



minnesota department of health

health resources division

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May 14, 1991

Ms. Maryanne V. Hruby
Executive Director
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

In compliance with Minnesota Statutes, sections 14.131 and 14.23, enclosed find a copy of the Statement of Need and Reasonableness concerning proposed rules to establish fees for the registration of home care providers, Minnesota Rules, chapter 4667. Also enclosed is a copy of the proposed rule.

Sincerely,

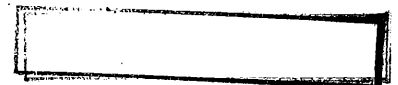
David L. Siegel

DLS:ep

Enclosures

The Legislative Commission to
Review Administrative Rules

MAY 17 1991



MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Proposed
Adoption of Rules of the
Department of Health Concerning
Fees for the Registration of Home
Care Providers, Minnesota Rules,
chapter 4667

STATEMENT OF NEED
AND REASONABLENESS



Minnesota Department of Health

BACKGROUND AND LEGAL AUTHORITY

Minnesota Statutes, sections 144A.43 to 144A.48, establishes a system of licensure for home care providers, including hospice programs, to be administered by the Department of Health. Section 144A.49 provides temporary procedures pending promulgation of licensing rules. Among those procedures is a requirement for the registration of providers, including a registration fee. To establish the one time fee, Minnesota Rules, chapter 4667, is proposed under the authority of Minnesota Statutes, sections 144A.49 and 144.122.

The Department has been registering providers pending adoption of this rule to establish fees. Each registrant has been informed that a fee will be assessed upon adoption of this fee rule.

RULEMAKING PROCESS

Notices

A Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing the Licensure and Regulation of Home Care Providers and Hospice Programs was published in the State Register, 12 S.R. 2105, on March 21, 1988. A notice of Outside Information or Opinions Sought Regarding Proposed Rules Governing Fees was published in the State Register, 13 S.R. 2102, on February 27, 1989.

A proposed rule was published in the State Register, 14 S.R. 2934, on June 18, 1990. After a public hearing, the rule was withdrawn with a notice published in the State Register, 15 S.R. 588, on September 4, 1990. That proposed rule would have established a flat fee for each provider in one of five fee categories. Written comments and testimony at the public hearing almost unanimously opposed flat fees, preferring fees proportionate to revenues.

Meetings and other communications were held with trade associations that represent providers to determine the fee structure that would be acceptable to their memberships. These associations represent the majority of providers in the state. This proposed rule represents the results of those consultations.

A new Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Home Care Registration Fees was published in the State Register, 15 S.R. 629, on September 10, 1990.

Small Business Considerations

PARTICIPATION IN RULEMAKING PROCESS

Minnesota Statutes, section 14.115, requires state agencies to consider ways to reduce the impact of proposed rules on small businesses, and to provide small businesses with an opportunity to participate in the rulemaking process. Although the Department believes that rules to

implement the home care and hospice statute are exempt from those requirements under section 14.115, subdivision 7, paragraph (c), the following analysis is provided voluntarily.

Virtually all small businesses that are to be regulated under the home care and hospice licensing statute are registered with the Department, as required by Minnesota Statutes, section 144A.49. The registrants, business and governmental trade associations, and other interested parties, have been informed of all major steps taken in the development of the rules, and have been provided the opportunity to attend and address Advisory Task Force meetings, and to submit written and oral comments to the Department.

The Notice of Intent to Adopt a Rule includes a statement describing the impact of the rules on small business and encourages comments from those affected.

CONSIDERATION OF EFFECT OF RULE ON SMALL BUSINESS

The Department is mandated by Minnesota Statutes, section 144A.49 and 144.122, to recover the cost of the program in fees. Therefore, the total assessed in fees is established by the actual costs incurred by the Department in establishing the registration and licensure rules and systems.

The Department considered how the registration fees could be distributed to minimize negative impacts on providers, within the strictures of the statute. It is reasonable to base fees, in part, on ability to pay, because providers generate a wide range of revenues. Although the fees are not a tax, it would be unduly burdensome on many providers to assess a flat rate fee.

It also is reasonable to conclude that individual providers should be assessed a relatively small fee, both because of the potential that a burdensome fee would cause some individuals to cease doing business, and because current registrations show that individual paraprofessional providers generate relatively small revenues, averaging less than \$10,000 a year. Some individuals generate revenues of less than \$100 a year. In addition, it is possible that a high fee could become an incentive for small providers to evade registration, thereby defeating the purpose of the licensure law to establish minimum standards to protect the public from substandard services. Because the Department will regulate individuals primarily by responding to complaints, the cost of their regulation will be less than that of organizational providers. This is so because it will not be necessary to assign Department staff to periodically survey the individuals, but only respond when necessary. In addition, relatively few individuals are registered, and few more are expected. Therefore, regardless the amount of the individual fees, the total that will be recovered will not be highly significant.

Most hospices, which are not certified for Medicare or Medical Assistance, generate limited revenues because they are mostly staffed by volunteers and do not bill clients for any services. The revenues they do receive are primarily from donations and bequests.

Minnesota Statutes, section 14.115, subdivision 2, requires the consideration of five methods for reducing the impact of the rule on small businesses.

The first method, in paragraph (a), is "the establishment of less stringent compliance or reporting requirements for small businesses". This registration fee rule only requires providers to report their revenues on which the fees are based. This report is required one time only. No less stringent requirement is possible.

The second method, in paragraph (b), is "the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses". The proposed rule allows 60 days after billing to pay the fee. Absent explicit statutory authority, the Department cannot collect the fees in installments over a period of years. The time allowed for payment should be sufficient for all providers to accommodate their budgets.

The third method, in paragraph (c), is "the consolidation or simplification of compliance or reporting requirements for small businesses". The proposed rule requires only that registrants inform the Department of their revenues and pay the fee after receiving a bill. It is not possible to further simplify the procedure.

The fourth method, in paragraph (d), is "the establishment of performance standards for small businesses to replace design or operational standards required in the rule". This proposed rule does not mandate any design or operational standards.

The last method, in paragraph (e), is "the exemption of small businesses from any or all requirements of the rule." Minnesota Statutes, section 144A.49, requires all providers who are not explicitly exempt from the statute to pay a registration fee. The Department has no authority to exempt any other providers from the fee.

RULE PARTS

General

FACTORS

Minnesota Statutes, section 144A.49, states that the registration fee must be based on a consideration of four factors: the number of clients served, the number of employees, the number of services offered, and annual revenues.

During the legislative process developing the licensure law, concerns were raised regarding the amount of the registration fee and the impact that a large fee would have on small providers. Minnesota Statutes, section 16A.128, subdivision 1a, requires that fees provide for the recovery of general fund expenditures. Small providers were concerned that, if funds allocated for the start up costs of the program were simply divided by the number of registrants, smaller agencies would pay the same fee as the larger home care agencies. The factors contained in the legislation were included as a method to more fairly allocate the costs among the various groups of providers.

An analysis of the information obtained through the registrations reveals that the four factors in the statute correlate very highly with each other. That is, as one factor changes, the others tend to change proportionately. Basing fees on one factor effectively bases them on all factors. (The correlations are discussed further under part 4667.0030, below).

The providers can be classified in five proposed licensure classes: Class A (professional agencies); Class B (paraprofessional agencies); Class C (individual paraprofessionals); Class D (hospice programs); and Class E (assisted living services). These classes are discussed in detail, below.

CRITERIA

The Department used the following additional criteria in developing a fee structure:

1. Total fees collected for registration should approximate the total costs of the program from the date of enactment of the statute, June 2, 1987, as directed by Minnesota Statutes, section 144.122, paragraph (a); and, because fees are a method of financing regulation, they should be related to the cost of the regulation;
2. Fees must be based on reliable and comparable information from providers, so as to be fair to all providers and accurate in the assessments;
3. The fee structure should be as simple and understandable as possible;
4. Fees should be reasonable, and not unduly burdensome to each type of provider, within statutory mandates; and
5. To the extent that is reasonable, fees should be based on ability to pay.

It also is important to note that home care registration is a temporary procedure pending adoption of a licensing rule, which is nearing completion. This fee rule uses a classification system similar to the one that the Department anticipates using in the licensing rule. It is reasonable to use the same classification system for registration and licensure to be consistent, and thereby less confusing, to registrants and prospective licensees.

Specific Rule Parts

4667.0005 AUTHORITY. This part is necessary to inform parties affected by the rule of its function and authority.

4667.0010 DEFINITIONS.

Subpart 1. **Scope.** This part is necessary to specify to which parts the definitions apply.

Subp. 2. **Annual revenues.** This part is necessary because the term is used in a technical sense, and is ambiguous without this definition.

Subp. 3. **Class A provider.** As required by M.S. 144A.45, subd. 1(f), and recommended by the Home Care Advisory Task Force in its Report of March 15, 1989, the forthcoming home care licensing rule, now in development, will divide providers into licensure classes. It is reasonable to use the same approach in classifying providers for purposes of setting registration fees, so as to simplify the transition from registration to licensure. The Department's experience with over 500 registrations, as well as information from staff research and the Advisory Task Force, reveals that providers can be categorized in functional classes.

Class A consists of providers who offer at least one "professional" service (nursing, physical therapy, speech therapy, respiratory therapy, occupational therapy, nutritional services, or medical social services).

Subp. 4. **Class B provider.** Under the structure of the anticipated licensure rule, Class B licensees will include home care providers that are not individuals and provide only personal care services, under Minnesota Statutes, section 144A.43, subd. 3, item (2), or home management services, under section 144A.43, subd. 3, item (8). This definition is reasonable because these providers tend to be similar in structure and often similar in size to many class A providers, but are limited to nonprofessional services, principally homemaking and chores, and some personal care.

Subp. 5. **Class C provider.** Under the structure of the anticipated licensure rule, Class C licensees will include individuals who provide only home health aide services, under section 144A.43, subd. 3, clause (1), personal care services, under section 144A.43, subd. 3, clause (2), or home management services, under section 144A.43, subd. 3, clause (8). This definition is reasonable because these providers are all individuals who provide limited services to individual clients. The current registration information indicates that persons who fall under this class generate limited revenues, often working on a limited basis for few clients. It is reasonable to charge this type of provider a relatively small fee, because of the small size of the businesses. Because the fee is sufficiently small, there is no need to scale the fee according to revenue.

Subp. 6. **Class D provider.** Under the structure of the anticipated licensure rule, Class D licensees will include hospice programs, under section 144A.43, subd. 3, item (11) and section 144A.48. Approximately 47 hospice programs currently operate in the state, and provide a similar set of services.

Subp. 7. **Class E provider.** Under the structure of the anticipated licensure rule, Class E licensees will include assisted living services (comprised of personal care services, under Minnesota Statutes, section 144A.43, subd. 3, item (2), or home management services, under

section 144A.43, subd. 3, item (8)), provided to residents of residential centers by or under the direction of the management of the residence. It is reasonable to assess a uniform fee for all assisted living programs and Class B providers because of the similarity of the providers in type of services and the anticipated similarity in regulation. Assisted living programs are generally sold as a package of housing, meals, activities, and support services. Only the support services are subject to home care regulation. It is extremely difficult to identify revenues related to home care services apart from those generated by the package as a whole.

Although medical equipment vendors will be licensed under class A, the problem of distinguishing their home care revenues from overall revenues is similar to that of assisted living programs. Those equipment vendors that provide home care services do so as part of a package of renting or selling medical equipment.

Subp. 8. **Commissioner.** It is necessary to define "commissioner" to clarify that the Commissioner of the Department of Health, rather than another state department, is being identified.

Subp. 9. **Provider.** It is necessary to define "provider", because its usage in the rule is potentially ambiguous. It is reasonable to make it clear that "provider" means a home care provider required to register under Minnesota Statutes, section 144A.49, because that is how the term is used in the statute.

Subp. 10. **Registrant.** It is necessary to define "registrant", because the term is used in this rule in a precise manner, as meaning a home care provider who has registered with the Commissioner before the effective date of this chapter.

Subp. 11. **Register.** It is necessary to define "register", because it is used here as well as in the statute, but is not defined in the statute, and is potentially subject to different interpretations.

4667.0015 REGISTRATION FEE.

This part is necessary to establish the requirement that registrants pay the registration fee and that providers report their revenues on which the fees are based. It is reasonable because it only implements the requirement of §144A.49 and requires the reporting only of that information which is required to compute the fees.

4667.0020 PROCEDURE FOR REGISTRATION FEE.

Subpart 1. **Billing of existing registrants.** It is necessary to establish a billing procedure to inform each current registrant of the amount of the fee. It is reasonable to require the Commissioner to simply bill each registrant to provide that notice, because such a procedure is straightforward, economical, and universally understood.

It should be noted that the Department required registrations of providers pending development and adoption of this fee rule so as not to delay the process of listing providers and in order to obtain the necessary data for developing the fee formula.

Subp. 2. **Payment of fee.** It is necessary to set a time limit within which each current registrant must pay the fee, so as not to allow unreasonable delays. It is reasonable to require payment within 60 days after the billing because 60 days is twice that commonly used in commercial transactions as a payment period, and should be sufficient to allow for processing of fees by registrants.

Subp. 3. **New providers.** It is necessary to provide a procedure for payment of fees by those who register after adoption of this chapter. It is necessary and reasonable to require payment in full with the registration because Minnesota Statutes, section 144A.49 states that "a registration fee must be submitted with the application for registration".

Part 4667.0025 FEE LIMITATION.

The home care statute licenses "providers" rather than distinct service units. Therefore, an entity that operates more than one home care service unit need register and be licensed only once for all its services. Therefore, only one fee need be assessed. However, because most fees under this rule are based on revenues, it does not make any significant difference whether one fee is assessed based on total revenues or two fees are based on part of the total. Therefore, it is reasonable to make it explicit that a provider entity need only pay one fee.

Part 4667.0030 FEE SCHEDULE.

Structure

Under the mandate of Minnesota Statutes, sections 144.122 and 144A.49, it is necessary to establish a schedule of fees that is both reasonable and based on statutory factors.

Other Models

An obvious model for a fee structure is the existing nursing home and hospital rules. Those rules, Minnesota Rules, part 4735.0200, provide a flat base fee for each facility plus an additional fee per each licensed bed. That fee structure reflects an ability to pay because the number of beds correlate highly with revenues. Although home care providers have no such fixed feature that provides a measurable and consistent basis for assessing fees, there are measurable factors that reflect ability to pay.

Analysis of Data

In October, 1990, the Department required all registrants to submit revenue data for the period July 1, 1987 through June 30, 1990 (which are the state's three fiscal years of 1988, 1989, and

1990). Although not audited, that data is subject to verification. Some of the reports were not available at the time this analysis was conducted. Therefore, the following analysis is based on the available data.

Correlations of Factors

The Department analyzed the registrations of 440 providers that were registered as of February 28, 1991, out of a total of 495 registrants. The following conclusions were reached.

Three of the four statutory factors, annual revenues, number of clients served, and number of employees, all correlate with each other, meaning that one factor accurately predicts the others. As expected, revenues do not correlate well with the fourth factor, number of services offered, since a provider can generate significant revenues with a few services that are provided in high volume or for relatively high price, while another provider might generate low revenues with a large number of services provided in low volumes and low prices. (See Appendix 2 for details about the correlations).

Specifically:

- a. revenue correlates with the number of clients to a factor of .5620;
- b. revenue correlates with the number of employees to a factor of .8250;
- c. revenue correlates with the number of services to a factor of .2468.

Because of the correlations, it is reasonable to use revenue as a basis for computing fees.

Nature of Data

The three year average of revenues range from a high of about \$6,800,000 to a low of no revenue.

Program Costs

The cost of the Department's home care program for the three fiscal years of 1988, 1989, and 1990, and the first two months of fiscal year 1991 (dating from July 1, 1987 through August 31, 1990), was \$327,352. (See Appendix 1 for budget information). This period was selected because it represented the period for which most of the revenue data was collected and involved costs approximately equal to that which the fee range would recover. It is anticipated that the licensing fees will recover the costs after August 31, 1991.

Structure of fees

To simplify the fee structure and to minimize discrepancies among the reported figures, the rule establishes 12 fee brackets (plus a thirteenth bracket for small hospices) rather than a straight

percentage of revenues. The brackets are based on a fee of 0.25% of revenues, which yields the amount to be recovered. The brackets are approximately centered around the respective fees. For example, a fee of \$2,000 is equal to 0.25% of revenues of \$800,000. The \$2,000 bracket ranges from \$750,000 to \$850,000.

Allocation of Fees

Specifically, the fees will generate the following approximate revenues to the Department. Numbers of providers are approximate, because registrations and revenue data continue to be received by the Department. The revenues of several providers were not available at the time of analysis. Those providers are reflected in the following table at the minimum fee in their classes. The fees that actually will be billed are likely to be more than the minimum.

CLASS	NUMBER OF PROVIDERS	FEE	T O T A L REVENUE
A, B, D	380	500-4,000	\$312,750
C	104	20, 50	2,800
E	10	500	5,000
DME	1	500	500
TOTALS	495		\$321,050

COST RECOVERY GOAL = \$327,352

CONCLUSIONS

Based on the analysis described above, it is reasonable to assess fees based on the revenues of class A, B, and D providers, and to assess a single fee for class C and E providers and medical equipment vendors (class A-DME). This fee structure is reasonable because:

1. it meets the criteria discussed above;
2. it is statistically valid to use revenues as a proxy for all statutory factors; and
3. the fee structure recovers the costs of the program for the last three fiscal years, as required by law.

Expert Witnesses

If a public hearing is held on this rule, the Department does not plan to solicit outside expert witnesses to testify on behalf of the Department. The Department intends to have the following employees testify or be available at the hearing: H. Michael Tripple, Assistant Director of the Division of Health Resources, who will testify about the general background and rationale for the proposed rule, and the Department's costs on which the fees are based; David L. Siegel, Division of Health Resources, who will testify about the method of computing the proposed fees; William Tallaksen, Division of Health Resources, who will testify about the statistical methodology used to analyze the data on which the proposed fees are based; and Cecelia Weible, who will testify about the costs incurred by the Department in administering the home care program. Other staff may substitute for those named above.

3/28, 1991

Mary Jo O'Brien
Mary Jo O'Brien
Acting Commissioner of Health

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

April 12, 1991

John Gunyou
John Gunyou
Commissioner of Finance

APPENDIX 1

COSTS INCURRED BY THE DEPARTMENT
IN THE ADMINISTRATION OF HOME CARE REGISTRATION
July 1, 1987 to August 31, 1990

<u>ITEM</u>	<u>Fiscal</u> <u>1988</u>	<u>Fiscal</u> <u>1989</u>	<u>Fiscal</u> <u>1990</u>	<u>July 1-</u> <u>Aug. 31</u> <u>1990</u>
Public Health Nursing	25,772	45,083	47,205	5,722
Advisor	17,598	35,359	24,278	6,620
Management Analyst 3		16,581	26,703	6,997
Clerk Typist 3				
Supplies/Expenses	1,488	1,066		
Purchased Services	775	1,760	2,000 (1)	
	185	297	300	1,651
Communications-Postage	301	6,967	1,000	733
Communications-Telephone	548			
Travel In-State	2,911	415	500	300
Travel Out-State	12,332	1,891		
Supplies	8,752	10,306		
Furniture			6,006 (2)	
Equipment			3,000 (3)	
State Register			1,000 (4)	
Attorney General			3,000 (5)	
Revisor's Office				
Administrative Law Judge				
	70,612	119,725	114,992	22,023
TOTAL HEALTH RESOURCES				

(1) Includes two mailings of rules to clientele.

(2) Includes 77 pages @\$78/page published twice.

(3) Includes A.G. time to attend public hearings and review rules @\$46/hr.

(4) Includes drafting rules.

(5) Includes 5 days of hearing time @\$74/hr.

11/19

VARIABLE	CASES	MEAN	STD DEV
REVENUE	351	315726.8462	676759.5227
SERVICE	351	3.4188	2.4770
CLIENTS	351	93.7287	224.3208
EMPLOYS	351	12.7070	23.1077

VARIABLES	CASES	CROSS-PROD DEV	COVARIANCE	VARIABLES	CASES	CR
REVENUE SERVICE	351	144803585.9154	413724.5312	REVENUE CLIENTS	351	
REVENUE EMPLOYS	351	4515679056.8448	12901940.1624	SERVICE CLIENTS	351	
SERVICE EMPLOYS	351	5088.5708	14.5388	CLIENTS EMPLOYS	351	

----- PEARSON CORRELATION COEFFICIENTS -----

	REVENUE	SERVICE	CLIENTS	EMPLOYS
REVENUE	1.0000 (0) P=*****	.2468 (351) P= .001	.5620 (351) P= .001	.8250 (351) P= .001
SERVICE	.2468 (351) P= .001	1.0000 (0) P=*****	.0933 (351) P= .040	.2540 (351) P= .001
CLIENTS	.5620 (351) P= .001	.0933 (351) P= .040	1.0000 (0) P=*****	.4890 (351) P= .001
EMPLOYS	.8250 (351) P= .001	.2540 (351) P= .001	.4890 (351) P= .001	1.0000 (0) P=*****

APPENDIX 2

(COEFFICIENT / CASES / SIGNIFICANCE) (99.0000 MEANS UNCOMPUTABLE)