projects that involve more than one floor of a building? The most common example will be a roof replacement that occurs within 36 months of some other type of capital asset addition or replacement.

Definitions. MAHA recommends that an addition be made to part 4655.1110 to reference the definition of a facility's appraised value contained in part 9549.0010 to 9549.0080. The purpose would be to clarify that the reference to the facility's appraised value in part 4655.1140 relates to the reimbursement rule, rather than any sort of appraised market value. Other key terms in the reimbursement rule are specifically identified in the defintions section of this proposed emergency rule.

We hope these comments prove to be helpful. Please contact us if you have any questions or need clarification of any of our points.

Sincerely yours,

Michael C. Finn
Vice President of Public Affairs

Darrell R. Shreve
Director of Research & Regulation

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In the Matter of the Adoption of the Rule of the Minnesota Department of Health Governing Nursing Home and Certified Boarding Care Home Construction Projects, parts 4655.1100 to 4655.1150 [Emergency]

DECLARATION OF COUNSEL

I, Richard A. Wexler, 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 1300.

Richard A. Wexler
Assistant Attorney General

Dated: 12/29/92