

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

Legislative Authority

Minnesota Rules, parts 9553.0010 to 9553.0080 (Rule 53) establish procedures for determining rates for all intermediate care facilities for persons with mental retardation (ICFs/MR) 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 were developed to implement Minnesota Statutes, section 256B.501, subdivisions 1 to 3, and were effective on December 16, 1985.

The rule parts were promulgated in accordance with section 1902(a)(13)(A) of the Social Security Act, codified as United States Code, title 42, section 1396(a)(13)(A) and the Code of Federal Regulations, title 42, part 447.

This Statement of Need and Reasonableness is prepared in compliance with the Administrative Procedure Act, Minnesota Statutes, sections 14.131 and 14.23.

Legislative Hist

Minnesota Statutes, section 256B.501, subdivisions 1 to 3 require the Commissioner of Human Services to establish, by rule, procedures for determining rates for care of residents of ICFs/MR. Subdivision 3 provides that the rates should cover only "...costs that must be incurred for the care of residents in efficiently and economically operated facilities", and:

"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 requires that, in developing the rule, "...the commissioner shall consider the recommendations contained in the February 11, 1983, Report of the Legislative Auditor on 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 ICFs/MR participating in the Medical Assistance Program.

A public hearing on the permanent rule was held on August 21, 22, and 23, 1985 and the rule was approved by the Office of Administrative Hearings. Rule 53 was published in its final form in the State Register on December 9, 1985, and was effective on December 16, 1985, for payment rates established on or after January 1, 1986. Permanent Rule 53 has since been amended and the amendments were published in their final form in the State Register on June 29, 1987, and were effective on July 6, 1987.

Amendment Process

The Department published a "Notice of Solicitation of Outside Information or Opinions" in the State Register on November 2, 1987 (12 S.R. 961). Advisory Committee meetings were held November 3, November 12, November 19, and December 15, 1987. The Department's and the industry's experience with Minnesota Rules, parts 9553.0010 to 9553.0080 led to the identification of several issues that needed to be addressed to improve the providers' ability to manage their facilities. The proposed amendments address those issues to ensure that quality care be provided in a cost-effective manner. Several modifications were made to the proposed amendments based on the input received from the advisory committee members. The changes considered by the advisory committee are:

- a. Review the appropriateness of the Consumer Price Index for use as an inflation factor.
- b. Consider adjusting the program operating cost base to provide additional resources to meet increased Federal and state requirements.
- c. Consider modifications to the maintenance cost limitation.
- d. Consider changes in the method used to calculate the efficiency incentive.
- e. Consider modifying the computation of capacity days for facilities which reduce their number of licensed beds after the end of the reporting year.
- f. Review the requirement that all facilities report costs on a calendar year basis.

A list of the advisory committee members is contained in Exhibit A.

The Need and Reasonableness of Specific Rule Provisions

Following are discussions of the need for and reasonableness of each rule part to be amended.

1. Part 9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. Required cost reports.

The change proposed in this subpart relates to the annual cost reports that must be filed under Rule 53. Currently, all ICF/MR providers annually must file a cost report on a calendar year basis. In addition to being certified under the Medical Assistance Program as ICFs/MR, two facilities are also certified as nursing homes. Under Minnesota Rules, parts 9549.0010 to 9549.0080, these nursing homes are required to file annual cost reports, with the reporting year ending September 30. The result is a duplication of administrative and accounting costs in each year for these dual certified facilities to comply with both reimbursement rules. Additional costs are incurred to separately account for, allocate, and report costs twice each year. It is necessary to relieve this unnecessary administrative burden to promote administrative efficiency.

The proposed amendment permits ICF/MR facilities that are attached to a nursing home to substitute the costs identified as ICF/MR costs for the fiscal year ending September 30 for those costs otherwise required to be reported under this part. It is reasonable to use the information on ICF/MR costs determined at the time the nursing home's costs are identified

so that duplication of effort is eliminated and the possibility of some costs being paid both through the nursing home reimbursement rule and through Rule 53 is avoided.

The ICF/MR costs identified on September 30 are merely being substituted for those costs which otherwise would have been provided. The other provisions of Rule 53 are applied to those costs without change.

2. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. Establishment of allowable historical operating cost per diem.

Item A, subitem (1), unit (f).

The purpose of unit (f) is to provide for the annual inflation indexing of the group administrative cost per licensed bed limits established in unit (e) for the rate year beginning October 1, 1987. The group administrative cost per licensed bed limit was established for the entire rate year beginning October 1, 1987. For all subsequent rate years beginning on or after October 1, 1988, this limit is to be indexed. The current index required by the rule is the consumer price index (CPI-U) for Minneapolis/St. Paul for the reporting year. After review by the advisory committee and the Department, it was determined that, under a prospective reimbursement system, the use of a historical index on variable costs (operating costs) could result in an inflation factor that may not always adequately reflect the costs that will be incurred during the rate year. Since the rate year lags the reporting year by nine months, a forecasted index is believed to be more appropriate, fair and reasonable.

A forecasted index provides an adjustment for anticipated economic conditions for the period in which the costs will be incurred. In addition, since the ICF/MR industry's payroll-related costs account for more than 60 percent of its operating costs, a wage-driven index is more appropriate. Of the various indices reviewed by the advisory committee, it was determined the average hourly earnings in nursing and personal care facilities index (SIC 805) most closely represents cost changes in ICFs/MR.

It is reasonable to use the percentage moving average index for the fourth quarter of the rate year because that represents the forecasted percentage change in the rate year over the previous fiscal year. It is necessary and reasonable to state that the forecasted index is to be determined from the second quarter of the calendar year following the reporting year to fix a point in time at which the index is to be established and to provide adequate time for the Department to obtain the index before the date (September 1) that the payment rates must be determined.

The Department intends to use the SIC 805 index forecast by Data Resources, Inc. (DRI). DRI is a nationally recognized econometric firm which forecasts a variety of indices for many users such as Federal, state, and local governments, and private industry. It is necessary for the Department to rely upon DRI for the forecasting of SIC 805, since the reputation, expertise, and knowledge of DRI can not be duplicated by Department staff. It is reasonable to use DRI since the Department currently purchases the forecasting service provided by DRI for many other purposes such as budgeting and the updating of projected costs of its

various programs and services. It is also necessary and reasonable to state where the historical portion of the forecasted index can be found so that the accuracy of the forecasted index can be independently verified.

The initial base period for the forecasted index was the second quarter of 1987. For purposes of forecasting this index, Data Resources, Inc. will from time to time reestablish the base period in conjunction with their quarterly updates of the forecasted index (SIC 805).

3. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. Establishment of allowable historical operating cost per diem.

Item A, subitem (2).

These provisions establish limits for the maintenance operating cost category. The current limit is specific to each facility and is based on the facility's revenues paid in the maintenance cost category during the reporting year. The Department and the advisory committee have concluded that the current limit is too restrictive given the significant potential variability of several cost items included in this cost category. Those line item costs subject to the greatest variability include repairs and maintenance, utility expenses, and food costs. To accommodate this variability, it is necessary to establish a corridor which will permit costs in the maintenance cost category to exceed the current limit by up to 25 percent for the portion of the rate year beginning January 1, 1988, and ending September 30, 1988. The new maintenance limit provides the needed flexibility for facilities to cope with much of the expenditure

variations. It is reasonable to establish the new maintenance limit at 25 percent above the current limit because the variability in these costs can be managed by an efficient and economical provider within the proposed limit. It is necessary and reasonable to continue some limitation on maintenance costs to remain in compliance with the enabling legislation, Minnesota Statutes, section 256B.501, subd. 3(a).

To avoid the potential for exponential growth in the maintenance operating cost category, it is necessary to index the new maintenance limit for future rate years by the same inflation index used in subitem (1) unit (f). It is reasonable to use the same index to avoid confusion and to be consistent with the index applied to the administrative cost limit (see the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f)).

It is necessary to make the change effective January 1, 1988, so that facilities may obtain the maximum benefits of this change within the constraints of the State's Medical Assistance budget for ICFs/MR, and so that the amendments to the state plan can be made on a timely basis for the state to receive full Federal financial participation. To receive Federal financial participation, the amendments must be effective in the same quarter that the state plan changes are filed with the Health Care Financing Administration of the United States Department of Health and Human Services.

4. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.**

Item A, subitem (4).

The purpose of this addition to subitem (4) is to fill a void in item A

with respect to the program payments made during the reporting year are to be used in the computation of the efficiency incentive for rate years beginning on or after October 1, 1988. Since the current provisions of item A do not address this issue, it is necessary for the Department to clarify the rule. The proposed computation represents the method used for rate years beginning October 1, 1986, and October 1, 1987. The computation establishes the program revenues paid by the Department during the facility's report year. In subpart 2, item E, this amount is compared to program expenditures during the year. The rule does not place maximum limits on program costs. However, subpart 2, item E does require that program costs not be decreased, thus establishing a minimum limitation. It is reasonable to compute the minimum program cost limit in the same way as was done previously, since the sole purpose remains the determination of a facility's eligibility for the efficiency incentive.

5. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 2. Establishment of total operating cost payment rate.

Item A.

Subpart 2 provides for the establishment of the total operating cost payment rate. The subpart establishes the necessary intermediate steps for the transition from a facility's allowable historical operating costs per diem in each of the three categories (program, maintenance, administrative) to a prospective operating cost payment rate.

Item A specifies that a facility's allowable historical operating cost per diem be indexed. It is necessary to specify that the CPI-U index will continue to be used for operating cost payment rates established for time

periods prior to January 1, 1988, to make it clear that the amendment refers only to time periods after January 1, 1988. This is reasonable for the reasons concerning the MA budget and Federal financial participation given in the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (2).

The index to be used after January 1, 1988, is the same index required by subpart 1, item A, subitem (1), unit (f), except that that index must be annualized to account for the time lag between the reporting year and the rate year. For the rationale for the particular index used, see the discussion of the amendment to part 9553.0050, subpart 1, item A, subitem (1), unit (f).

In addition to the application of the annualized inflation factor, the program allowable historical operating cost per diem is to be further adjusted by a factor of 2.46 for the period January 1, 1988, through September 30, 1988. It is necessary to increase the annualized inflation factor by 2.46 to compensate providers for additional program costs associated with recent increased staffing requirements caused by new Federal and state regulatory and staffing standards, as well as the for the additional staff that may be required to serve newly admitted residents from state regional treatment centers. While part 9553.0050, subpart 3 (one-time adjustment to program operating costs) and Minnesota Rules, parts 9510.1020 to 9510.1140 (Rule 186) provide the necessary financial resources for substantial changes in a facility's program or for significant individual needs of some resident's, other less significant required changes that may not be included under the provisions in these rules may

not be adequately or timely reimbursed. This adjustment is a reasonable way to account for such increased costs in lieu of the client-based reimbursement system, now being developed.

6. Part 9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 2. Establishment of total operating cost payment rate.

Item E.

Item E provides an efficiency incentive on total operating costs excluding those costs included in the special operating cost category. The amendment provides that the computation of the current efficiency incentive be based on "allowable" operating costs for rate periods beginning on or after January 1, 1988. This change, in conjunction with the change in part 9553.0050, subpart 1, item A, subitem (2), will permit a greater number of facilities to be eligible for an efficiency incentive. The requirements that the facility's total operating cost excluding special operating costs be below the sum of its historical operating cost limits, and that the facility's program allowable historical operating costs not be below the respective limit on those costs, is not affected by the amendment. Without the latter constraint, a facility could generate efficiency dollars by eliminating program employees.

This amendment is consistent with a similar methodology used in the nursing home reimbursement rule (rule 50). The proposed change is both necessary and reasonable to reward economically efficient providers who operate below the computed historical operating cost limits. The maximum amount of the efficiency incentive of \$2 per resident per day remains the same and must be limited for cost containment purposes.

In addition, -- is reasonable to place a limit on the efficiency incentive so as not to encourage providers to reduce necessary costs in areas that support the ongoing programs of the facility.

7. Part 9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 4. Computation of property related payment rate.

Item A.

Item A in subpart 4 provides the method of computing the facility's capacity days that are used in determining the property-related payment rate. Currently, the facility's number of licensed beds during the reporting year were multiplied by the number of days in the reporting year. With the state's emphasis on providing services in alternate, less restrictive service settings, a number of facilities are reducing the number of licensed and certified ICF/MR beds. The proposed amendment is necessary to make it possible for a facility to use its reduced licensed bed capacity at a time (August 1) closer to the beginning of the rate year (October 1). The use of a later date is reasonable because it allows the facility's actual capacity to be more closely related to that of the rate year while retaining the integrity of a prospective reimbursement system. The use of licensure reductions that have occurred before August 1 and that are reported to the Department by August 4 is necessary and reasonable to

allow for the timely audit of the information and computation of payment rates before the deadline of September 1 provided by the rule. If a hearing is held, the Department does not expect to present the testimony of any expert witnesses.

CONCLUSION

The foregoing discussion establishes the need for and the reasonableness of the proposed amendments to parts 9553.0041, 9553.0050, and 9553.0060. 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.

1-6-89
DATE


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SANDRA S. GARDEBRING
Commissioner