

MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Proposed  
Adoption of Rules of the  
Department of Health Concerning  
Licensure of Home Care Providers,  
Minnesota Rules, chapter 4668, and  
Licensure Fees, chapter 4669.

SUPPLEMENTARY  
STATEMENT OF NEED  
AND REASONABLENESS

This Supplementary Statement of Need and Reasonableness addresses the bases for modifications that the Department proposes be made to the rules originally proposed for the licensing of home care and hospice providers under Minnesota Statutes, §§144A.43 to 144A.49.

Proposed rules to license home care and hospice providers were published on June 24, 1991 in the State Register (15 S.R. 2669). A public hearing was held August 28 through 30, 1991. In response to testimony and comments entered in the hearing record, the Department proposed a number of changes during the period following the hearing.

On October 22, 1991, the Administrative Law Judge issued his Report, in which he found that some of the proposed modifications to the proposed rules constituted substantial change within the meaning of Minn. Stat. §14.15, subd. 3 and Minn. Rule pt. 1400.1000, subp.1 and 1400.1100. He determined that the Department could either commence a new rulemaking procedure with the modified rule or publish the modification with an abbreviated notice scheduling a new hearing date to take testimony on the modifications.

The Department has chosen the second option and is publishing the proposed modifications and reconvening the hearing to consider only the modifications. This Supplementary Statement of Need and Reasonableness is submitted in addition to the record from the August hearing. These modifications are based on the testimony and comments in the hearing record, the Department's analysis of those views and proposals and changes to Minnesota Statutes, §§ 144A.43 to 144A.49 made by the 1992 Minnesota Legislature.

The Legislative Commission to  
Review Administrative Rules

SEP 10 1992



The following discussion addresses each proposed modification to the proposed rules. Changes due only to the renumbering of rules caused by deletions or additions are not specifically addressed.

1. **Part 4668.0003, subpart 2: Definitions: ambulatory.** Proposed part 4668.0110 provides "ambulation" of clients as a test for distinguishing between home care aide tasks and home health aide tasks. Testimony at the hearing revealed different views as to whether ambulation is the appropriate test. Some testimony asserted that ambulation is an inappropriate criterion because it constitutes a single activity of daily living (ADL), and therefore does not fully measure a client's ability to assist or direct his or her care. Other testimony asserted that, as defined by the nursing home case mix system, ambulation actually constitutes three ADLs, namely walking, wheeling and transfer, and therefore is a good criterion for distinguishing between the need for training by aides.

The Department continues to conclude that ambulation is an appropriate test, for the reasons stated in the original Statement of Need and Reasonableness. However, to clarify the distinction, we recommend adding "transfer" as an explicit part of the definition of "ambulatory".

2. **Part 4668.0003, subpart 12: Definitions: home health aide tasks.** This modification of the definition is necessary to conform to the changes made in part 4668.0100, subpart 1.

3. **Part 4668.0008, subpart 2: Services included in and excluded from licensure: determination of direct services.** The statute provides that at least one home care service be provided "directly," and not by contract, in order for the entity to be considered a home care provider. See Minn. Stat. § 144A.43, subd. 4. The proposed rule did not implement this distinction between services provided directly and services provided by contract because it included references to contractors in the test to determine when services are provided directly. It is necessary to clarify the rule language so that the rule does not conflict with the statute.

4. **Part 4668.0008, subparts 2 and 5 (originally 4): Services included in and excluded from licensure: determination of direct services: determination of regularly engaged.** This part, as originally proposed, allowed the Department to use unstated factors in determining whether a provider either is a "direct" provider of services or is "regularly engaged" in the provision of home care services. To prevent unwarranted discretion in applying the statute and rules, it is necessary to modify the last sentences of subparts 2 and 5 to delete the reference to unstated factors.

5. **Part 4668.0008, subpart 3: Services included in and excluded from licensure: contract services.** Subpart 3 is added because a home care provider may be subject to licensure if it provides at least one home care service directly and also provides other services by contract. If the contractor is not subject to licensure, it is necessary to ensure that the contract between the provider and the contractor provides for compliance with licensure standards so that it is clear that the provider's obligations under its home care license will be carried out. This subpart is reasonable because it does not change any policy, but clarifies that a provider must hold a contract provider responsible for compliance with the chapter.

6. **Part 4668.0008, subpart 9: Services included in and excluded from licensure: home management services.** The statute was amended to require registration instead of licensure for home management services so this subpart is no longer needed. See Minn. Stat. §144A.461.

7. **Part 4668.0009, subparts 1 to 6: Exemptions for regulated programs.** Part 4668.0009 established a process for exempting from the rule those providers that are already regulated by another state program. The rule required that the other program's regulation be "substantially the same as or exceed" the home care rules. Minn. Stat. § 144A.46, subd. 4 states that "in the exercise of the authority granted under sections 144A.43 to 144A.49, the Commissioner shall not duplicate or replace standards and requirements imposed under another state regulatory program." Because of this, and other provisions in part 4668.0008, providers that would be eligible for this exemption are already exempt or not considered home care providers, making part 4668.0009 unnecessary.

8. **Part 4668.0012, subpart 3: Licensure: classes of licenses.** These changes are being made to conform to changes made in Minnesota Statutes, sections 144A.43 to 144A.49 during the 1992 legislative session. See item 6 above. The phrase "home health aide services" is changed to "home health aide tasks" to be consistent throughout the rule.

9. **Part 4668.0012, subparts 5, 6 and 13 (originally 14): Licensure: licenses for county social service agencies.** Intended as a convenience for counties, the rule allowed biennial licensure of counties. Comments received at the hearing suggested that this is not fair because the only difference between counties and other providers is the type of ownership, not the type of service. To be efficient and fair, it is necessary and reasonable to modify this part to treat counties the same as other providers. The original proposal is an unnecessary inconsistency, because it applies only to county social service agencies and not to other county or other governmental agencies. It would be administratively more efficient and fair to other providers to have a single process for applying for licenses.

10. **Part 4668.0012, subpart 6 (originally 7): Licensure: license application.** The law was amended by the 1992 legislature to remove the requirement that managerial officials not involved in direct client contact shall disclose criminal convictions. However, the statute still prohibits the involvement of any person in the management, operation or control of a provider if the person has been convicted of a crime that relates to the provision of home care services. See Minn. Stat. §144A.46, subd. 5. The change in this subpart is intended to provide assurance that those persons do not have disqualifying convictions. Item A, subitem 5 is changed to conform to those changes.

It is reasonable to require that Class C licensees document satisfaction of the supervision requirements on their applications for licensure to verify that they have, in fact, done so, and to facilitate the Department's monitoring of this fact. Such documentation is not necessary for the other provider classes, because those licensees generally have administrations which can verify compliance, and they can more readily be monitored by office surveys by the Department.

11. **Part 4668.0012, subpart 8 (originally 9): Licensure: notification of changes in information.** The proposed rule requires licensees to notify the Department of every change in identifying information about owners and managerial officials. To minimize any

unnecessary burden on providers in reporting changes involving large numbers of directors and officers, it is reasonable to modify the rule to limit notification of this information to times of license renewal.

12. **Part 4668.0012, subpart 13 (originally 14).** See item 9.

13. **Part 4668.0012, subpart 14 (originally 15): Licensure: conditional license.** To eliminate unwarranted discretion on part of the Commissioner, it is necessary to change the term "may" to "shall".

14. **Part 4668.0016, subpart 2: Waivers and variances: criteria for waiver or variance.** To eliminate unwarranted discretion on part of the Commissioner, it is necessary to change the term "may" to "shall".

15. **Part 4668.0016, subpart 9: Waivers and variances: revocation or denial of renewal.** To eliminate unwarranted discretion on part of the Commissioner, it is necessary to change the term "may" to "shall".

16. **Part 4668.0020: Criminal disqualifications of applicants, licensees and staff.** At the prior hearing in August 1991, many providers and representatives of providers objected to subpart 11, which required providers to initiate a criminal record study if the licensee had "reasonable cause to believe that an employee or prospective employee has not disclosed all convictions of crimes". Following the original hearing, the Department proposed modifications to the rule to establish a system in which the Department would have conducted background studies of every provider's employees and prospective employees, with costs to be paid by providers. As a result, many comments were received expressing concern about the costs, particularly for screening volunteers who provide home care services. The Department raised these issues with the 1992 Legislature and as a result, the Home Care statute was amended. The Legislature concluded that the responsibility for screening prospective employees appropriately belongs with providers rather than the Department. Therefore, the original rule language is retained with minor changes needed to conform to the statute.

17. **Part 4668.0020, subpart 3: Criminal disqualification of prospective and existing employees.** The statute was changed to require that "all persons who have or will have direct contact with clients . . . shall be required to disclose all criminal convictions." The language in this section of the rule was deleted to conform to these statutory changes as people who supervise may or may not have direct contact with clients.

18. **Part 4668.0020, subpart 4: Criminal disqualification: disclosure of criminal conviction information by owners and managerial officials.** This subpart is no longer needed because of changes made in Minnesota Statutes, sections 144A.46, subd. 5(a) during the 1992 legislative session that eliminated the requirement for persons in management to disclose criminal convictions.

19. **Part 4668.0020, subpart 4 (originally 5): Criminal disqualification: criminal investigation of applicants for licensure.** This language is added to implement Minnesota Statutes, section 144A.46, subd. 5 which allows the commissioner to require a provider who must disclose convictions to provide fingerprints and releases that authorize law enforcement

agencies to release criminal background information.

The word "licensee's" is added to be consistent within this subpart.

20. **Part 4668.0020, subpart 7 (originally 8): Criminal disqualification: criminal investigation of employees.** This change is added for clarification.
21. **Part 4668.0020, subpart 8 (originally 9): Criminal disqualification: disclosure of criminal conviction information by employees and applicants.** See item 17 above. This section also clarifies that individual applicants who have direct contact with clients must disclose.
22. **Part 4668.0020, subpart 9 (originally 10): Criminal disqualification: removal of disqualified employees.** See item 17 above.
23. **Part 4668.0020, subpart 10 (originally 11): Criminal disqualification: criminal conviction history search.** Examples of reasonable cause were added to help clarify what constitutes reasonable cause.
24. **Part 4668.0020, subpart 11 (originally 12): Criminal disqualification: failure to provide release.** See item 17 above.
25. **Part 4668.0020, subpart 13 (originally 14): Criminal disqualification: procedure to contest disqualification for employment.** See item 17 above.
26. **Part 4668.0020, subpart 15 (originally 16): Criminal disqualification: rehabilitation.** Language was added to clarify that this section applies to individual licensees and where the responsibility lies for determining rehabilitation. This is reasonable because the statute requires the Commissioner to establish factors under which someone is rehabilitated, but does not require the Commissioner to make employment decisions. This division of responsibility is consistent with legislative intent for employers to make these decisions. This process still provides the Commissioner with oversight authority to determine, through the survey and enforcement process, whether proper decisions have been made.
27. **Part 4668.0020, subpart 17 (originally 18): Criminal disqualification: reporting new criminal information.** See item 17 above.
28. **Part 4668.0030, subpart 7: Home care bill of rights: abuse reporting.** This subpart is being deleted because the Department already has authority to write correction orders for the Vulnerable Adults Act under Minnesota Statutes, Section 144A.45, Subdivision 2, clause 4 and 144.653, subd. 5. See item 61 below.
29. **Part 4668.0035, subpart 1: Handling of clients' finances and property: Powers-of-attorney.** To guard against abusive conflicts of interest, the rule as originally proposed barred all providers, except for governmental providers, from accepting powers-of-attorney or appointments as guardians or conservators. This rule would be an unnecessary hardship on organizations with both home care and guardianship services. To allow such organizations to continue those services, it is reasonable to modify the rule that allows the provision of both

services as long as the functions are administratively separated. Court supervision safeguards any conflict of interest in the case of guardianships and conservatorships. Powers-of-attorney, however, are not subject to any oversight, and should not be allowed in any case.

30. **Part 4668.0035, subpart 2: Handling of clients' finances and property: Handling clients' finances.** The Department recognizes that often it is impractical or impossible to obtain receipts for all financial transactions, particularly small ones. The Department concludes that requiring receipts in all cases is unduly burdensome. It therefore is reasonable to modify subpart 2 to allow documentation of transactions in lieu of obtaining receipts when receipts are not available.

31. **Part 4668.0040, subpart 2, item D: Complaint procedure: Informing clients.** To clarify that the appropriate place to contact the Department with complaints is the Office of Health Facility Complaints, it is reasonable to modify this rule accordingly.

32. **Part 4668.0060, subpart 1: Administration: Referrals.** The requirement that providers notify other health providers of clients' contagious diseases could be construed to contradict confidentiality rights under the home care bill of rights, Minnesota Statutes, §144A.44, subdivision 1, clause (11). To resolve the possible contradiction, it is necessary and reasonable to clarify the language. Because clients have the right to control dissemination of their health care information, it is reasonable to require that information about contagious disease must be communicated only when the client authorizes the exchange of the information. The rule is modified to restrict the requirement to cases in which clients are "transferred" to other providers rather than just "referred". In the case of a transfer, medical records, including disease information would be sent to the transferee.

33. **Part 4668.0060, subparts 5 and 6: Administration: scheduled appointments for nonessential services, scheduled appointments for essential services.** The rule as originally proposed required providers who failed to keep a scheduled appointment to arrange an alternative "acceptable to the client". The Department agrees with many providers that the requirement is unworkable and unclear, and agrees to modify the rules to allow a "reasonable" alternative.

34. **Part 4668.0065, subpart 1: Infection control: Tuberculosis screening.** The Tuberculosis Control Program, Minnesota Department of Health, proposes a minor change in the tuberculosis screening rule to account for persons who have taken or are taking preventive therapy, for whom there is no medical need to have a chest x-ray. Because the modification makes it easier and less costly for persons in that situation, it is reasonable to adopt the changes. Language is also added to clarify that "within the two years before..." includes the pre-employment Mantoux test.

35. **Part 4668.0070, subparts 1 and 2: Personnel records: scope, personnel records.** The first clause in subpart 2 that reads "except for class C licensees", was intended to exempt class C licensees from this entire part. The language is not entirely clear in its meaning. To clarify that intent, it is reasonable to modify the language accordingly.

36. **Part 4668.0075, subpart 2, item G: Orientation to home care requirements: Content.** This part in the proposed rule requires orientation to community health resources. Many individuals who would receive this orientation are paraprofessionals. Although the

Department still concludes that such information is useful and appropriate for all staff, it is inappropriate for paraprofessionals, because they do not independently make referrals to community resources. To clarify this, it is reasonable to modify the rule by deleting the identified clause.

**37. Part 4668.0080, subpart 1: Qualifications of professional personnel: occupational therapy.** These are technical corrections to accurately identify the name of the committee and the association that were recently modified.

**38. Part 4668.0080, subpart 5: Qualifications of professional personnel: physical therapy.** Although physical therapists are regulated by statute, Minnesota Statutes, §§148.65 to 148.78, it is appropriate and reasonable to clarify the rule by referencing the statutory system of registration by the Board of Medical Practice to ensure that physical therapy is conducted by persons that meet state standards.

**39. Part 4668.0100, subpart 1: Home health aide tasks.** As discussed below concerning part 4668.0110, the Department proposes to restrict the home care aide tasks category to class B, C, and E licensees. Therefore, class A and D licensees must use only paraprofessionals who meet the training requirements for home health aide tasks and supervise them accordingly. Because of the changes made to part 4668.0110, home care aide tasks, it is necessary to make several technical changes to part 4668.0100, Home Health Aide Tasks.

The rule, as originally drafted, established three categories of paraprofessional tasks. The categories are nested, i.e., home care aide tasks are a subset of home health aide tasks, and home management tasks are a subset of home care aide tasks. Each category has a different training and supervision requirement. By restricting the home care aide task category to B, C, and E licensees, class A and D licensees may still perform home care aide tasks, but must use personnel trained to the level of home health aide tasks.

The Board of Nursing recommended that the right of registered nurses to delegate medical and nursing procedures to home health aides be clarified to accurately conform to the board's rules. The Department concludes that subpart 1, item B allows that a nurse or therapist may delegate or assign anything, consistent with their licensure or registration. The new language also makes it explicit that class A and D providers (professional agencies and hospice programs, respectively) must use persons trained to perform home health aide tasks.

The Department also proposes to clarify the language used by therapists to indicate "delegation" of tasks. The term "assign", rather than "delegate", is used by physical therapists and others. See Minnesota Statutes, section 148.706.

**40. Part 4668.0100, subparts 2, 3 and 9: Home health aide tasks: administration of medications, limitations on administering medications, periodic supervision of home health aide tasks.** In the hearing process, the Board of Nursing proposed changes to this subpart concerning the administration of medications by home health aides, to more accurately reflect Board rules and policy. Public comments were also made in favor of greater flexibility in the administration of prn medications (taken as needed), and the supervision of the administration of medications and treatments. These changes allow additional flexibility in administration and protection for the public both by relying on the judgment of an R.N. and provision that persons administering medication are trained.

To eliminate any inconsistencies in state policy, it is necessary to modify the rules, reflected in new language for these subparts, which establish limitations on the administration of medications and supervision requirements.

**41. Part 4668.0100, subpart 4: Home health aide tasks: Performance of routine procedures.** To be consistent with the changes to subpart 1, it is reasonable to make similar changes to subpart 4.

The changes to subpart 4, items A and C, are intended to protect the public by requiring that prior to performing procedures, the person must be instructed in and demonstrate competency to perform procedures.

**42. Part 4668.0100, subpart 6: Home health aide tasks: in-service training and demonstration of competence.** This subpart was not consistent with the Medicare competence requirements for home health aides. To be consistent, it is necessary to modify the rule to delete the requirement as originally proposed and substitute a new item C that is consistent with Medicare's requirement that a person who has not worked for the last 24 months must demonstrate competence in all skills.

This part also clarifies that the in-service training obtained from either the licensee or another source is appropriate.

**43. Part 4668.0100, subpart 8: Home health aide tasks: initiation of home health aide tasks.** The rule as originally proposed required providers to orient persons performing home health aide tasks at the client's residence. To minimize unnecessary cost and to eliminate any inconsistency with nursing practice, it is reasonable to modify the rule to only require orientation of all aides to the clients and tasks prior to performing, but not necessarily at the residences. Language was also added to clarify that this must be done before the tasks are initiated. This is necessary to assure that each person performing tasks is oriented to the tasks. It is reasonable for the protection of the health, safety and comfort of the clients.

**44. Part 4668.0100, subpart 9: Home health aide tasks: Periodic supervision of home health aide tasks.** The supervision requirements of this subpart as originally proposed were inconsistent with current industry practice. To clearly be more consistent with current industry practice, it is necessary and reasonable to modify subpart 9, items A to C as indicated.

The monitoring requirement is extended as the minimum requirement for supervisory visits from monthly to every 60 days. With the extended monitoring schedule, it is reasonable to modify the supervision of persons performing home health aide tasks by an R.N. to every other visit. Additional language is added to be consistent with the Board of Nursing requirements.

**45. Part 4668.0110: Home care aide tasks.** Through testimony at the original hearing and comments submitted in the record after the hearing, many providers, particularly those certified for participation in Medicare and Medicaid, objected to establishing the home care aide task category of paraprofessional. The Department stands by the rationale for the category given in the Statement of Need and Reasonableness. However, the Department



agrees to certain changes suggested by the testimony and comments. Providers of assisted living services support the category because of its flexibility in the provision of services that require less skill than that of a person trained as a home health aide. Essentially, the objections are that home care aide tasks are nursing tasks and must be delegated by a registered nurse, and that lack of a supervision requirement for persons performing home care aide tasks poses unnecessary risks. Home health agencies, particularly those certified under Medicare, have a well established structure utilizing home health aides for all delegated tasks with supervision.

The proposed changes will limit the use of staff who perform limited personal care and who do not meet the training for home health aide tasks, to class B (paraprofessional agency), class C (individual paraprofessional), and class E (assisted living) licensees. For class B, the changes include a requirement that persons who perform home care aide tasks in a person's residence must be supervised by a registered nurse or therapist. This is consistent with the requirement for all class A licensees, whether Medicare certified or not, that must meet identical standards of supervision of paraprofessionals. For class E settings, which are provided in a residential center, a less stringent visit schedule is required. Because these are distinct living units in a building or complex of buildings, there is less isolation than a single family dwelling. The Department agrees with testimony that clients in class E programs are at some risk and requires the class E licensee to visit the resident and observe the home care services at least every 60 days. The Department does not believe this requirement will be an undue burden for class E providers because it is consistent with current practice as indicated by testimony at the hearing. In addition, subpart 1, item A is modified to delete "planning" of modified diets as a home care aide task, because that activity is a professional function.

**46. Part 4668.0110, subpart 3: Home care aide tasks: Documentation.** Under the proposed changes, class A and D licensees may not use anyone other than one trained in home health aide tasks to perform home care aide tasks. Therefore, it is necessary to modify this part so that the documentation requirement for home care aides no longer applies to class A or D licensees, but only to class B and E licensees.

**47. Part 4668.0110, subpart 4: Home care aide tasks: In-service training.** As with home health aides tasks, the intent of the rule is to allow paraprofessionals to obtain in-service training from the employer or other source. It is reasonable to modify the language of this subpart to clarify the intent of the rule.

**48. 4668.0110, subparts 5 and 6: home care aide tasks: class B supervision, class E visits.** As discussed above, the Department agrees to require supervision of persons who perform home care aide tasks, when employed or contracted by class B or class E licensees. It is necessary to modify subparts 5 and 6 accordingly.

**49. Part 4668.0120, subparts 1 and 2. Home management tasks:** These changes are being made to conform to changes made in Minnesota Statutes, sections 144A.43 to 144A.49 during the 1992 legislative session. This language is included because providers of other home care services may choose to provide home management tasks as well. They will be held accountable for these services through licensure.

**50. Part 4668.0140, subpart 1: Service agreements.** This part as originally proposed requires that every modification to an original service agreement be in writing. Comments

received at the hearing expressed concern about requiring "any modifications" to be in writing because some situations can be handled most effectively for all concerned by telephone, for example, when a client calls and changes hours for service. The Department maintains that modifications to the service agreement must be in writing for the reasons stated in the original Statement of Need and Reasonableness, but agrees to clarify this section by allowing the provider to effect the modification and confirm the modification at the next visit.

**51. Part 4668.0140, subpart 2: Service agreements: contents of service agreement.**

The language of item D of this subpart could be misinterpreted. The word computed could be interpreted to mean how the charges are calculated, i.e. the formula from which the charges are derived. The intent is to communicate the fees for service. To clarify the rule, it is reasonable to modify item D to read as indicated.

**52. Part 4668.0140, subpart 2: Service agreements: contents of service agreement (formerly subpart 3: Service agreements: exceptions for class C).** Based on hearing testimony and comments from the Minnesota Association of Homes for the Aging and the Minnesota Home Care Association, the Department concludes that it is inappropriate to require licensees that are providing home management tasks only to comply with item E, subitem 5. The modification is reasonable because it will reduce the burden of this requirement on licensees providing home management tasks only.

This language was moved to subpart 2, therefore subpart 3 is being eliminated to create consistency in the rule structure.

**53. Part 4668.0160, subpart 2: Client records: security.** This rule requires that client records be safeguarded by providers. It is not possible for providers to always safeguard records that are kept in clients' residences, because licensees have limited control over records that must be left in residences to communicate to successive staff. To minimize the burden, the Department proposes to modify the rule to only require that providers establish procedures that safeguard the records.

**54. Part 4668.0160, subpart 6: Client records: content of client record.** This rule, as originally proposed, required providers to summarize "each contact with the client" in the client's record. To minimize the burden, it is reasonable to modify the rule to limit the case notes to contacts with clients in their residences. Only individual providers should be exempt from subpart 6, item D.

**55. Part 4668.0180, subpart 2: Class A provider, professional home care agency: required services.** Items H and I are added to be consistent with part 4668.0012, subpart 3.

**56. Part 4668.0180, subpart 10: Class A provider, professional home care agency: equivalent requirements for certified providers.**

**Part 4668.0210, subpart 22 (originally 23): Class D provider, hospice program; equivalent requirements for certified providers.**

**Part 4668.0220, subpart 2: Surveys and investigations: coordination of surveys.**

At the original hearing, the Department submitted an Addenda to Proposed Rules, including

changes to parts 4668.0180, subpart 10 and 4668.0210, subpart 23.

The changes to these proposed parts are necessary to clarify the intent of the rule. The proposed rule, in effect, exempts Medicare certified providers from certain rules that are equivalent to requirements of the Medicare conditions of participation (Code of Federal Regulations, title 42, parts 484 and 418). The rule as originally drafted did not anticipate a possible change in the federal government's methods of enforcement. The U.S. Department of Health & Human Services, Health Care Financing Administration (HCFA), has accepted one private industry certification for Medicare Home Health agencies in lieu of surveys and enforcement directly by the Minnesota Department of Health and may accept one for Medicare certified Hospice programs (See Attachment 1).

The Department has authority and responsibility to inspect providers under Minnesota Statutes, § 144A.45, subd. 2. The Department also conducts surveys to determine compliance with Medicare conditions of participation. Although the Minnesota Legislature allows a provider that is Medicare certified to be exempt from certain parts of the rules if equivalent, there is no legislative intent to accept surveys and enforcement completed by persons other than state inspectors. The Legislature has not made the decision to accept private industry certification for state licensure and has never given the Department authority to delegate inspections. Therefore, the rule is modified to clarify the conditions under which equivalency with Medicare certification provides an exemption from these rules.

**57. Part 4668.0210, subpart 15: Class D provider, hospice program: criminal disqualification of volunteers.** This subpart is being eliminated because it is redundant with Part 4668.0020, subpart 1.

**58. Part 4668.0215: Class E provider, assisted living services: scope.** The language is changed to provide clarification.

**59. Part 4668.0218: Information and referral services.** To eliminate unwarranted discretion on part of the Commissioner, it is necessary to change the term "may" to "shall".

**60. Part 4668.0220, subpart 1: Surveys and investigations: Surveys.** To minimize the burden on providers certified and surveyed by the Minnesota Department of Health under Medicare and Medical Assistance, and to reduce the demands on the Department's enforcement resources, it is reasonable to modify subpart 1 to not require a prelicense survey for Medicare certified providers.

**61. Part 4668.0230, subpart 4: Fines for uncorrected violations: schedule of fines for violations of Reporting of Vulnerable Adults.** Fines for uncorrected violations of the Vulnerable Adult Act are added. The omission of fines for this statute in the rule as originally proposed was an oversight.

**62. Part 4668.0230, subpart 5 (originally 4): Fines for uncorrected violations: Schedule of fines for violations of rules.** The changes to substantive rules, as described above, require that the schedule of fines be modified to conform to the deletions, additions, and renumbering of rules. Inadvertent omissions were also added. It therefore is necessary to modify the proposed rules as indicated.

63. **Part 4668.0240: Failure to correct deficiency after a fine has been imposed.** This part implements Minnesota Statute 144.653, subdivision 6, which is applicable to home care providers pursuant to Minn. Stat. §144A.45, subd. 2(4). This provision states that for each subsequent reinspection, the licensee may be fined an additional amount for each deficiency which has not been corrected. If, upon subsequent reinspection after a fine has been imposed the deficiency has still not been corrected, another fine will be assessed. This fine will be double the amount of the previous fine. This is reasonable because an uncorrected order after ample opportunity to correct and one previous reinspection demonstrates bad faith by the licensee. It also increases the impact on the health, safety or well-being of the licensees' clients.

64. **Part 4669.0030, subpart 2: Procedure for paying license fee: Verification of revenues.** The home care registration fee rule, Minnesota Rules, chapter 4667, was adopted in October 1991. Because this licensing fee rule, chapter 4669, is modeled on chapter 4667, it is necessary to modify it to conform to the registration rule.

65. **Part 4669.0040: Fee limitation.** This change corrects the language to indicate that this is a license fee and clarifies that the fee limitation does not apply to a provider with multiple units.

66. **Part 4669.0050, subpart 1: Fee schedule: Fees for classes A, B, and D.** Modifications are necessary to this subpart because of 1992 legislative changes related to registration of home management providers and a legislative request for the Department to re-examine fees to minimize the fee burden on providers. See Minn. Stat. §144A.461 and Laws of Minn. 1992, Chap. 513, Art. 5, §7.

### **Program Costs**

The fiscal note for the enabling legislation, which was developed in 1987, estimated that 300 providers would be subject to licensure (See Attachment 2). The projected cost of \$325,000 for the Home Care licensing program was based on this number. The statutory amendment in 1992 established a registration system in lieu of licensure for persons or organizations that provide home management services only. See Minn. Stat. §§144A.46 subd. 2(7) and 144A.461. As of July 1992, there were 46 home management only providers subject to registration and 455 providers subject to licensure. As stated in the original Statement of Need and Reasonableness, there were 498 providers subject to licensure in April 1991.

Even with home management providers excluded, there will be more providers subject to licensing than initially projected in 1987 when program costs were estimated. However, other factors on which the original projected costs were based have also changed or are unknown, for example: the effect of accreditation of home health agencies by private industry certification on the number of providers surveyed by the Department (see Attachment 1) and the amount of funding available for the federal certification program with a separate state licensing program. For these reasons, the Department has not modified projected program costs, but will examine its costs as the program is implemented and is fully operational.

### **License Fees**

For the reasons stated in the original Statement of Need and Reasonableness, it is reasonable to use revenue as a basis for computing fees. In May 1992, the Department conducted a

survey of providers and obtained updated revenue data from some providers for July 1, 1990 to June 30, 1991 (fiscal year 1991). The most recent data available for each provider shows revenues ranging from a high of about \$14,000,000, which is an increase from the \$6,000,000 indicated in the original Statement of Need and Reasonableness, to a low of no revenue. Based on the data received and revenues reported from July 1, 1989 to June 30, 1990 for those providers not responding, the Department analyzed fees that would be collected if this rule were in effect. The chart below summarizes this analysis.

CLASS	NUMBER OF PROVIDERS	FEE	TOTAL REVENUE
A, B, D	370	\$100-4,000	\$327,450
C	74	20, 50	2,020
E	9	500	4,500
DME	<u>2</u>	500	<u>1,000</u>
Total	455		\$334,970

Due to the increased revenues of some providers, the Department recommends lowering the license fee for low-revenue providers whose license fee as originally proposed would have been a greater percentage of their revenues (See Attachment 3). The proposed license fees for class A, B and D providers are less than the fees included in the Registration rule, Minn. Rules 4667.0030.

This modification of the fee schedule is reasonable because it establishes a fee structure that is fair and it recovers the Department's projected costs of \$325,000 per year.

July 29, 1992

Marlene E. Marschall  
 Marlene E. Marschall  
 Commissioner

Approved by the Department of Finance under Minnesota Statutes, section 16A.128, subdivision 1a.

August 10, 1992

John Dunyou  
 John Dunyou  
 Commissioner of Finance