

IN THE MATTER OF THE PROPOSED  
ADOPTION OF AMENDMENTS TO PERMANENT  
RULES GOVERNING THE DETERMINATION  
OF PAYMENT RATES FOR INTERMEDIATE  
CARE FACILITIES FOR PERSONS WITH  
MENTAL RETARDATION OR A RELATED  
CONDITION, PARTS 9553.0010 TO 9553.0080

STATEMENT OF NEED  
AND REASONABLENESS

**Authority**

Minnesota Rules, parts 9553.0010 to 9553.0080 establish procedures for determining rates for all intermediate care facilities for persons with mental retardation participating in the medical assistance program, except intermediate care facilities in state owned hospitals as defined in Minnesota Statutes, section 246.50, subdivision 5. These rules took effect on December 16, 1985. They were developed to implement Minnesota Statutes, section 256B.501, subdivisions 1 to 3.

The rule parts were promulgated according to the requirements of federal statutes 42 USC 1396 (a)(13)(A) and federal regulations 42 CFR Part 447.

**Legislative History**

Minnesota Statutes, section 256B.501, subdivisions 1 to 3 specify that the commissioner of human services shall establish by rule, procedures for determining rates for care of residents of ICF/MRs. The legislation indicates that the rates should cover only "costs that must be incurred" in the care of residents in efficiently and economically operated facilities, and "that in developing the procedures, the commissioner shall include:

- (a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy;
- (b) limits on the amounts of reimbursement for property, general and administration, and new facilities;
- (c) requirements to ensure that the accounting practices of the facilities conform to generally accepted accounting principles;
- (d) incentives to reward accumulation of equity; and
- (e) appeals procedures that satisfy the requirements of section 256B.50 for appeals of decisions arising from the application of standards or methods pursuant to Minnesota Rules, part 9510.0500 to 9510.0890, 9553.0010 to 9553.0080, and 12 MCAR 2.05301 to 2.05315 (temporary)."

This legislation reflects the continuing concern of the citizens of Minnesota that quality care for the mentally retarded be provided in a cost-efficient manner. The legislation further stipulates that in developing the rule, "the commissioner shall consider the recommendations contained in the February 11, 1983, Report of the Legislative Auditor Community Residential Programs for the Mentally Retarded and the recommendations contained in the 1982 Report of the Department of Public Welfare Rule 52 Task Force." Information from these reports, as well as other sources comprise the background for the permanent rule, which sets out procedures for determining the total payment rates for ICF/MRs participating in the Medical Assistance Program.

### Amendment Process

The Department published a "Notice of Intent to Solicit Outside Opinion" in the State Register, December 15, 1986 (11 S.R. 1079). Advisory committee meetings were held December 23, 1986, February 11, 1987 and March 23, 1987. Several modifications were made to the proposed amendments based on the input received from the advisory committees. A list of the advisory committee members is contained in Exhibit A.

The Department and the industry's experience with Minnesota Rules parts 9553.0010 to 9553.0080 since the rules took effect led to the identification of several issues that need to be addressed to improve the providers' ability to manage their facilities. The purpose of the proposed amendments is to address those issues so that quality care can be provided in a cost effective manner.

### Statement of Need and Reasonableness for Specific Rule Provisions

The specific provisions of parts 9553.0010 to 9553.0080 which are to be amended are affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

Part 9553.0050, Subpart 1, item A, subitem (1) unit (f); part 9553.0050, subpart 2, item A; and part 9553.0075, subpart 3, item A, subitem (3).

These amendments change the time period used to calculate the percentage change in the All Urban Consumer Price Index CPI/U from "between the two most recent Januarys prior to the beginning of the rate year" to "between the two most recent Decembers before the beginning of the rate year." It is necessary to change the months used for the consumer price index because this statistic is no longer published in January. The federal government only publishes the CPI/U in June and December, currently all facilities governed by this rule have a common reporting year of January 1 through December 31. It is reasonable to use the December statistics because they will more closely reflect inflation for the period during which the reported costs were incurred.

Minnesota Rules, Part 9553.0050, subpart 1, item A, subitems (2) and (3).

This section of the rule imposes limits on the allowable historical operating costs in the maintenance and administrative cost categories. It is necessary to limit these costs to comply with Minnesota Statutes, section 256B.501, subdivision 3 which states that the commissioner shall establish procedures for determining rates for the care of residents of ICF/MR which "shall include: (a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy; [and] (b) limits on the amounts of reimbursement for property, general and administration, and new facilities".

The rule currently in effect limits allowable historical operating costs in both the maintenance and administrative cost categories to "the operating cost payment rate for each of those categories in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year." The purpose of the amendment proposed to subpart 1 item A, subitem (2) is to remove this limit on the administrative cost categories for rate years beginning on or after October 1, 1987. It is reasonable to remove this limit on administrative costs because the rule already contains an administrative cost per licensed bed limit in part 9553.0050, subpart 1, item A, subitem (1), units (f) and (g) which meets the requirements in Minnesota Statutes, section 256B.501, subdivision 3.

The Department has examined the use of two limits on these costs and has determined that the historical limit is no longer necessary to contain costs. It is reasonable to discontinue use of this limit because by retaining the per bed limit and discontinuing the historical limit, the Department can control the overall amount spent on administration without penalizing facilities that had low administrative costs in the past.

Minnesota Rules, parts 9553.0050 and 9553.0075

The rule sections listed below all refer to the amended sections in part 9553.0050, subpart 1, item A, subitems 2 and 3. It is necessary and reasonable to correct the references in these sections to clarify when the amended provisions apply.

1. Part 9553.0050, subpart 1, item A, subitem (3):  
Delete "(3)"; insert "(5)".
2. Part 9553.0050, subpart 1, item A, subitem (3):  
Delete "(3)"; insert "(5)".  
Delete "subitem (2)"; insert "subitems (2), (3), and (4)".
3. Part 9553.0050, subpart 2, item E:  
In both places that refer to subitem (2), strike "subitem (2)"; insert "subitems (2), (3), and (4)."
4. Part 9553.0075, subpart 1, sentence number 3:  
Strike "subpart 1"; insert " (2), (3), and (4)."

5. Part 9553.0075, subpart 2, item B, subitem (1):  
Strike "subitem (2); insert "subitems (2), (3) and (4)."
6. Part 9553.0075, subpart 3, item A, subitem (1):  
Strike "subitem (2)"; insert "subitems (2), (3), and (4)."

#### Minnesota Rules Part 9553.0060, subpart 5, item A

Subpart 5 is necessary to encourage the efficient and prudent management of capital assets and reward the accumulation of defined equity. The purpose of the provision is:

1. to reduce the amount of allowable capital debt outstanding by the portion of the capital debt reduction allowance to be applied to reduce capital debt; and
2. to establish a payment which rewards the accumulation of equity as defined in part 9553.0020, subpart 18 by allowing an increase in payments to the facility as the amount of equity increases.

The amendments to subpart 5 are necessary to decrease the amount of the capital debt reduction allowance which must be applied to reduce outstanding capital debt and to increase the payment which rewards the accumulation of equity. These changes increase the reward for the accumulation of equity for facilities with more than 40 percent equity and give all providers greater flexibility to use payments made under the property reimbursement system for capital acquisitions or program changes to meet the needs of newly admitted residents. It is reasonable to increase the capital debt reduction allowance for facilities with more than 40 percent equity to give a more equitable return on equity for those providers. The current system is somewhat skewed in favor of the facilities with less equity because the department wants them to increase their equity. This change is necessary to better reward facilities that already have significant amounts of equity. Increasing their ability to use existing financial resources is a reasonable way to enable providers with equity of 40% or less to meet the needs of the more disabled residents who are now being admitted to community-based ICFs/MR.

#### Minnesota Rules, Part 9553.0061.

##### Background

In November 1985, the federal government published amendments to the fire safety standards for intermediate care facilities for the mentally retarded. These amendments require ICFs/MR to meet the provisions of the 1985 edition of the National Fire Protection Association's 1985 edition of the Life Safety Code. (1985 Life Safety Code). The amendments were adopted as published in the April 1986 Federal Register (Volume 51, No. 75 pages 13224 to 13228) and were effective May 19, 1986. The new standards



apply to all residential facilities licensed to serve persons with mental retardation or a related condition under Minnesota Statutes, section 252.28 and licensed as a supervised living facility under Minnesota Statutes chapter 144 which is certified as an intermediate care facility for persons with mental retardation or related condition by the Minnesota Department of Health. The Federal Regulations allow facilities with more than 16 beds to be operated under the version of the Life Safety Code in effect at the time the facilities were licensed. However, facilities with 16 or fewer beds are required to meet the new fire safety standards.

Chapter 21, Appendix F of the 1985 Life Safety Code sets forth the method used to determine the level of evacuation status of the facility based on the physical plant configuration and the type of occupants. Based on the criteria in Appendix F, facilities are placed in one of three categories; prompt, slow, and impractical. The 1985 Life Safety Code permits the facilities to comply with the standards for their level of evaluation in a variety of ways. Equivalencies for each factor are established in Appendix G of Chapter 21. Several combinations of corrective actions that can be used to achieve compliance with the different types of deficiencies are also included in Appendix G. Among the factors considered are staffing levels and physical plan modifications.

Part 9553.0050, subpart 3 currently provides a method for immediately adjusting a facility's program operating costs for staff additions required to correct federal or state licensure deficiencies. This one-time adjustment can be used to provide additional reimbursement for staff necessary to satisfy a fire safety deficiency. However, the rule does not contain a provision to provide additional immediate reimbursement for the cost of physical plant modifications or the addition of new depreciable equipment needed to correct deficiencies under the 1985 Life Safety Code.

Because modifications to the facility's physical plant or the purchase of additional depreciable equipment may be necessary to comply with the 1985 Life Safety Code, the Department developed part 9553.0061 to provide some additional reimbursement for these costs. It is reasonable to add a rule part to reimburse these costs more quickly to promote efficient use of existing class A beds, to facilitate rapid compliance with the 1985 Life Safety Code, and to avoid incurring unnecessary financing costs.

**Subpart 1.** This subpart clarifies that adjustments may be made to the facility's special operating cost payment rate to permit compliance with section of the Code of Federal Regulations which incorporates the 1985 Life Safety Code. It is necessary to state that the adjustment will be made to the facility's special operating cost rate so that the providers will know which part of the rate will be affected. It is reasonable to adjust the special operating cost rate and not the other portions of the facility's rate because these costs can be handled more easily as special operating costs. Other provisions in the current rule can be used to meet other cost increases needed to comply with the 1985 Life Safety Code. Limiting the adjustment to physical plant modifications and the addition of new depreciable equipment and handling these costs through the special operating cost payment rate is a reasonable means to limit the scope of the adjustment to only necessary costs increases that can not be accommodated by the current rule.

**Subparts 2 to 5.** Subparts 2 to 5 establish the conditions, the documentation, and the evaluation process which must be met by a facility in order to receive a rate adjustment for the cost of additional assets needed to correct a fire safety deficiency. These provisions are necessary to notify providers of the commissioner's expectations. The provisions are also necessary to limit the rate adjustments made under this part to those the commissioner determines are necessary to meet the fire safety in the 1985 Life Safety Code requirements. It is reasonable to limit this provision to the cost of assets necessary to meet the fire safety requirements in the 1985 Life Safety Code because other allowable costs can be reimbursed under other provisions of the rules. It is reasonable to accelerate payment for some of these asset costs to improve the facility's cash flow and to decrease the need for additional financing of debt.

**Subpart 2, item A.** This item is necessary to limit the rate adjustments made under this part to facilities with 16 or fewer licensed beds. It is reasonable to limit the application of the rate adjustment to facilities with 16 or fewer beds because the purpose of the proposed rule part is to provide relief for facilities that are required to modify their physical plant or purchase new equipment to meet the requirements in the 1985 Life Safety Code. It is not necessary to adjust the rate for facilities with more than 16 beds because these facilities were not affected by the 1985 Life Safety Code changes. The 1985 Life Safety Code specifically "grandfathers" in these large facilities under the Life Safety Code in effect when these facilities were licensed. Since these facilities have not been required to make any changes due to adoption of the 1985 Life Safety Code, it is not necessary to provide them with an immediate rate adjustment.

**Subpart 2, item B.** Under the 1985 Life Safety Code there are combinations of corrective actions that can be taken to correct deficiencies. Item B is necessary to give the commissioner the authority to determine the most programmatically sound and cost effective means of correcting the deficiency. It is reasonable for the commissioner to make this determination so that the added cost to the MA program of the corrective actions can be balanced against the effectiveness and programmatic impact of the corrective actions.

**Subpart 2, item C.** Item C is necessary to assure that other existing resources available to the facility are used before the facility receives a special operating cost payment rate adjustment under this part. It is reasonable to limit rate adjustments under this part to costs that can not be covered using other available resources because this part was developed to provide relief to facilities that were having difficulty meeting the requirements of the 1985 Life Safety Code under the existing rules. Facilities that can meet the requirements of the 1985 Life Safety Code using existing resources do not need the special operating cost payment rate adjustment provided under this part.

**Subpart 2, item D.** Item D is necessary to clarify that the facility must also meet the procedural requirements in subparts 3 and 4 in order to receive a rate adjustment under this part. The reasonableness of the requirements in subparts 3 and 4 are discussed in the rationale for those subparts.

**Subpart 3.** This subpart specifies the documentation which providers must provide to the commissioner. It is necessary to include this information in the rule so that providers know what documentation to provide. It is reasonable to request that the facility submit the information requested because this information is easily accessible to the provider. The documentation in subpart 3, item A is already produced by the state fire marshal. The documentation in items B and C would be acquired by the facility in the process of addressing the fire safety deficiencies. It is necessary for the commissioner to receive this information so that the commissioner can determine if the request meets the requirements in subpart 2. In addition, the commissioner will need this information in order to evaluate the cost effectiveness and programmatic impact of the proposed plan of correction.

**Subpart 4.** This subpart is necessary to specify what the commissioner expects the facility to do with regard to the bidding process. The documentation required is necessary to enable the Commissioner to make an informed decision concerning the scope of the project for which the bid was prepared, its relationship to the fire safety deficiency, and the cost effectiveness of the project. Requiring that the facility obtain a bid from a nonrelated organization is a reasonable way to ensure that the bid reflects the cost of obtaining the necessary assets in a competitive market. Using a bid rather than the provider's estimate to determine the cost of the project is reasonable because the bid would more closely represent the "true" cost of the project. It is reasonable to give the commissioner authority to reject the bid when it is excessive or includes items unrelated to the fire safety deficiencies because this part was designed to pay only for necessary and reasonable costs to correct the deficiencies. It is reasonable to permit the commissioner to recommend another organization which must supply a second bid because the commissioner may be aware of a more cost effective way to correct the life safety deficiency based on her knowledge of proposals submitted by other providers.

It is reasonable not to apply this subpart to a facility that has implemented a plan of correction before the effective date of this part because the provider did not know of the requirement when the plan was implemented and could not benefit from seeking a second bid.

**Subpart 5.** This subpart gives the commissioner authority to require the facility to submit an alternate plan of correction to the State Fire Marshal when the Department determines that another plan is more programmaticaly sound or cost effective. Since the commissioner is required under Minnesota Statutes, section 256B.501, subdivision 2 to establish approved rates based on methods and standards that the commissioner finds adequate to provide for costs that must be incurred for

the "quality care of residents in efficiently and economically operated facilities and services", it is necessary for the commissioner to evaluate the cost and programmatic impact of plans submitted. To ensure that state funds are used to maximum advantage, it is reasonable to require the facility to submit an alternative plan when the commissioner determines that another plan would be more cost effective or programmatically sound. Requiring the facility to develop the alternative plan ensures that there is facility involvement in the plan. It is necessary to require that the facility submit the alternative plan to the fire marshal to ensure that the alternative plan corrects the deficiency.

**Subpart 6.** This subpart specifies the process and computations necessary to determine the allowable cost of the fire safety deficiency which can be reimbursed under this part. This subpart is necessary to inform providers of the method to be used to compute the rate.

**Subpart 6, Item A.** This item is necessary to document the costs incurred by the provider to correct the deficiency. It is reasonable to require copies of actual invoices showing the cost of the project to assure that only necessary costs are reimbursed.

**Subpart 6, item B.** It is reasonable to allow the lesser of the actual cost or the approved bid to ensure that only costs that are actually incurred are reimbursed and to encourage submittal of accurate bids. It is reasonable to reduce the final bid amount allowed by 75% of the facility's accumulated funded depreciation or other savings or investments because the purpose of this part is to reimburse only costs that the facility can not cover using existing resources. It is reasonable to require the use of only 75% of the facility's accumulated funded depreciation or other savings or investments because the facility may need to replace other assets using these funds. The reference to part 9553.0060, subpart 1, item E, subitem (4) is necessary to identify that only the portion of the accumulated depreciation targeted for the purchase, replacement, or repair of capital assets must be used to reduce the amount of the life safety code adjustment. This portion of the funded depreciation accumulated by the provider only represents up to 50% of the facility's funded depreciation account. The other 50% is to be used to repay the principal portion of outstanding debt. The purpose of the portion of the funded depreciation account referred to in this item is to purchase, replace, or repair capital assets. Since the costs included in the life safety code adjustment are also related to the purchase, replacement, or repair of capital assets it is reasonable to reduce these costs by using this portion of the facility's funded depreciation account.

**Subpart 6, item C.** A significant number of the facilities reimbursed under these rule parts are financed by Minnesota Housing Finance Agency (MHFA). As a condition of the mortgage, MHFA requires facilities to set aside an additional amount of money to be used in case the facility defaults on its mortgage. This money is deposited in the development cost escrow account. A facility is permitted to withdraw money from this account to make repairs or replace capital assets as long as the amount



withdrawn is later replaced. It is reasonable to require the use of this money for the physical plant modifications and additions of new depreciable equipment needed to correct a fire safety deficiency since the money is available to the facility for that purpose and since this part provides the means for replacing the amount withdrawn.

**Subpart 6, items D and E.** Items D and E are necessary to spread the cost of the major modifications or depreciable equipment purchases over two years rather than one. It is reasonable to spread these costs over a greater period of time to enable the Department to keep the total cost of the program within the budget constraints and legislative appropriations.

**Subpart 7.** This subpart is necessary to establish the additional per diem amount to be included in the facility's special operating cost payment rate. It is reasonable to handle reimbursement in this way to assure that allowable costs are reimbursed while minimizing the administrative burden on the Department in setting rates. This method of reimbursing these costs minimizes the administrative burden on the Department because it only requires minor modifications to the Department's computerized rate setting system.

**Subpart 8.** This subpart is necessary to avoid the duplication of reimbursement which would occur if the allowable costs under this part were reimbursed through these provisions and also were allowed to be capitalized and depreciated under other rule parts. It is reasonable to apply existing rule provisions to capitalize and depreciate costs not allowed under these parts so that the facility is reimbursed for those costs in the same way that it would be reimbursed for other similar costs.

**Subpart 9.** This subpart is necessary because some facilities which have received a one-time adjustment under Part 9553.0050, subpart 3 may more appropriately be reimbursed under this part. When it is acceptable to the state fire marshal and more programatically sound or cost effective to satisfy the fire safety deficiency through payments under this part, it is reasonable for the commissioner to require that the change be made. This provision assures that programatically sound and cost effective decisions can be implemented. It is reasonable to allow the provider to reapply for a one-time adjustment under part 9553.0050, subpart 3 when a majority of the initial one-time adjustment is subtracted from the facility's total payment rate because this means that the initial one-time adjustment was used to correct a fire safety deficiency and the facility may need another one-time adjustment for other reasons.

## CONCLUSION

The foregoing statements demonstrate the need for and the reasonableness of the proposed amendments to parts 9553.0010 to 9553.0080. To a great extent, the need for the amendments is prescribed expressly by state statute, federal requirements, and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

DATE 3/31/87

*Wicketi Sleeper for*  
SANDRA S. GARDEBRING

EXHIBIT A

RULE 53 (PARTS 9553.0010 TO 9553.0080)

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