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MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Permanent Rules of the Department of Health Governing Resident Rights, Resident Services, and Physical Plant in Licensed Nursing Homes, and Proposed Amendments to Permanent Rules of the Department of Health Governing Restraints, Dietary and Food Services, and Clinical Records in Licensed Nursing Homes, Minnesota Rules, Chapter 4658

STATEMENT OF NEED
AND REASONABLENESS

and

STATEMENT OF ANTICIPATED
COSTS AND BENEFITS

December 18, 1995

Minnesota Department of Health
Facility and Provider Compliance Division
393 North Dunlap Street
P.O. Box 64900
Saint Paul, MN 55164-0900

TABLE OF CONTENTS

BACKGROUND AND LEGAL AUTHORITY	1
RULEMAKING PROCESS	1
1995 AMENDMENTS TO ADMINISTRATIVE PROCEDURES ACT	2
INTERACTION OF FEDERAL AND STATE REGULATIONS	4
PUBLIC AND GOVERNMENTAL VIEWPOINTS	6
REGULATORY REVIEW PROCESS	7
WORKGROUPS ON RULE SECTIONS	9
SMALL BUSINESS CONSIDERATIONS	16
EXPERT WITNESSES	16
RULE PARTS	16
REVISIONS TO CHAPTER 4655	18
DEFINITIONS	18
FINES FOR STATUTORY VIOLATIONS	20
RESIDENT RIGHTS	24
RESIDENTS' PERSONAL FUNDS ACCOUNTS	26
RESTRAINTS	29
CLINICAL RECORDS	30
DIETARY AND FOOD SERVICES	31
ACTIVITIES	32
SPIRITUAL NEEDS	37
SOCIAL SERVICES	38
BARBER AND BEAUTY SERVICES	41
SPECIALIZED REHABILITATIVE SERVICES	42
PHYSICAL ENVIRONMENT	43
RELOCATION OF RESIDENTS FROM NURSING HOMES	50
SPECIALIZED UNITS	51
PHYSICAL PLANT LICENSURE, EXISTING AND NEW	57
NEW CONSTRUCTION	59
EXISTING CONSTRUCTION	93
REVISIONS TO CHAPTER 4660	106
REVISIONS TO CHAPTER 9050	106
REPEALED PARTS	106
EFFECTIVE DATE	107
STATEMENT OF ANTICIPATED COSTS AND BENEFITS	108
CONCLUSION	118

BACKGROUND AND LEGAL AUTHORITY

The proposed Minnesota Rules, parts 4658.0191 to 4658.0290, 4658.0900 to 4658.1250, and 4658.1400 to 4658.5590, establish standards for fines for statutory violations, resident rights, activities, spiritual needs, social services, barber and beauty services, specialized rehabilitative services, relocation of residents, specialized units, new construction, and existing construction physical plant standards in licensed nursing homes. The proposed revisions to Minnesota Rules, part 4658.0010, establish definitions applicable to specialized units and the physical plant of licensed nursing homes. The proposed revisions to parts 4658.0300 to 4658.0450 provide clarification on restraints, dietary and food services, and clinical records. The proposed revisions to Minnesota Rules, parts 4655.0090 and 4660.0090, clarify the scope of those rule chapters, which will be changed with the promulgation of these proposed rules.

These proposed rules set forth operational requirements considered necessary to assure the health, safety, well-being and appropriate treatment of persons residing in nursing homes, and the requirements considered necessary for construction and maintenance of the physical plant. The rules implement Minnesota Statutes, sections 144A.02 to 144A.18, under the authority of Minnesota Statutes, section 144A.04, subdivision 3, and section 144A.08. This Statement of Need and Reasonableness is prepared to comply with the requirements of Minnesota Statutes, sections 14.131 and 14.23, in the Administrative Procedures Act.

During the process of developing the proposed rules, the Minnesota Department of Health (the Department) underwent a reorganization process. What was formerly known as the Health Resources Division is now, as of the fall of 1994, known as the Facility and Provider Compliance Division. Consequently, both titles for that division are used in this document, depending upon the applicable time period of the reference.

RULEMAKING PROCESS

Minnesota Laws 1991, Chapter 292, Article 4, Section 75, authorized the Department of Health to conduct a comprehensive review of the nursing home licensure laws and regulations. This review was necessary to establish an effective regulatory program in the state, in conjunction with the revisions to the federal certification regulations, effective October 1, 1990. The statute reads:

Sec. 75. [REGULATORY REVIEW.]

The commissioner of health shall study the regulation of long-term care facilities and report to the legislature by January 15, 1992, with any recommendations for changes in the current regulatory structure. The study must address at least the following issues:

- (1) the possibility of unifying the federal and state enforcement systems;*
- (2) the effectiveness of existing enforcement tools;*
- (3) the appropriateness of current licensure standards; and*
- (4) alternative mechanisms for dispute resolution.*

In addition to adding this section to the laws, the 1991 Legislature also passed a two-year budget increase for the Minnesota Department of Health to conduct this review and revision of the state regulations. This budget increase was funded through a surcharge on licensed nursing home and

boarding care home beds. The Nursing Home Regulatory Reform Project, as the study authorized by the statute is known, was expected to take several years to complete because of the complexity of the regulations and their interrelations with resident rights and consumer expectations and with reimbursement to these long term care facilities. The project encompasses a review of all of Minnesota Rules Chapters 4655 and 4660, and portions of Minnesota Statutes Chapter 144A.

A "Notice of Solicitation of Outside Information or Opinions regarding Proposed Revision of Adopted Rules Governing the Operation of Nursing Homes and Boarding Care Homes and the Physical Plant Requirements of Nursing Homes and Boarding Care Homes as Conditions of Licensure" was published in the *State Register*, 16 S.R. 1230, on November 18, 1991. The purpose of this notice was to inform interested parties that the Minnesota Department of Health was beginning the rulemaking process and to request information and opinions from them concerning the regulation of nursing homes and boarding care homes.

Because of amendments to the Administrative Procedures Act by the 1995 Minnesota Legislature, an "Amended Notice of Solicitation of Outside Information or Opinions regarding Proposed Revision of Adopted Rules Governing the Operation of Nursing Homes and Boarding Care Homes and the Physical Plant Requirements of Nursing Homes and Boarding Care Homes" was published in the June 26, 1995 *State Register* at 19 S.R. 2494. The purpose of this amended notice was to comply with amendments to the state law requiring notification of proposed rulemaking to potentially affected parties.

1995 AMENDMENTS TO ADMINISTRATIVE PROCEDURES ACT

The 1995 Minnesota Legislature enacted amendments to Minnesota Statutes, Chapter 14, commonly known as the Administrative Procedures Act. Revisions to Minnesota Statutes, section 14.131, are effective January 1, 1996; that section refers to the Statement of Need and Reasonableness¹. To the extent possible, this Statement of Need and Reasonableness will address the information required by that new statutory language.

First, effective January 1, 1996, a statement of need and reasonableness must include a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. The classes of persons who will be affected by this proposed rule are nursing home residents, and indirectly their family members and friends, also nursing home owners, administrators, and staff, state agency surveyors, ombudsmen and other advocates for nursing home residents, and other interested persons. There are little or no anticipated additional costs of implementing the proposed rules because much of these proposed rules are continuations of or amendments to current rules, or revisions of state rules to be more consistent with existing federal certification regulations. Classes that would bear any costs would be those nursing home residents that pay for their stay in a nursing home (or their family members that pay), the Medicare and Medicaid programs, and state taxpayers. Classes that would benefit financially or economically from these rules would be difficult to specify, since there are already extensive existing state rules and federal regulations.

¹ 1995 Minnesota Laws, Chapter 233, Article 2, Section 13.

There are no probable additional costs to the Department nor to any other agency for the implementation and enforcement of the proposed rule, and so there is no anticipated effect on state revenue. Again, there are existing rules which nursing homes are required to comply with, and the enforcement process has been in existence along with those existing rules. The enforcement system for the federal certification regulations has been modified within the past year, and the state enforcement system complements that federal enforcement system.

The amendments to the Administrative Procedures Act require a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule, and a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The purpose of the proposed rule (as well as the statute and current rule) is to protect the health, safety, comfort, treatment, and well-being of each nursing home resident. Nursing homes receive a majority of their payments for the costs of residents' stays from the Medicare and Medicaid programs. The state rules and the state enforcement system blend in with the federal certification regulations and enforcement system. Facilities must be licensed by the state to be eligible for certification and participation in those federally funded programs. Because of the extent of public involvement the Department has used to develop these proposed rules, they contain language that the public feels is necessary and reasonable as state rules in addition to the federal certification regulations. Determining less costly methods or less intrusive methods was less important than ensuring quality and appropriate cares for nursing home residents. These rules fall under the domain of the protection of the public health, and at this point, based on the suggestions from the public workgroups and the recommendations from the project Steering Committee, the public generally prefers that those protections remain in place. A few persons did suggest that Minnesota repeal all the nursing home licensing rules, and only require nursing homes to comply with the federal certification regulations. The department considered that method of protecting residents, but feels it is necessary and appropriate to maintain and enforce state rules to provide protections for residents, first, for those facilities that do not participate in the Medicare and Medicaid programs; second, to complement those federal regulations where they may be incomplete or nonspecific; and third, to assure a basic standard of care throughout the state regardless of changes to or elimination of federal regulations.

The department's first priority for proposing revisions to existing rules was to rework the standards for licensure of nursing homes. As discussed earlier, this process was begun in late 1991, and was developed over the last few years with extensive public involvement. With those revised standards now ready, we will explore further alternative methods for achieving the purpose of the rules, such as focusing on continuous quality improvement. In other words, we will finish the rule revisions as developed by the public workgroups, the Steering Committee, and department staff. When that process is completed, staff will go over the entire revised rule to address these new requirements of the Administrative Procedures Act, since parts of the rules were revised without this perspective (because they were revised prior to the promulgation of those new requirements).

The probable costs of complying with the rules are addressed later in this document, in the Statement of Anticipated Costs and Benefits.

An assessment of any differences between the proposed rule and existing federal regulations and an analysis of the need for and reasonableness of each difference are addressed below in the sections on each proposed rule part.

Effective May 26, 1995, *Minnesota Statutes*, section 14.101, an agency shall solicit comments from the public on the subject matter of a possible rulemaking proposal by publishing notice in the *State Register* at least 60 days before publication of a notice of intent to adopt rules or a notice of hearing. As discussed above, two notices on these proposed rules were published in the *State Register*, at 16 S.R. 1230, on November 18, 1991, and at 19 S.R. 2494, on June 26, 1995.

Effective January 1, 1996, *Minnesota Statutes*, section 14.131, also requires a statement of need and reasonableness to describe the agency's efforts to provide additional notification to persons or classes or persons who may be affected by the proposed rule or must explain why these efforts were not made. Some of that notification is addressed in the section of this document titled, "Public and Governmental Viewpoints." As discussed later, there have been many efforts made to provide additional notification of the development of the proposed rules. In addition, a copy of the dual notice of proposed rulemaking as it appears in the *State Register* will be sent to all licensed nursing homes and to the discretionary mailing list, in addition to the official department rulemaking mailing list.

INTERACTION OF FEDERAL AND STATE REGULATIONS

The purpose of the review of the existing state licensure requirements for nursing homes and boarding care homes was to assess the appropriateness of the current state regulatory system, to examine interrelationships between federal and state regulatory systems, and to determine what areas needed to be addressed under the state licensure system. Expected results included the deletion of certain current state regulations or laws, as well as additions or supplements to state regulations or laws.

Under the provisions of Minnesota law, nursing homes and boarding care homes must be licensed. The purpose of the licensure law is to assure that the services provided in these facilities meet minimum standards to protect the health, safety, comfort, treatment, and well being of the facility's residents. The licensure law establishes general conditions relating to the operation and administration of these facilities, authorizes the development of regulations, and requires the inspection of these facilities by the Minnesota Department of Health. Minnesota has traditionally had strong nursing home licensure standards in comparison to previous federal certification requirements and many other states' licensure standards.

Licensed nursing homes and boarding care homes wishing to participate in the federal Medicare or Medicaid programs must comply with the federal regulations known as "Requirements for Participation." Nursing homes and boarding care homes are "certified" for participation in the Medicare or Medicaid programs when they are found, through on-site surveys, to be in compliance with the federal Requirements for Participation. The majority of nursing homes in Minnesota are certified to participate in one or both of those federal programs.

In December 1987, the federal Nursing Home Reform Act was signed into law. Since this act was included in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), it is often

referred to as "OBRA 87". The majority of the nursing home reform provisions of OBRA 87 became effective on October 1, 1990. The final enforcement provisions of OBRA 87 became effective July 1, 1995. The purpose of these provisions was to improve the quality of life and quality of care of residents in certified nursing facilities, as well as to clarify and strengthen residents' rights. These provisions marked a radical shift in the focus of federal regulations from the capacity or capability of the facility to provide appropriate services to actual facility performance in meeting residents' needs in a safe and healthful environment. There is much greater latitude for resident involvement in the care they receive due to the expanded resident notice provisions and other resident empowerment features of OBRA 87.

With the enactment of the extensive OBRA 87 provisions and the development and issuance of their implementing regulations, it was appropriate to establish a process to review Minnesota's licensure standards for areas of overlap or conflict with the new federal regulations. Since the federal regulations are more stringent than they previously were and now have a greater outcome orientation, it was thought that it may not be necessary nor appropriate for state licensure regulations to be as extensive as they have been. Rather, it might be more appropriate to use the federal certification regulations as the basic model, and modify the state licensure regulations to supplement the federal requirements in the areas deemed by Minnesotans to warrant more stringent stipulations for licensed nursing homes and boarding care homes and the services they provide.

At the same time as these federal requirements are changing, the practice and provision of long term care services are in a state of change. Alternative services are being developed that meet individual needs outside of institutions, nursing home providers are becoming more creative in services they provide in existing physical environments, and specialized service units in nursing homes are being developed or are evolving because of the changing needs of the population being served by those nursing homes. Managed care for long term care residents is becoming available in many parts of the state. There has been much discussion throughout the state and the nation about the past few years about health care reform, and some of that discussion is in the process of becoming practice. Over the years, resident and family involvement in the care and treatment received in nursing homes has occurred to varying extent. The new OBRA regulations greatly expand the potential and the necessity for that involvement, and that resident empowerment needs to be taken into greater account in our state regulations. Ideally, the regulatory process would respond to those innovations in services and settings in an effective and efficient manner, while continuing to protect the residents.

The goal, then, of this nursing home regulatory reform project is the development of a comprehensive regulatory system that provides an appropriate level of protection to resident health and safety, provides a clear statement of provider responsibility, and promotes an effective regulatory process. The analysis necessary to achieve this goal identifies those state law and rule provisions, not currently part of the federal enforcement regulations, that need to be retained or included in state regulations. Provisions remaining in state law and rule after this analysis and revision would complement the federal enforcement provisions. They would build on the strengths in the federal regulatory system, while retaining those provisions of state regulations that are deemed essential to the maintenance of the high standards of care found in Minnesota. The outcome of the revision process would be the elimination of state regulations that are not needed, even some for which there are no corresponding federal provisions. These proposed changes would result in the integration of the state and federal survey processes to a far greater extent than is presently possible.

The Minnesota Department of Health is closely monitoring the actions of the 1995 Congress regarding the repeal or revision to the federal Medicare and Medicaid program requirements. It appears at this time that, regardless of the outcome of any federal regulatory changes, states will continue to be required to develop and enforce state licensure requirements to enable participation in those federal programs. The Department is going ahead with promulgating these proposed revisions to complete the process of revising all the state licensure rules for nursing homes; this process was begun in 1991, to update rules which were at that time 20 years old. The information gathered and recommendations received from providers, consumers, and regulators during the development of these proposed rules reflects current and more relevant licensure requirements than do the existing rules. It is necessary and reasonable to promulgate these proposed rules so that there is an appropriate state licensure system with pertinent requirements and expectations in place in Minnesota.

PUBLIC AND GOVERNMENTAL VIEWPOINTS

In order to gather public comment and initiate public debate on what type of licensing rules Minnesota should have for its nursing homes, a variety of methods were used to receive comments from the public and from governmental agencies.

Articles describing the regulatory review process and its status have been published regularly in *The Resource*, the quarterly publication of the MDH Facility and Provider Compliance Division. Also, the major provider organizations and many professional organizations have had articles on the regulatory review in their newsletters.

Interviews have been conducted with representatives of groups from whom comments were indispensable. Such groups include legislators, residents and their families, professional organizations, other state and federal officials, and national experts.

In March 1992 a survey was sent to each Minnesota nursing home and boarding care home, addressed to the Resident Councils and Family Councils. This survey attempted to gather information about resident rights, needs, safety, and other issues. 142 Resident Council questionnaires were returned, and 131 Family Council questionnaires were returned; these were very good return rates. The results of the survey were incorporated into workgroup discussions and summaries.

Public meetings have been conducted at various points throughout the process to assure that all possible viewpoints are being received. These included approximately 20 meetings with resident and family councils at locations around the state, mainly during calendar year 1992. Many presentations have been given at meetings of professional organizations and nursing home provider associations.

Meetings with legislators or their staff were held to receive their comments and to provide updates on the project. In addition, annual reports to the Legislature on the status of the project have been published and are available to interested persons upon request.

In addition, many of the subject areas required consultation with other divisions of the Department of Health or with other state agencies that have regulations which interact with these nursing home and boarding care home licensure regulations.

REGULATORY REVIEW PROCESS

A project Steering Committee, consisting of 15 members from the public and private sectors, provides oversight to the Department on the regulatory reform process. This Steering Committee began meeting in December 1991. The charge given to the Steering Committee by the Commissioner of Health was to provide policy direction to the Department on the regulatory reform process, the examination of individual issues within that process, and the review of public comments and workgroup recommendations on proposed regulatory changes. The Steering Committee examined the regulatory areas to identify where outcome based regulations would be appropriate and provided guidance to the workgroups on the development of outcome based regulations. The Steering Committee has provided recommendations to the Department on the feasibility and extent of the integration of federal and state regulations.

The members of this Steering Committee have been:

"Greenie" Greenseth, nursing home resident

Judy Liffengren, family member

Sharon Zoesch, State LTC Ombudsman, Minnesota Board on Aging
(replacing Jim Varpness)

Iris Freeman, Minnesota Alliance for Health Care Consumers

Sue Stout, Minnesota Nurses Association
(replacing Bonnie Peterson)

Dr. Robert Meiches, Minnesota Nursing Home Medical Directors Association
(replacing Dr. Tom Altemeier)

Dr. Robert Kane, Minnesota Chair in LTC and Aging, University of Minnesota

Darrell Shreve, Minnesota Association of Homes for the Aging

Barbara DeLaHunt, Administrator, Ebenezer Luther Field Hall

Patti Cullen, Care Providers of Minnesota

Jayne Stecker, Health Dimensions, Inc.

Munna Yasiri, Long Term Care Facilities Division, Minnesota Department of Human Services
(replacing Gail Dekker, who replaced Sandra Bisgaard)

Tom Moss, Long Term Care Facilities Division, Minnesota Department of Human Services
(replacing Gary Karger, who replaced Pamela Parker)

Elisabeth Quam, Assistant Commissioner, Minnesota Department of Health
(replacing Andrea Mitchell Walsh)

Linda Sutherland, Director, Facility and Provider Compliance Division, Minnesota Department of Health

After examination of the existing regulations, the Steering Committee suggested the formation of 15 workgroups to review specific areas of those regulations. There was at least one member of the Steering Committee and one department staff person on each workgroup. This helped to assure continuity of information flow between the Steering Committee and the workgroups, as well as focusing policy direction throughout the review process. There were some areas of regulations which were addressed by more than one workgroup, or which impacted on other areas.

The Steering Committee developed a document titled, "Guidelines for Workgroups", which outlined expectations of the workgroups' review of regulations. One of the charges contained in that document was to consider how outcomes, both clinical and resident satisfaction, could

be incorporated into the regulatory system. Another of the charges was to review the documentation requirements for the specific regulations and to make recommendations on what actually needs to be documented and why. Still another charge was to address how resident choice and autonomy is accounted for and allowed at the same time there are requirements which facilities must comply with.

The Steering Committee developed a prioritization for establishment and suggested membership list for the workgroups. The members of the workgroups were chosen by the Department of Health, from the over 600 names of volunteers. The initial six workgroups addressed physician and dental services, dietary and food services, infection control, nursing services, resident rights, and physical plant. The next set of workgroups addressed medications and pharmacy services, administration and operations, activities, social services, and environmental services (laundry, housekeeping, and maintenance). The third set of workgroups dealt with rehabilitation services and other ancillary services, medical records, and whether there is a need for regulations specifically for specialized care units. The final step of the review will address the enforcement process; this step has awaited the publication of final federal certification and enforcement regulations. Those final federal certification and enforcement regulations became effective July 1, 1995.

As mentioned earlier in this document, one of the charges of the Legislature to the Department was to "address the possibility of unifying the federal and state enforcement systems." By incorporating specific portions of the federal regulations into these proposed state rules, the Department of Health is addressing that possibility of unifying those two systems, where reasonable and necessary. The intent is not to duplicate all of the federal regulatory language, but rather to utilize those parts which are applicable and appropriate. By coordinating federal and state regulatory language in sections, we are attempting to decrease confusion on pertinent regulations and to eliminate regulations which are in conflict but both of which currently apply to the situation. Of the approximately 450 licensed nursing homes in Minnesota, about 2% are not certified to participate in either the Medicare or Medicaid programs. This means that 98% are certified, and so are required to follow the federal certification requirements as well as the state licensing requirements. By coordinating these two sets of regulations, regulatory expectations should be accordingly easier to understand for consumers, providers, and regulators. This should increase the efficiency and effectiveness of the regulations - and allow for more provider time to be spent providing cares to residents rather than trying to understand the rules, and which rule might take precedence in a given situation.

The charge, then, to these workgroups was to review the current state and federal rules relating to a specific service area, and suggest revisions to those rules. Those revisions could entail editorial changes, matching the state rule language to the federal language, adding new language, deleting existing language, a combination of those changes, or whatever else would make for more appropriate rules. In addition to voicing their own opinions, the workgroup members were encouraged to solicit suggestions from other persons and to share those suggestions either verbally or in writing. The intent was not to reach consensus among workgroup members as to how the rules should look, but rather to gather as much input as possible about current situations, standards of practice, and ideals. From that input, the Steering Committee could then develop proposed revisions to the current state licensing rules which mesh as much as possible with other applicable regulations nursing homes must comply with as well as make for more efficient operations.

WORKGROUPS ON RULE SECTIONS

RESIDENT RIGHTS WORKGROUPS

The public Resident Rights Workgroup met 4 times, on March 27, 1992, April 15, 1992, May 13, 1992, and June 17, 1992. During their review of the regulations, the workgroups used a side by side comparison of the current federal and state regulations relating to resident rights, resident funds, and relocations in nursing homes. Current research, articles, and guidelines were submitted by workgroup members, and incorporated into discussions of what the state regulations should "look like."

The members of the public Resident Rights Workgroup were:

Iris Freeman, Executive Director, MN Alliance For Health Care Consumers
Darrell Shreve, MN Assn of Homes for the Aging
Barbara DeLaHunt, Administrator, Ebenezer Luther / Field Hall
Ted Schmidt, Administrator, Wilder Residence East
Doug Peterson, Attorney, St John's Lutheran Home
Evangeline Myhre, Family Member
Marlene Hoover, NA/R, Martin Luther Manor
Sharon Miller, RN
Peter Brower, Social Worker, Good Neighbor Services
Jean Mueller, Office of Ombudsman For Older Minnesotans
Sharon Zoesch, Office of Ombudsman For Older Minnesotans
Helen Hyllestad, Resident, St Louis Park Plaza
Gail Kaba, Attorney, Minneapolis Legal Aid
Dr. Jim Lehmann, Medical Director, Waconia Health Care Center
Phyllis Metzger, R.N., MDH - Survey and Compliance Section
Doris Solie, R.N., MDH - Survey and Compliance Section

The members of the internal Resident Rights Workgroup were:

Judy Vierling, R.N., Assistant Section Chief
Sue Jackson, Director, Office of Health Facility Complaints
Phyllis Metzger, R.N., Unit Supervisor
Carol Moen, R.N., Nursing Assistant Registry
Mary Sontag, Licensed Social Worker
Judy Maccanelli, R.N., Health Facility Evaluator
Elizabeth Sandt, R.N., Health Facility Evaluator

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the rule parts that the workgroups devised or suggested. The Steering Committee reviewed those suggestions on December 8, 1993, December 22, 1993, January 24, 1994, and April 11, 1994. The document "Resident Rights Regulations - Proposed Revisions for Public Review and Comments - 4/15/94" was then developed and circulated for public review and comments. This draft of proposed revisions to the rules was issued on April 15, 1994. It was circulated to the members of the workgroups, the project Steering Committee, Facility and Provider Compliance

Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through May 20, 1994.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on June 13, 1994. Final recommendations for proposed revisions to the state nursing home licensing rules were then developed, and are discussed in detail below.

ACTIVITIES WORKGROUPS

The public Activities Services Workgroup met two times, on September 17, 1992, and October 12, 1992. During their review of the regulations, the workgroups used a side by side comparison of the current federal and state regulations relating to activities services and spiritual needs in nursing homes. Current research, professional standards, and articles were submitted by workgroup members, and incorporated into discussions of what the state regulations should "look like." There was a fair amount of discussion on the differences between the activities program which is mainly for social interaction and the therapeutic recreation program which incorporates more rehabilitation type activities.

The members of the public Activities Services Workgroup were:

Wayne "Greenie" Greenseth, resident, Highland Chateau Health Care Center
Nadine Touhey, Activities Director, Bethesda Homes
Heidi Sibbon, Presbyterian Homes of Arden Hills
Deb Kopp, R.N., Director of Nursing, Birchwood Care Home
Erin Clark, Minnesota Alliance For Health Care Consumers
Linda Holst, Social Services Department, Saint John's Lutheran Home
Ione Sater, family member
Charles Cox, Recreation Therapy Director, Minnesota Veterans Home
Kristi Mitchell, Therapeutic Recreation Director, Camilia Rose
Charlotte Hendrickson, Volunteer Coordinator, Ebenezer Luther Field Hall
Pat Fitzgibbon, R.N., MDH Survey and Compliance Section

Once the public workgroup completed their discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met on March 3, 1993. The members of this internal workgroup were:

Bob Gunkle, Assistant Section Chief
Marge Meeker, R.N., Health Facility Evaluator
Margaret Amundson, R.N., Unit Supervisor

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the

rule parts that the workgroups devised or suggested. The Steering Committee reviewed those suggestions on June 25, 1993. The document "Activities Program and Spiritual Needs - Proposed Revisions to State Licensing Rules for Public Review and Comments - 7/20/93" was then developed and circulated for public review and comments. This first draft of proposed revisions to the rules was issued on July 20, 1993. It was circulated to the members of the workgroups, the project Steering Committee, Facility and Provider Compliance Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through August 31, 1993.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on September 27, 1993. Final recommendations for proposed revisions to the state licensing rules for nursing home activities services and spiritual needs were then developed, and are discussed in detail below.

SOCIAL SERVICES WORKGROUPS

The public Social Services Workgroup met two times, on September 3, 1992, and October 7, 1992. During their review of the regulations, the workgroups used a side by side comparison of the current federal and state regulations relating to social services in nursing homes. Current research, professional standards, other state laws and rules, and articles were submitted by workgroup members, and incorporated into discussions of what the state regulations should "look like."

The members of the public Social Services Workgroup were:

Jayne Stecker, R.N., Health Dimensions, Inc.
Judy Liffengren, family member representative
Carole Christensen, family member
Erv Christensen, family member
Elise Schleisman, family member
Pat Diesen, Dir of Social Services & Environmental Services, Benedictine Health Center
Susan Jacobs, Long Term Care Ombudsman, Northwest Regional Office
Sue Stout, R.N., Minnesota Nurses Association
Pam Harris, Director of Social Services, Fridley Convalescent Home
LeAnn Simonson, Minnesota Board of Social Work
Barbara Schiek, Director, Social Services Department, St. Marks Lutheran Home
Peggy Sullivan, Social Services Department, Gardenview
Helen Hyllested, resident, Saint Louis Park Plaza Care Center
Jeanelle Lahr, R.N., Health Facility Evaluator, MDH Survey and Compliance Section
Mary Sontag, Licensed Social Worker, MDH Survey and Compliance Section

Once the public workgroup completed their discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met on January 15, 1993. The members of this internal workgroup were:

Joan DeMarce, R.N., Assistant Program Manager
Dolores Zimmerman, R.N., Unit Supervisor
Bonnie Wendt, R.N., Health Facility Evaluator
Mary Sontag, Licensed Social Worker

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the rule parts that the workgroups devised or suggested. The Steering Committee reviewed those suggestions on June 25, 1993. The document "Social Services - Proposed Revisions to State Licensing Rules for Public Review and Comments - 7/19/93" was then developed and circulated for public review and comments. This first draft of proposed revisions to the rules was issued on July 19, 1993. It was circulated to the members of the workgroups, the project Steering Committee, Facility and Provider Compliance Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through August 31, 1993.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on September 27, 1993. Final recommendations for proposed revisions to the state nursing home licensing rules for social services were then developed, and are discussed in detail below.

REHABS AND ANCILLARY SERVICES WORKGROUPS

The public Rehabs and Ancillary Services Workgroup met two times, on June 4, 1993, and June 14, 1993. As with the other workgroups, a side by side comparison of the current federal and state regulations relating to rehabilitative services and other ancillary services in nursing homes was used during discussions.

The members of the public Rehabs and Ancillary Services Workgroup were:

Sharon Zoesch, State LTC Ombudsman, MN Board on Aging
Michael Klein, Administrator, Shalom Home East
Pat Reller, Administrator, Crystal Care Center
Sandy Froehling, Saint Benedicts Center
Karen Lamecker, Minnesota Veterans Home
Jill Ostlund, Rehabilitations Director, Presbyterian Homes of Roseville
Helen Hyllested, resident, Saint Louis Park Plaza HCC
Craig Johnsen, Health Dimensions Rehab
Jane Brink, Ombudsman for Older Minnesotans
Peggy Durham-Lien, R.N., MDH Survey and Compliance Section
Judy Jones, R.N., MDH Survey and Compliance Section

Once the public workgroup completed their discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met on June 18, 1993.

The members of this internal workgroup were:

Bob Gunkle, Assistant Program Manager, MDH Survey and Compliance Section
Dee Zimmerman, RN, Unit Supervisor, MDH Survey and Compliance Section
Pat Fitzgibbon, RN, MDH Survey and Compliance Section

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the rule parts that the workgroups devised or suggested. This included portions on specialized rehabilitative services and barber / beauty shop services. The Steering Committee reviewed those suggestions on November 17, 1993. The document "Rehabilitations and Ancillary Services - First Draft of Proposed Revisions for Public Review and Comments - 11/19/93" was then developed and circulated for public review and comments. It was provided to the members of the workgroups, the project Steering Committee, Facility and Provider Compliance Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through December 31, 1993.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on February 2, 1994. Final recommendations for proposed revisions to the state licensing rules for infection control in nursing homes were then developed, and are discussed in detail below.

SPECIALIZED UNITS WORKGROUPS

The public Specialized Units Workgroup met three times, on May 10, 1993, June 7, 1993, and June 21, 1993. During their review and discussions of the regulations, the workgroups used MDH Informational Bulletin 91-1/NH-1, "Guidelines for Locked Nursing Home Units." Existing regulations from other states were provided by workgroup members, as well as current studies and documents addressing special care units. In addition, a presentation was made by Dr. Leslie A. Grant, Assistant Professor at the University of Minnesota School of Public Health, Division of Health Management and Policy. Dr. Grant, and the University of Minnesota, are conducting a part of the National Institute of Health's "Special Care Units Initiative", the first multi-center national study to look at special care units, what defines them, and to what extent they make a difference for people with Alzheimer's disease and their caregivers. At the time of the workgroup meetings, there was no data available to make any conclusions from the study. The workgroup spent considerable time discussing what issues needed to be addressed in the licensing rules, and the various types of special units for which there could be rules in addition to the nursing home rules.

The members of the public Specialized Units Workgroup were:

Gary Karger, DHS - LTC Management Division
Darrell Shreve, MN Association of Homes for the Aging
Charlotte Samuelson, Administrator, White Bear Lake Care Center
Nancy Dahl, R.N., D.O.N., Ah Gwah Ching Nursing Home

Judy Gerald, Ombudsman for Older Minnesotans, Duluth
Wendy Carper, R.N., Hermantown
Susan Cary-Hanson, R.N., Ebenezer Society
Juletta Nygren, R.N., Alzheimer's Association
Bobbie Buchamp Guidry, Wilder Residence West
Dave Rous, Director of Social Services, Nopeming Nursing Home
Dale Tremain, architect, Ellerbe-Becket, Minneapolis
Mary Foslid, MN Alliance for Health Care Consumers
Sally Schoephoerster, MN Alliance for Health Care Consumers
Phyllis Smith, family member, St. Peter
Jim Loveland, Engineering Section Chief, MDH Health Resources Division
Sandra Holst, R.N., surveyor, MDH Health Resources Division, Rochester
Joyce Hedlin, R.N., surveyor, MDH Health Resources Division, Marshall
Pat Nelson, R.N., surveyor, MDH Health Resources Division, St. Paul

Once the public workgroup completed their discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met on June 28, 1993. The members of this internal workgroup were:

Jim Loveland, Engineering Section Chief, MDH Health Resources Division
Joan DeMarce, Survey and Compliance Section Chief, MDH Health Resources Division
Vernice Berg, R.N., survey team supervisor, MDH Health Resources Division, St. Cloud
Sharon Szamatula, R.N., surveyor, MDH Health Resources Division, Duluth

When the workgroups had finalized suggestions for additions and revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document containing the various versions of the rule parts that the workgroups devised. The Steering Committee reviewed those suggestions on September 13, 1993.

The document "Specialized Units - First Draft of Proposed Revisions For Public Review and Comments - 10/21/93" was developed and circulated for public review and comments. This first draft of proposed revisions to the rules was issued on October 21, 1993. It was circulated to the members of the workgroups, the project Steering Committee, Health Resources Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through December 1, 1993.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on February 2, 1994. Final recommendations for proposed revisions to the state nursing home licensing rules for specialized units were then developed, dated February 14, 1994, and are discussed in detail below.

PHYSICAL PLANT WORKGROUPS

The public Physical Plant Workgroup met three times, on April 1, 1992, April 29, 1992, and May 20, 1992. During their review of the regulations, the workgroups used a side by side comparison of the current federal and state regulations relating to the physical plant of nursing homes. Current research, articles, and guidelines in the area of physical plant architecture, construction, operations, and maintenance were submitted by workgroup members, and incorporated into discussions of what the state regulations should "look like."

The members of the public Physical Plant Workgroup were:

Patti Cullen, Care Providers of Minnesota
Gary Karger, DHS - LTC Management Division
John Korzendorfer, Administrator, Lakeshore Nursing Home
Willis Stelter, Architect, Foss Associates
Dave Scheller, Engineer, Sholom Home East
Bev Kinney, Environmental Services, Bryn Mawr HCC
Pat Sheehan, State Fire Marshal's Office
Mark McMillan, Plant Operations, Episcopal Church Home of Minnesota
Jeannette O'Brien, RN, Minnesota Nurses Association
Steve Hernick, Plan Reviewer, MN Dept of Admin., Division of Building Codes & Standards
Jim Loveland, Engineering Section Chief, MDH Health Resources Division
Scott Wyatt, supervisor, MDH - Survey and Compliance Section
Dorothy Huesers, surveyor, MDH - Survey and Compliance Section

Once the public workgroup completed their discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met on November 20, 1992, January 8, 1993, and February 26, 1993. The members of this internal workgroup were:

Jim Loveland, Engineering Section Chief, MDH Health Resources Division
Bob Gunkle, assistant section chief, MDH HRD Survey and Compliance Section
Doris Noard, R.D., surveyor, MDH HRD Survey and Compliance Section
Michelle Chappius, R.N., surveyor, MDH HRD Survey and Compliance Section
Laurel Koster, R.N., surveyor, MDH HRD Survey and Compliance Section
Gary McAndrew, sanitarian, MDH HRD Survey and Compliance Section

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the rule parts that the workgroups devised or suggested. The Steering Committee reviewed those suggestions on February 12, 1993, February 26, 1993, March 12, 1993, and April 23, 1993.

At the February 12, 1993 Steering Committee meeting, the section of current rules on definitions was discussed. Since there could be significant policy implications from any definition changes, it was decided that a small group should form and meet to work on developing definitions for the physical plant rules that will clarify terminology and applicability of the rules. For example, there are rules for existing construction and for new construction; the new construction rules apply for circumstances in addition to the building of a new facility. The Definitions workgroup met three times, on March 23, 1993, May 13, 1993, and July 12, 1993. The definitions

developed by this workgroup were folded into the draft of proposed revisions for public comments. The members of this Definitions workgroup were:

Darrell Shreve, MN Association of Homes for the Aging
Bill Bergum, Care Providers of Minnesota
Gary Karger, DHS Long Term Care Management Division
Jim Loveland, Engineering Section Chief, MDH Health Resources Division
Mike Tripple, Assistant Director, MDH Health Resources Division

The document "Physical Plant Rules - Proposed Revisions To State Licensing Rules - For Public Review and Comments - 11/12/93" was developed and circulated for public review and comments. This first draft of proposed revisions to the rules was issued on November 12, 1993. It was circulated to the members of the workgroups, the project Steering Committee, Health Resources Division management, and other interested persons. They had been asked to circulate the draft to their constituents and any other interested persons. The written comment period ran through December 30, 1993.

Once the comment period expired on the draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on January 19, 1994, February 23, 1994, March 14, 1994, May 9, 1994, and May 18, 1994. Final recommendations for proposed revisions to the state nursing home licensing rules for physical plant were then developed, and are discussed in detail below.

repealed laws 1995

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, generally requires the Department to consider five methods for reducing the impact of the rule on small businesses. However, subdivision 7 exempts rules that affect "service business regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes, and residential care facilities...." It is the Department's position that these rules regulating services provided in nursing homes is exempt from section 14.115, because nursing homes are specifically exempted in that statute.

EXPERT WITNESSES

If a public hearing is held on these rules, the Department does not plan to solicit outside expert witnesses to testify on behalf of the Department. If a public hearing is held on these rules, the following witnesses may testify on behalf of the Department in support of the need for and reasonableness of the rules: H. Michael Tripple, Maggie Friend, and Dena Dunkel. The witnesses will be available to answer questions about the development and the content of the rules. Other staff may testify or be available to answer questions about specific aspects of the proposed rule. Other staff may substitute for those named above.

RULE PARTS

A new rule chapter, including a new numbering system, has been implemented for the nursing home licensing rules. Chapter 4655 will remain in existence, but will contain the operations rules only for boarding care homes. The nursing home licensing rules are being relocated to the new Chapter 4658. Some of the rule language from the current Chapters 4655 and 4660 is being maintained, and incorporated in the new Chapter 4658 (by including the same rule text in each chapter). Other parts of that current rule language is being maintained in Chapters 4655 and 4660, to apply only to boarding care homes. Because of this, a statement of needs and reasonableness will be established only for material that differs from original language.

The current Chapter 4660 contains the rules for the physical plant of nursing homes and boarding care homes, for both new construction and existing construction. In many of those current rule parts, individual subparts contain the rules for either new construction or existing construction, or in some cases, for both new and existing construction. One of the aspects of the revision of the current rules into these proposed rules is the separation of the rules for new construction from the rules for existing construction. The proposed parts 4658.3500 to 4658.4690 contain the rules for new construction. The proposed parts 4658.5000 to 4658.5590 contain the rules for existing construction. This separation will make the applicable rule parts easier to locate and comply with (rather than requiring users to flip through the entire rule chapter, looking at each rule part heading to determine whether there may be an applicable rule for that area).

Many of the revisions to the current rule language found in Chapters 4655 and 4660, and carried over to Chapter 4658 concern terms used in the rules. For example, the terms "patient" and "resident" are used in Chapters 4655 and 4660 to distinguish between those persons residing in nursing homes and boarding care homes, respectively. Since Chapter 4658 applies only to nursing homes, it is not necessary to distinguish between persons residing in facilities with those differing licensure levels. The term "resident" is used in Chapter 4658 to refer to a person who has been admitted to a nursing home. It is necessary to have some common term to refer to those persons, in order to be consistent and clear throughout the rule when referring to the persons residing in the nursing home. It is reasonable to use the term "resident" because those persons reside in the nursing home; they are there for some extended period of time, and the nursing home is required to provide a home-like atmosphere for them. It is also reasonable to use the term "resident" to be consistent with the terminology used in the federal certification regulations.

Another revision that has been made throughout the rules is the replacement of the term "shall" (as found in Chapter 4655) to the term "must." The Office of the Revisor of Statutes recommends using "must", not "shall", to impose duties, because it is a more definitive term.² In a number of rule parts, the only difference between the current rules as found in Chapter 4655 and these proposed rules is the replacement of the term "shall" with the term "must." These revisions are necessary and reasonable to comply with those recommendations from the Office of the Revisor of Statutes in order to use appropriate grammar and to develop consistency across all rules.

The remainder of this Statement addresses the provisions of the proposed rule.

² "Minnesota Rules Drafting Manual," The Office of the Revisor of Statutes, 1990, p. 27.

REVISIONS TO CHAPTER 4655:

PART 4655.0090 SCOPE

As discussed earlier, part of this rule revision process involves the separation of the licensure requirements for the two licensure categories, nursing home and boarding care home. It is necessary and reasonable to revise part 4655.0090 to reflect that separation. Upon promulgation of these proposed rules, *Minnesota Rules*, Chapter 4655 will no longer include rules governing the licensure of nursing homes. Chapter 4655 will only apply to boarding care homes, EXCEPT that the rules governing "Procedures for Exceptions to Nursing Home Bed Moratorium" are still contained in Chapter 4655 (parts 4655.1070 to 4655.1098). The clarifying language in this rule part reflects that exception to the rule scope.

OTHER PARTS OF CHAPTER 4655

There were minor technical revisions to other parts in Chapter 4655, simply to reference the new location of applicable rules. For example, *Minnesota Rules*, Parts 4655.1070 to 4655.1098 contain the "Procedures for Exceptions to Nursing Home Bed Moratorium" rules. Physical plant rules are referenced in those rule parts. The new location of pertinent rules in Chapter 4658 replaces the old location of those rules in Chapter 4655.

PART 4655.9342 REPORTING MALTREATMENT OF VULNERABLE ADULTS; FINES.

The 1995 Minnesota Legislature enacted changes to the Vulnerable Adults Act, found in *Minnesota Statutes*, section 626.557. The proposed revision to part 4655.9342 is necessary and reasonable to accurately reflect the corresponding state law being listed in this rule part, to ensure an accurate and enforceable regulation.

REVISIONS AND ADDITIONS TO CHAPTER 4658:

PART 4658.0010 DEFINITIONS

Part 4658.0010 is being revised by adding several definitions which relate to the physical plant of nursing homes. These additions are necessary and reasonable to provide explanation and clarification of terms used throughout the proposed rules. Some of the terms have been found in the current Chapter 4660, while others are new to the rules, but have been used by nursing home providers, architects, and regulators, and require a common definition for the purposes of this chapter. It is appropriate to cluster definitions for Chapter 4658 in one rule part, to make those definitions easier to locate as one reads through the Chapter.

Subpart 1 Scope: Subpart 1 of part 4658.0010 is being revised to reflect the applicable scope of the chapter, with the promulgation of this set of rules. The revision to subpart 1 includes all existing and proposed parts of Chapter 4658. It will only apply to licensed boarding care homes. It is necessary and reasonable to make these revisions to ensure the accuracy and applicability of the rules.

Subpart 1a Addition of new resident services: This subpart is being added to include a definition of "addition of new resident services." This term refers to the situation when a

nursing home begins providing a resident service that it had not been providing in the immediate past. This definition is necessary to include because a nursing home must notify the Department when there is an addition of a new resident service, to assure that the Department is aware of that service for regulatory purposes. The definition is reasonable because it provides a clarification of a term used in the licensing rules.

Subpart 1b Changes in existing resident services: The definition of "changes in existing services" is necessary and reasonable to provide clarification of a term used in the licensing rules. This term refers to any change in existing space in the nursing home used for resident services, because of an alteration in the use of that space. For example, designating a room that had been a resident bedroom as a dining area would be a change in existing services. There are requirements for notification of the Department of changes in existing services, found later in the rules.

Subpart 4 Existing facility: Subpart 4 of part 4658.0010 is being revised to reflect the applicable scope of the chapter, with the promulgation of this set of rules. The revision to subpart 4 removes the reference to applicable parts of Chapter 4660. With the promulgation of these proposed rules for physical plant in nursing homes, Chapter 4660 will no longer apply to licensed nursing homes. It will only apply to licensed boarding care homes. It is necessary and reasonable to make these revisions to ensure the accuracy and applicability of the rules.

Subpart 4a Food service equipment: Subpart 4a would be added to provide a definition of the term "food service equipment." This definition is necessary and reasonable to clarify what is considered food service equipment, which consequently must comply with the rules and incorporated standards in these licensing rules. There are technical aspects to the rule in regards to differences between new construction standards and existing construction standards, and when it is necessary to install equipment that meets national standards for construction. By defining "food service equipment" in the rule, the department intends to clarify the rule requirements.

Subpart 4b Food storage equipment: Subpart 4b would be added to provide a definition of the term "food storage equipment." This definition is necessary to clarify what is considered food storage equipment. There are licensing rules and incorporated standards to comply with for food storage equipment, so it is reasonable to define what items or equipment would be included in that term as it is used in this chapter.

Subpart 5a New construction: The proposed part 4658.0010, subpart 5a is a revision of the current part 4660.0100, subpart 2. It is necessary and reasonable to define the term "new construction" to clarify under what circumstances a nursing home must comply with the rules for new construction (as opposed to complying with the rules for existing facilities). There are different rules for new construction because the industry standards and consumer expectations are more stringent for the construction of new facility space, and it is reasonable to reflect those standards and expectations in rule to protect the health, safety, and comfort of the residents of the nursing home.

Subpart 7a Nursing area: Subpart 7a would be added to provide a definition of the term "nursing area". This definition is necessary to clarify a term used in the licensing rules. It is reasonable to define the term as an area within the nursing home that is served by a single nurses station so that the necessary rooms and other physical plant features are included in the construction plans for a nursing home, within an area served by a nurses station.

Subpart 13a Redecoration: Subpart 13a would be added to provide a definition of the term "redecoration". This definition is necessary to clarify what is meant by that term. It is reasonable to define the term to provide an explanation of when certain physical plant rules (for new construction and for existing facilities) apply when certain specific changes are being considered or made to the physical plant of the nursing home.

Subpart 13b Remodel: Subpart 13b would be added to provide a definition of the term "remodel". This definition is necessary to clarify what is meant by that term. It is reasonable to define the term to provide an explanation of when certain physical plant rules (for new construction or for existing facilities) apply when changes are being considered or made to the physical plant of the nursing home.

Subpart 13c Replace in kind: Subpart 13c would be added to provide a definition of the term "replace in kind." This definition is necessary to clarify what is meant by that term. It is reasonable to define the term to provide an explanation of when certain physical plant rules (for new construction or for existing facilities) apply when changes are being considered or made to the physical plant of the nursing home.

Subpart 14a Room: Subpart 14a would be added to provide a definition of the term "room", which is used throughout these rules. This definition is necessary to clarify what is meant by that term, to assure that a nursing home is originally constructed, and remains constructed, to provide separate, distinct areas for various functions or services in the nursing home. The definition is reasonable because it provides a clear definition that is based on common understanding of the term, and that will protect the health, safety, comfort, and well-being of residents.

Subpart 14b Shelf: Subpart 14b would be added to provide a definition of the term "shelf". The definition is necessary to clarify what is meant by that term because there have been disagreements and misunderstandings on what constitutes a shelf. The definition is reasonable because it is easy to understand, while providing sufficient explanation and expectations to assure that residents' health, safety, and comfort will be protected.

FINES FOR STATUTORY VIOLATIONS

4658.0191 DEPARTMENT OF HEALTH STATUTES; FINES.

4658.0192 NURSING HOME STATUTES; FINES.

4658.0193 REPORTING MALTREATMENT OF VULNERABLE ADULTS; FINES.

Minnesota Statutes contain several provisions relating to nursing homes. There are no specific penalties for noncompliance with those statutes included in the statutory language. Rather, the penalties have traditionally been included in the corresponding *Minnesota Rules*. It is necessary, then, to include the penalties for noncompliance with statutes in the new *Minnesota Rules*, Chapter 4658, for nursing homes, to ensure that it is clear what those penalties are for this licensure category. Penalties are necessary to provide for consequences to individuals or organizations which are not providing appropriate, mandated cares to nursing home residents.

These rule parts contain identical language to existing rule language found in *Minnesota Rules*, Chapter 4655. Part 4658.0191 matches Part 4655.9340. Part 4658.0192 matches Part 4655.9341. Part 4658.0193 matches Part 4655.9342, plus it acknowledges the 1995 repeal of

Minnesota Statutes, section 626.557, subdivision 15 (by not copying part 4655.0342, item F into part 4658.0193).

It is reasonable to include these penalties for noncompliance with statutes in this rule chapter applying to nursing homes because, by including the penalties here, they provide information to licensed providers, residents, regulators, and interested others in a format and location which is (or, should be) frequently used by those parties. The penalty levels have not been changed from current rules, and are based on an eight-tier schedule of fines developed for Minnesota Department of Health rules. The penalties for nursing homes for noncompliance with those statutes are simply being relocated to the more convenient and logical rule chapter, to assure that statutes and rules applicable to nursing homes are readily referenced.

One part of the reorganization of the rules for licensing nursing homes involves attaching language containing the penalties for violation of the rules to their applicable parts. In the current rules, there is a separate section of the rules which includes the penalties, or fines, for all the sections. In this proposed format, we are locating the rule parts listing the penalties at the end of each section of the rules. In other words, the penalties for noncompliance with correction orders on the resident rights rule parts are located at the end of the section of rules dealing with resident rights, those penalties for noncompliance with correction orders on the activities rule parts are located at the end of the section of rules dealing with activities, and so on. This reorganization has been done to make the penalties for noncompliance with rule parts easier to locate for consumers, providers, and regulators.

There has been some confusion with trying to locate applicable penalties under the current setup because one may have to look in more than one rule part to find the applicable penalty assessment for different sentences or subparts within a rule part. This reorganization should remove the chances for confusion or missing applicable penalties for noncompliance with correction orders based on the nursing home licensing rules.

The statutory authority for promulgating parts 4658.0191, 4658.0192, and 4658.0193, and other parts addressing penalties, is contained in Minnesota Statutes, section 144A.10, subdivision 6 (1993) which provides that:

"A nursing home which is issued a notice of noncompliance with a correction order shall be assessed a civil fine in accordance with a schedule of fines established by the commissioner of health before December 1, 1983. In establishing the schedule of fines, the commissioner shall consider the potential for harm presented to any resident as a result of noncompliance with each statute or rule. The fine shall be assessed for each day the facility remains in noncompliance and until a notice of correction is received by the commissioner of health in accordance with subdivision 7. No fine for a specific violation may exceed \$500 per day of noncompliance."

Thus, it should be noted that the provisions of parts 4658.0191, 4658.0192, and 4658.0193 will apply only to facilities licensed as a nursing home, and will provide for the daily accrual of fines. This part is necessary to implement the statutory requirement. The current system of penalty assessments for noncompliance with correction orders relates the amount of the penalty assessment to the impact on the resident resulting from noncompliance with the statute or rule. In other words, it looks at how noncompliance jeopardizes the health, treatment, safety, comfort, or well-being of residents.

The current schedule of penalty assessments includes an 8 tier level of fines: \$50, \$100, \$150, \$200, \$250, \$300, \$350, and \$500. The underlying premise of the correction order and penalty assessment system is to assure that there is an efficient mechanism to promote compliance with the nursing home rules and to assure that the licensee operates the nursing home in accordance with the licensure laws and rules.

The minimum penalty assessment of \$50 is assigned to those rules that do not directly jeopardize the health, safety, treatment, comfort or well-being of residents. While these rules are required minimum standards necessary to promote the proper operation of the nursing home, the potential for harm presented to residents as a result of noncompliance is not direct. This minimum fine level conforms with the legislative standard that the schedule of fines take into consideration the potential for harm to residents and, at the same time, establishes a sufficient sanction for a nursing home's failure to comply with a correction order.

The \$100 penalty assessment is assigned to those rules which relate, in a general nature, to the administration and management of the nursing home. While noncompliance with one of these provisions need not necessarily create a substantial risk of harm, the failure to comply has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents.

The \$150 and \$200 penalty assessments are assigned to those rules that are related to the physical environment and physical plant of the facilities. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health and safety of residents but do impact on the comfort or well-being of residents, and the \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. This also includes the rules relating to the furnishing of resident rooms and other areas of the nursing home. The licensure rules establish minimum requirements which are necessary for the proper construction, maintenance, equipping and operation of the nursing home. The rules which have been assigned to these two assessment levels are necessary to assure that the physical plant and physical environment are maintained in such a manner to fully protect the health, safety, treatment, comfort, or well-being of the residents. The failure to comply with the provisions of these rules will deprive residents of the minimum requirements established by the Department to assure that an adequately furnished and safe environment is provided. For that reason, noncompliance with the rules in this category will create a situation which could potentially jeopardize the health, safety, treatment, comfort, or well-being of residents.

While the rules assigned to these two fine categories relate to similar areas, the impact of noncompliance with the rules on the health, safety, treatment, comfort, or well-being of the residents does differ. Therefore, to comply with the requirement that the schedule of fines take into consideration the potential for harm, the \$150 and \$200 categories were developed. The \$150 penalty assessment has been assigned to those rules for which noncompliance would not necessarily impact directly on the health and safety of residents but would impact on the comfort or well-being of residents.

The \$200 penalty assessment has been assigned to those rules for which noncompliance could impact on the health or safety of residents in the facility. Since the potential for harm is greater than the rules contained in the \$150 category, the \$50 increase in the amount of the fine is appropriate. Rules which are designed to promote safety, proper sanitation, or the prevention of infection have also been included in this category. These rules relate to the environment and do have an impact on the health and safety of residents.

The \$250 penalty assessment is assigned to those rules and statutes that relate to the protection of the individual rights of residents. These provisions are designed to assure that the individual rights of residents are promoted and protected in the nursing home. A violation of one of these provisions could jeopardize the well-being of residents and could also jeopardize the resident's health. The rules are necessary to assure that the residents' rights to privacy and the right to adequate and considerate care are fully protected. The \$250 fine is appropriate to assure that these important interests are fully protected within the nursing home.

The \$300 and \$350 fine levels have been assigned to those rules which relate to the provision of care services with the nursing home. The provisions contained within these rules relate to the primary purpose of a nursing home - to provide nursing care and other services to residents. The failure to provide these services in accordance with the minimum standards contained in the rules has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents. The importance of assuring that the mandated services are provided justifies the imposition of the \$300 and \$350 penalty assessments. While the rules contained in this category all relate to the provision of care services to the residents, the impact of noncompliance on the health, safety, treatment, comfort, or well-being of residents does differ. Therefore, to comply with the requirement that the schedule of fines take into consideration the potential for harm, the two fine levels were established.

The \$300 penalty assessment has been assigned to those rules that are necessary to assure that the service is properly provided, e.g. staffing, general orientation and in-service requirements, development of policies and procedures governing the provision of care, availability of equipment and supplies, etc. Noncompliance with these rules would affect the quality of care that is provided to the residents. These rules are directly related to the actual provision of the service, and compliance with these rules is necessary to assure that the actual provision of the service is done in a safe and effective manner. Noncompliance with these rules would result in the inability to adequately meet the needs of the residents and the Department believes that the \$300 fine is appropriate.

The \$350 penalty assessment has been assigned to those rules which relate to the direct provision of services to residents. Since the impact of noncompliance with those provisions would be more immediate, the Department believes that the additional increase of \$50 is appropriate. Examples of rules contained in this category would include the provision that medications and treatments be administered in accordance with the physician's instructions, assuring that the dietary needs of residents are met and that the food is of acceptable quality and is prepared, served, and handled in a safe and sanitary manner, and assuring that staff are trained prior to providing care to residents. The direct relationship of these rules to the provision of the service in a safe manner justifies the \$350 fine.

The maximum penalty assessment of \$500 is assigned to those rules and statutes for which noncompliance with a correction order would present an imminent risk of harm to the health, treatment, comfort, safety, or well-being of nursing home residents. Continued noncompliance with these rules would create a substantial probability that a resident would be subjected to serious physical, mental, or psychosocial harm. A violation of the provisions assigned to this fine level justifies the maximum fine due to the potential for harm presented to the resident by noncompliance with these provisions. The maximum fine is appropriate and necessary to fully protect nursing home residents.

RESIDENT RIGHTS

4658.0200 POLICIES CONCERNING RESIDENTS.

Minnesota state law contains a bill of rights for patients and residents of health care facilities.³ This bill of rights contains various provisions addressing the rights of patients and residents, and encompasses a wide range of rights. It is necessary to include rule language here to specify additional rights in existence for nursing home residents.

Subpart 1: Subpart 1 of the proposed rule part 4658.0200 is a revision of the current part 4655.1910, subparts 1 to 3, dealing with visiting policies. The current rule *recommends* unrestricted visiting hours; the only persons *guaranteed* unrestricted visiting hours are the pastor of a resident, and relatives and guardians of critically ill residents. The proposed language is necessary to assure the resident has unrestricted access to those and other visitors, as well. The proposed language also sets forth the resident's right to reject a visitor, and allows the nursing home to restrict visits when a visitor poses a health or safety risk, or if a visit otherwise interferes with resident rights. The rule is reasonable because it allows the resident to have visitors at all times; yet, it also gives the nursing home the authority to deny access to a visitor who is disruptive to the point of violating the rights of residents, or whose health or behavior endangers residents.

Subpart 2: Subpart 2 of proposed part 4658.0200 is a revision of current part 4655.1910, subpart 4, regarding telephones. The proposed language is necessary to clarify first that the nursing home must provide residents access to a telephone for emergency use, and that the telephone is non-coin-operated so it is readily available in an emergency without requiring the resident to locate coins to operate it. Second, the nursing home must provide access to a telephone for personal use of residents, to enable residents to have a telephone to use if they so wish. This may mean there is one non-coin-operated telephone for emergencies and one coin-operated telephone for non-emergencies, or it may mean there is one telephone for use in emergencies and for personal use (which would have to be a non-coin-operated telephone). The proposed language is reasonable because it allows for resident access to a telephone, while still allowing the nursing home to recover costs of any long distance calls a resident may make.

Subpart 3: Subpart 3 of proposed 4658.0200, dealing with mail, is the same language contained in part 4655.1910, subpart 5, except the term "patients" has been deleted, a "shall" has been changed to "must", and the resident has been added as a person who can request that his or her mail be reviewed. The current rule language allows only the resident's legal guardian to authorize review of the resident's mail; this change is reasonable in that it clarifies that the resident has the same right as the guardian to authorize the review of his or her own mail. The deletion of the term "patients" here, and in other places throughout these rules, reflects the separation of the rules for the two licensure categories (nursing homes and boarding care homes), and the revision of the term "patients" to the term "residents" for those people living in nursing homes. The Office of the State Revisor of Statutes currently recommends using the term "must" rather than the term "shall" in state rules because it is a more appropriate and stronger term in which to express requirements.

³ *Minnesota Statutes*, 1993, sections 144.651 and 144.652.

Subpart 4: Subpart 4 of the proposed part 4658.0200 is the same language as is currently found in part 4655.1910, subpart 6, regarding funds and possessions, except for the deletion of the term "patient", neutralization of the gender specific pronoun "his", and adding the conservator to the list of persons who may authorize the nursing home to handle the personal major business affairs of a resident. The current part 4655.1910, subpart 6 allows the legal guardian to do that authorization. The addition of a conservator is reasonable because conservators are often appointed specifically for handling a vulnerable adult's financial affairs; thus, it is logical to allow a conservator to authorize the nursing home to handle personal major business affairs of the resident.

Subpart 5: Subpart 5 of proposed part 4658.0200 relates to smoking. It is the language contained in the current 4655.1910, subpart 7, with the removal of the term "patients" and the addition of the reference to Minnesota Statutes, sections 144.411 to 144.417, and Minnesota Statutes, section 16B.24, subdivision 9. Citing the Minnesota Clean Indoor Air Act in this rule part is necessary and reasonable to clarify that the state law applies to all situations involving smoking by residents or staff in the nursing home. Also, the specification of Minnesota Statutes, section 16B.24, subdivision 9 is necessary to recognize the statute which expressly permits smoking in the Veterans Homes, which also must comply with these nursing home licensing rules.

Subpart 6: Subpart 6 of proposed part 4658.0200, addressing pet animals, contains identical language as the current part 4655.1910, subpart 8, except that the reference to boarding care homes is not included in these proposed rules for nursing homes.

4658.0205 PROCEDURE AT DEATH.

The language proposed for part 4658.0205, relating to the procedure at the death of a resident, is essentially the same as that in current 4655.2100, except that the term "patient" has been deleted and the wording slightly altered to reflect the dignity of the occasion. The requirement that the body be *separated* from other residents was changed to the requirement that the body be *accorded privacy*, in order to allow for bedside prayer services for the deceased resident or other private time, in the resident's room (or in some other location). This language is necessary and reasonable to allow for that and similar situations. This proposed language does not mandate, however, that the body of the deceased may not be moved from the bedroom. The nursing home may continue to choose to move the body away from the bedroom or other residents. Moving the body of the deceased resident away from other residents will remain an option within the context of "accorded privacy" to the body.

4658.0210 ROOM ASSIGNMENTS.

Subpart 1: Subpart 1 of the proposed part 4658.0210 directs the nursing home to accommodate residents' preferences whenever possible on room assignments, roommates, and furnishings, and is based on interpretive guidelines for the federal certification regulations. This proposed subpart is a clarification of the rights provided by Minnesota Statutes, section 144.651, subdivision 22. This requirement does not require expenditure of funds by the nursing home, but expects the nursing home to make efforts to accommodate resident preferences by a variety of means. Examples of that effort could include: allowing the resident to bring furnishings from their home, and exercising flexibility in room and roommate assignments. It is necessary and reasonable to include this language in the state licensing rules to assure that residents'

preferences on room assignments, roommates, and furnishings will be accommodated whenever possible, to clarify that this is a prerogative of residents.

Subpart 2: Subpart 2 of proposed part 4658.0210 requires the nursing home to develop and follow a policy on handling room assignment and roommate complaints. The policy must include informal dispute resolution and documentation. This rule is necessary because a significant proportion of residents' complaints involve roommate or room assignment issues. It is an important enough resident rights issue to warrant requiring a mechanism for resolution in the licensing rules. Informal dispute resolution is a reasonable process which gives the nursing home the opportunity and flexibility to handle those disputes internally and expeditiously.

4658.0215 ADMINISTRATION OF MEDICATIONS.

The proposed rule part 4658.0215 references the larger rule section on medications and pharmacy services that is a portion of this rule chapter. This proposed part specifically refers to the two subparts dealing with the resident rights issues of self administration of medication and when medication can be added to the resident's food. It is necessary and reasonable to include a reference here to those other rule parts to emphasize and specify that there are rule parts in the health services sections of these rules which include resident right provisions. Those other rule parts are included in the section of rules most closely related to their topic.

4658.0220 FREEDOM FROM CORPORAL PUNISHMENT AND INVOLUNTARY SECLUSION

The proposed rule part 4658.0220 specifies that a resident must be free from corporal punishment and involuntary seclusion. It is necessary and reasonable to include this language in rule to assure the safety and well-being of residents in regards to those practices. There are no reasons why a person who is residing in a nursing home should be subjected to either corporal punishment and involuntary seclusion. By specifically prohibiting those actions, these rules are serving to protect the rights of the residents and to clarify unacceptable practices by nursing home staff. The department has recently found examples of involuntary seclusion in nursing homes, so it remains necessary to specify in rule that this practice is prohibited in order to protect residents.

RESIDENTS' PERSONAL FUNDS ACCOUNTS

4658.0250 ADMISSION POLICIES

Proposed part 4658.0250 requires the nursing home's admission policies to specify the manner of protecting residents' personal funds. This requirement differs somewhat from the existing part 4655.4100, which does not mandate the nursing home to accept personal funds for safekeeping. It is necessary and reasonable to require nursing homes to accept residents' personal funds for safekeeping, if the resident so chooses, because residents need to have a secure and accessible place to keep their personal funds in order to enhance their independence and assure security of those funds. The proposed language is consistent with federal certification language related to residents' personal funds.

4658.0255 AUTHORIZATION.

The rule language proposed for subparts 1 and 2 in part 4658.0255 is essentially the same as what is currently in part 4655.4110, subparts 1, 2, and 3. The proposed changes are: the combination of three subparts into two; all references to "patient" or "patients" deleted; "shall" changed to "must"; the addition of "other person designated in writing by the resident", and the insertion of "Social Security" in describing the benefits received by the representative payee. These revisions to current rule language are necessary and reasonable to format the proposed language consistently and add clarity to the rules, while recognizing how a nursing home is actually authorized to accept a resident's funds, based on current practices.

4658.0260 PERSONAL FUND ACCOUNTING AND RECORDS.

The proposed subparts 1 and 2 of part 4658.0260 prohibit the commingling of resident funds with nursing home funds and the use of resident personal funds by the nursing home. The language is essentially the same as that in 4655.4120, subparts 1 and 2. The difference is the removal of references to "patients" and "boarding care home", as well as "shall" having been changed to "must". Subpart 3 of the current 4655.4120, which prohibits resident funds from being commingled with resident funds from more than one nursing home, is not included in the proposed rules for nursing homes because the other proposed language adequately protects against that situation. These proposed revisions are necessary and reasonable to format the proposed language consistently and to pattern the state licensing rule language after the federal certification language.

Proposed subparts 3 and 4 require the nursing home to have separate accounting of each resident's personal funds and to produce individual statements on a quarterly basis and upon request. These subparts require that the nursing home's accounting system be in accordance with generally accepted accounting principles. This language is in place of the detailed accounting regulations in the rule parts currently found at Minnesota Rules, parts 4655.4130 and 4655.4140, and is necessary and reasonable to include here to assure that there is an accounting of each resident's funds, while allowing for generally accepted accounting principles to be followed.

4658.0265 DEPOSIT OF PERSONAL FUNDS.

Proposed rule part 4658.0265 requires nursing homes to deposit resident personal funds in excess of \$100 in an interest bearing account which is separate from any operating accounts of the nursing home, and in which there is separate accounting for each resident's share. This language is a modification of existing rule part 4655.4150, subpart 1, which requires deposit of funds exceeding \$150 (but does not mandate deposit in interest bearing account), and subpart 2, which provides for accrued interest for each resident if the funds are placed in an interest bearing account. Although the federal certification regulations require funds in excess of \$50 to be deposited in an interest bearing account, some commentators felt this amount was too low, particularly since the current personal needs allowance under the Medical Assistance program in Minnesota is \$54. It is necessary and reasonable to specify an amount for deposit of funds in an interest bearing account to provide protection of resident funds, and to allow those funds to increase over time if the resident chooses to leave their funds in the interest bearing account.

4658.0270 WITHDRAWAL OF FUNDS FROM THE ACCOUNT.

The language proposed for 4658.0270 is essentially the same as current rule part 4655.4160. References to "patients" and "boarding care home" have been deleted. This is necessary and reasonable to assure a uniformity of rule formats and language.

4658.0275 RETURN OF FUNDS AFTER DISCHARGE OR DEATH.

Subpart 1: Subpart 1 of the proposed part 4658.0275 is the same as current rule part 4655.4170, except for the rearrangement of the sentence structure for clarity, deletion of references to "patient" and "boarding care home", and addition of "or other person designated in writing by the resident"; these revisions are necessary and reasonable to provide for a greater clarity and understanding of the expectations of these rules, and to enhance the provision of resident rights in these rules.

Subpart 2: Subpart 2 requires that the resident's funds and a final accounting be conveyed to the administrator of the estate after a resident's death. This language is consistent with the federal regulation on the return of resident funds after death, except the clause requiring that transfer or return to be done within 30 days is not included in this proposed rule. Minnesota law (in the Uniform Probate Code) addresses a timeframe for certain circumstances, and rather than be inconsistent with state law, it is necessary and reasonable to not include a timeframe in this rule. Minnesota Statutes, § 524.3-1201, clause (a) reads:

524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent, or a county agency with a claim authorized by section 256B.15, upon being presented a certified death certificate of the decedent and an affidavit, in duplicate, made by or on behalf of the successor stating that:

- (1) the value of the entire probate estate, wherever located, less liens and encumbrances, does not exceed \$10,000;*
- (2) 30 days have elapsed since the death of the decedent;*
- (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and*
- (4) the claiming successor is entitled to payment or delivery of the property.*

4658.0290 PENALTIES FOR RESIDENT RIGHTS RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed parts 4658.0200, 4658.0205, 4658.0250, 4658.0255, 4658.0260, 4658.0265, 4658.0270, and 4658.0275. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule

parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessment for noncompliance with a correction order for part 4658.0210, subpart 1, is \$250. The \$250 penalty assessment is assigned to those rules and statutes which relate to the protection of the individual rights of residents. Part 4658.0210, subpart 1 addresses the accommodation of resident preferences on room assignments, roommates, and furnishings. Residents have a "right to independent personal decisions and knowledge of available choices" (Minnesota Statutes, section 144.651, subdivision 1). The language proposed in this subpart clarifies one aspect of that part of the Resident Bill of Rights. The department believes that the establishment of the \$250 fine for this subpart is necessary and reasonable to assure the rights of the residents are protected.

The proposed penalty assessment for noncompliance with a correction order for part 4658.0210, subpart 2, is \$50. The \$50 penalty assessment is assigned to those rules that do not directly jeopardize the health, safety, treatment, comfort, or well-being of the residents. Part 4658.0210, subpart 2 requires the nursing home to develop and implement written policies and procedures for addressing resident complaints regarding room assignments and roommates. Although the outcomes of the dispute resolutions may have a great effect on the resident, this subpart addresses the need for policies and procedures. While this rule is a required minimum standard necessary to promote the proper operation of the nursing home and protection of resident rights, the potential for harm presented to residents as a result of noncompliance is not direct. The Department believes that the \$50 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for part 4658.0215 is \$250. The \$250 penalty assessment is assigned to those rules and statutes that relate to the protection of the individual rights of residents. A violation of this rule addressing the resident's right to self-administer medications and adding medications to food could jeopardize the well-being of residents and could also jeopardize the resident's health. The department believes the \$250 fine is appropriate to assure that these important interests are fully protected within the nursing home.

The proposed penalty assessment for noncompliance with a correction order for part 4658.0220 is \$500. The maximum penalty assessment of \$500 is assigned to those rules and statutes for which noncompliance with a correction order would present an imminent risk of harm to the health, treatment, comfort, safety, or well-being of nursing home residents. Corporal punishment or involuntary seclusion present an immediate risk of harm to the residents. The department believes the \$500 fine is appropriate for noncompliance with correction orders for this rule part to assure protection of the residents.

RESTRAINTS

4658.0300 USE OF RESTRAINTS

Minnesota Rules, Part 4658.0300, Use of Restraints, became effective November 12, 1995. Even before it became effective, it was evident from comments made by nursing home staff and MDH staff that the wording of some of Part 4658.0300 was problematic. In response to those

comments, the department is proposing to revise the current part 4658.0300, subpart 4. The proposed revisions are necessary to clarify the requirements and intent of this rule, and to assure that the nursing home complies with physician orders for the use of the restraint.

The current subpart 4 would be split into 2 subparts, to better delineate the rule requirements that apply to the decision to apply a restraint and the rule requirements for the use of physical restraints. Subpart 4 would continue to address the decision to apply a restraint. A new subpart 5 would contain the additional safety precautions, which are both necessary and reasonable, that apply in the case of a resident placed in a physical restraint.

Part 4658.0300, subpart 4, would contain basically identical language to the current part 4658.0300, subpart 4. The main difference in the actual text is the revision of one sentence into two, and the relocation of those sentences to earlier in the subpart. These revisions would clarify the requirements for obtaining an informed consent and a physician's order for the use of a chemical or physical restraint. The corresponding sentence in the current rule could have been misinterpreted. By separating that current sentence into two sentence, and relocating the sentence within the subpart, the intent of the entire subpart will be clarified. The resulting text will also be better constructed grammatically.

The revised part 4658.0300, subpart 5, will consist of much of the same language as in the second portion of the current part 4658.0300, subpart 4. However, the current items A and E would be revised to place more responsibility on the nursing home to develop a system to assure the resident in a physical restraint is monitored based on the interval specified in the physician's order. The current language requiring the resident to be checked every 30 minutes would be deleted. This revision is necessary and reasonable to allow for an appropriate measure of safety and comfort for the resident placed in a physical restraint, while removing some rather proscriptive language that could interfere with optimal delivery of care and services to residents. There were many concerns expressed regarding the intent of the language in the current item E, and how that should best be implemented by nursing homes. The language in that item E is fairly vague, and allowed a lot of flexibility to nursing homes to determine how to record the restraint usage and checks. However, the language, when considered in conjunction with the actual provision of nursing services and with other documentation requirements, did not seem to be necessary or easy to implement. The proposed language will continue to provide an assurance of safety for residents, while allowing flexibility for nursing homes to provide appropriate services to all residents.

CLINICAL RECORDS

4658.0445 CLINICAL RECORD

4658.0450 CLINICAL RECORD CONTENTS

Proposed rules addressing clinical records in nursing homes were published in the October 17, 1994 *State Register*. A hearing on those proposed rules was held November 21, 1994. The Notice of Adoption of Final Rules was published in the August 14, 1995 *State Register*, and those final rules become effective November 12, 1995.

Because this set of proposed rules adds several sections to Chapter 4658, it is reasonable to revise the clinical records portion of Chapter 4658 to reflect those additional sections. It is necessary to include the references to other parts of the rule chapter where recording

requirements are contained to assure that rule users what is expected in an accurate and clinical record. This revision is necessary and reasonable because it will help facility staff assigned the responsibility of health information management or clinical records to know what other disciplines or departments are expected, by this rule, to have contributions to the clinical record. This, in turn, will help to assure a more complete and accurate clinical record, reflecting a bigger picture of the resident's needs and choices, and what services are provided to meet those needs and choices.

The department is proposing to relocate those references to applicable rule parts from part 4658.0445, Admission Information, to part 4658.0450, Clinical Record Contents. It is in the best interest of everyone using these rules to have them organized logically and, where appropriate, sequentially. This relocation is necessary and reasonable because many of the items to be found in part 4658.0450, subparts 2 to 8, are ongoing reporting requirements, rather than just a one-time data collection at the time of admission.

Part 4658.0445, subpart 4, item H, would be revised by deleting the word "including". This revision is necessary and reasonable because a person's Do Not Resuscitate (DNR) and Do Not Intubate (DNI) status is based on a physician order, and is not an advance directive. This revision is necessary and reasonable to correct the language, thereby clarifying the rule requirement.

Part 4658.0445, subpart 4, item K, would be revised by including the term "or representative payee" as information to be collected upon admission for each resident. This revision is necessary and reasonable to be complete in the rule regarding those persons that the nursing home is to be aware of upon admission of a resident. By knowing the name of the representative payee, if there is one for a resident, the nursing home can be better prepared for any financial discussions or situations that might occur in regard to the resident.

Part 4658.0450, subpart 5 would be revised because of the revisions to part 4658.0300, subpart 4. Since the recording requirement would be removed from that rule part on the use of physical restraints, it is no longer necessary nor reasonable to specify that those records would be included in the clinical record. The text in the current part 4658.0450, subpart 5, would be deleted. The current subpart 6 would become subpart 5, the current subpart 7 would become subpart 6, and the current subpart 8 would become subpart 7.

DIETARY AND FOOD SERVICES

4658.0615 FOOD TEMPERATURES

The federal Health Care Financing Administration published revisions to the Medicare and Medicaid program certification regulations for nursing facilities in June 1995. The language in part 4658.0615 is consistent with federal regulations and their interpretive guidelines. Approximately 98% of the nursing homes in Minnesota are certified to participate in those federal programs, and so are required to follow those regulations. The June 1995 revisions clarified that these are proper holding temperatures, which may be different from proper serving

temperatures.⁴ It is necessary and reasonable to revise this state rule to be consistent with the federal guideline language to eliminate any direct conflict between the two sets of regulatory standards. The revision will not affect the health and safety of residents, but will most likely positively affect their comfort and well-being, since proper holding temperatures produce food too hot for most people to eat.

4658.0620 FREQUENCY OF MEALS

The department is proposing a revision to part 4658.0620, subpart 3, by adding the word "evening" to clarify when the nourishing snack is to be provided. Questions were raised on the intent of this language following its promulgation. It is necessary and reasonable to revise this part to clarify the intent of the rule, which is that up to 16 hours may elapse between the evening meal and breakfast if a resident group agrees to that timespan and a nourishing snack is provided to residents in the evening.

ACTIVITIES

4658.0900 ACTIVITIES AND RECREATION PROGRAM

Subpart 1 General requirements: Subpart 1 of the proposed part 4658.0900 is necessary to assure that there is an organized activity and recreation program provided to residents of each licensed nursing home to provide for "life fulfillment", a term used by activities professionals in describing the outcomes of their professional programming. The proposed rule language is based on current state licensing language and federal certification language. It is reasonable to require an activity and recreation program to provide for leisure, diversion, and exercise for the residents, and to improve the residents' quality of life. Without an adequate activity program, the residents' loneliness and isolation can increase, and their physical, mental, and psychosocial health can be adversely affected. It is necessary and reasonable to require that the activity and recreation programming be based on results of the comprehensive resident assessment and plan of care (required by parts 4658.0400 and 4658.0405) because the resident's therapeutic and diversion needs are not addressed only by activities staff nor only by nursing staff, or any other single service. The resident's plan of care (and the implementation of that plan of care) is intended to address all aspects of the resident's physical, mental, and psychosocial needs, and is to be integrated into the total cares and services each resident receives. Language in the Interpretive Guidelines for the federal certification requirements at 42 CFR 483.15(f)(1) was presented to support the intent of this section:

"Because the activities program should occur within the context of each resident's comprehensive assessment and care plan, it should be multi-faceted and reflect each individual resident's needs. Therefore, the activities program should provide stimulation or solace; promote physical, cognitive and/or emotional health; enhance, to the extent practicable, each resident's physical and mental status; and promote each resident's self-respect by providing, for example, activities that allow for self-expression and choice. Activities can occur at anytime and are not limited to formal activities being provided by activity staff. Others involved may be any facility staff, volunteers and visitors."

⁴ State Operations Manual, Transmittal No. 274, PP-144; June 1995; U.S. Department of Health and Human Services, Health Care Financing Administration.

During the development of suggestions for rule language by the public workgroup, there was mention of the different types of programming being provided by various nursing homes, ranging from social activities (such as movies and card playing) to very rigorous and extensive recreational therapy programs. Some nursing homes specialize in one sort or another of activity programming depending on the mission of the facility, the resident population, or other factor. The proposed language does not preclude these variations. In fact, the proposed language requires each nursing home to develop a program designed to address each resident's interests, strengths, and needs. Depending on the results of the resident assessments, the nursing home would appropriately be offering the types of programming for each resident to achieve the outcomes indicated by those assessments. The programming can then reasonably be expected to vary depending on the acuity levels of the residents, the discharge potential of residents, and the interests of the residents. The title of the department or service can vary, also, depending on the focus of the services provided to meet the needs, strengths, and interests of the residents; some examples of department titles which were provided during the public workgroup discussions were Activities Department, Leisure Services, Recreation Department, and Therapeutic Recreation Services. The nursing home would select a department or program title to address their individual situation and programming, based on their own preferences and the program or programs the residents receive.

The addition of the sentence requiring resident participation in the planning and development of programming is necessary and reasonable to strengthen resident rights to participation in care planning, and is based on consumer choice and preferences as indicated to the department. This is not a new concept in regulation, because the activities programming has been part of the services provided, and the residents have had opportunities to participate in that planning and development through, at a minimum, their comprehensive assessment and development of the plan of care, which is supposed to involve the resident where possible. Current rule language has stated at 4655.5200, subpart 3: "The patient or resident shall be encouraged to be involved in his own care through a purposeful activities program..." Many nursing homes have taken a more proactive approach and had a resident group, such as the Resident Council, provide recommendations on activities the residents would prefer, and comments on the programming offered. Other nursing homes have involved residents on a more informal basis, discussing programming offerings with residents, and basing some of the programming on resident attendance and interest in those activities or choices. The proposed language intentionally does not limit the method, type, or frequency of the opportunities provided residents to participate in the planning and development of the activity and recreation programming. Rather, those choices regarding opportunities are left up to the individual nursing home, which must meet the interests and needs of each resident.

Subpart 2 Frequency of program activities: The proposed subpart 2 is a revision of the current part 4655.5200, subpart 6. The proposed language would require programming to be scheduled every day, rather than the current 5 days each week. Many residents and staff reported that evenings and weekends are often lacking in programming for residents; "the weekends often drag on." It is necessary and reasonable to include this proposed language because programming must meet the needs, interests, and choices of each resident, as indicated in the comprehensive resident assessments, and not necessarily only be provided from 9 a.m. to 5 p.m. on weekdays. Many nursing homes already do provide programming on a wider schedule than that, and so no major change to the way they already schedule their programming is expected. In some nursing homes, a majority of the residents receive other sorts of therapy services during the day, so there is a wider variety of social, recreational, or diversionary

activities provided during the evening hours. The activity and recreation program may utilize facility staff in addition to the activity and recreation programming staff, volunteers, and visitors to meet the proposed "every day" scheduling requirement. The proposed language would allow nursing homes to establish a policy designating holidays or other days which are exempt from scheduled activities. This policy could depend on the religious, cultural, or other affiliations of that nursing home or residents of that home, or on other factors in the decision, such as the interests of the residents. For example, some nursing homes have a resident population that consistently receives lots of visitors on weekends, so scheduled activities and recreation programs generally have little or no attendance because residents have no interest in interrupting or giving up their time to spend with their visitors. Other nursing homes have a resident population that may rely on the change in the daily activity programming schedule between weekdays and weekends as part of their orientation to the world around them; these residents may benefit more from the change in scheduling than from activities they may or may not attend.

Subpart 3 Activity and recreation program director: The proposed subpart 3 is a revision to the current part 4655.5200, subpart 5. This proposed language requires nursing homes to determine what training or experience is necessary to direct the activity and recreation program at each nursing home. The nursing home would then be required to have an activity and recreation program director with those qualifications determined to be necessary to direct that program. This proposed language provides for flexibility to nursing homes by allowing for diverse backgrounds of the program director at various nursing homes, depending on the type of program offered and provided by each nursing home. Many people make their selection of a nursing home based partly on the activity and recreation program offered there, and the director of that activity and recreation program has an impact on the program offered.

The federal certification language includes requirements for the activity program director, which most licensed nursing homes in Minnesota are currently required to comply with. The language cites various professional qualifications which would be necessary, reasonable, and appropriate to expect of the professional staff person directing the activities program. The federal certification regulation reads:

42 CFR 483.15(f)(2) The activities program must be directed by a qualified professional who - -

(i) Is a qualified therapeutic recreation specialist or an activities professional who --

(A) Is licensed or registered, if applicable, by the State in which practicing; and

(B) Is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990; or

(ii) Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or

(iii) Is a qualified occupational therapist or occupational therapy assistant; or

(iv) Has completed a training course approved by the State.

Since there are no training courses approved by the State (in this case, the Minnesota Department of Health, as the certifying agency), all certified nursing homes must have an activities program director who meets at least one of the items (i), (ii), or (iii) above. In

addition to those listed in the federal certification language, other types of therapists, such as music therapists, are currently serving as activity and recreation program directors; these are allowed in certified facilities if they meet the requirements of item (ii) of the federal certification language. These are basic professional standards.

There are a number of national professional organizations of activity professionals, many of which have developed standards of practice for programs and professionals. A partial list of these organizations includes the National Therapeutic Recreation Association (NTRA), the American Therapeutic Recreation Association (ARTA), the Occupational Therapeutic Recreation Association (OTRA), and the National Certification Council of Activities Professionals (NCCAP). The NCCAP is the only group that "certifies" professionals for long term care. The NCCAP certifies three levels: Activity Assistant, Activity Director, and Activity Consultant. A public workgroup member reported in September, 1992, that Minnesota has the highest number of certified activity professionals per the amount of nursing homes in the country.

The non-certified nursing homes would, with the proposed language, be required to determine what qualifications for training and experience are necessary to direct the activity and recreation program at that specific nursing home, and then employ a person to direct the program who has those qualifications. If there are problems with the provisions of activities and recreational services at a nursing home, the nursing home administrator, licensee, board of directors, or state surveyors or regulators will be able to determine if the services are provided by staff meeting the qualifications determined necessary by that nursing home. Again, since the vast majority of licensed nursing homes are also certified, it is not necessary to include a list of professional standards for the program director for those certified facilities in these state licensing rules. The Department of Health does not wish at this time to specify training or experiential qualifications for activity and recreation program directors in the state licensing rules for nursing homes because it does not wish to limit the persons who may appropriately and competently be serving in that position. Rather, under these state licensure rules, the program director must be trained or experienced to direct the activity program staff and the activity and recreation program required under subpart 1, based on the assessment of each resident's interests, strengths, and needs in that nursing home.

Subpart 4 Staff assistance with activities: The proposed subpart 4 is based on the current 4655.5200, subpart 7, with revisions to require staffing levels based on the needs of the residents. The amount of staffing hours necessary to adequately and effectively operate an activity and recreation program varies by the resident population and its interests, strengths, and needs, as indicated in the comprehensive resident assessments and plans of care.

Some workgroup members suggested requiring staffing levels based on the case mix levels of the residents. A literature search was done to determine if there is any current research on methods used to determine appropriate staffing levels; no current research was located at the time of developing this proposed language. A professional organization proposed the following minimum staffing levels per week, based on the number of residents in the nursing home:

- | | |
|---|---|
| 1 - 50 resident beds | 1 full-time director + 20 hours additional staffing |
| 51 - 75 resident beds | 1 full-time director + 60 hours additional staffing |
| For each additional 25 resident beds, 40 hours additional staffing per week | |

Workgroup members favored incorporating minimum staffing levels in the licensing rules, to assure that there is something in regulation on which to base their requests for staff time. There

are concerns that activity and recreation program staff are frequently required to perform duties outside the scope of their program, such as shopping for residents, driving residents to appointments outside the facility, and so on. However, one of the directives of this rule revision project was to develop a more outcomes - oriented set of rules. Listing a required number of staff or required staffing hours will not necessarily guarantee that the residents receive the activities and recreation program and services they need. A rule stating that the residents must receive that program, based on their individual interests, strengths, and needs, states more clearly what the expectations of the regulations are. It then is the responsibility of the nursing home to provide that program and to have enough staff to implement that required program and programming. As mentioned above, people in addition to the activity staff can be involved in providing activities.

With these proposed rules, the nursing home would be developing the activity and recreation program based on the requirements in subpart 1 (including the information gathered from the comprehensive resident assessments and the development of the comprehensive plans of care), and determining how much staff time is necessary to provide the program needed by the residents, and then assigning enough staff to provide that program. Whether or not there is sufficient staff assigned to the activity and recreation program will be determined by ascertaining whether or not programming is available, in sufficient quantity and appropriateness, to meet the needs of the residents of that nursing home as determined by the comprehensive resident assessments and as documented in the residents' plans of care.

Subpart 5 Space, equipment, and materials: The proposed part 4658.0900, subpart 5 is based on a portion of the current part 4655.5200, subpart 8. There were revisions to the first sentence of this subpart (currently found in part 4655.5200, subpart 8) to clarify that there must be space provided both within the nursing home and outdoors so that residents may have the opportunity to be either indoors or outdoors if they so choose, and so that activities can be provided both indoors and out. This language has been a requirement in the current state licensing rules, so there is no additional rule requirement.

It is necessary to state in rule that there be appropriate and adequate equipment and materials to assure that those items are available to meet the individual residents' activity and recreation program needs. The proposed language is reasonable because the activity and recreation program, including the equipment and materials, needs to be oriented to the age and abilities of the individual residents, and to the plan of care for each resident. This language provides a linkage between the programming being planned and developed, and how that programming is provided to meet individual resident interests and needs.

Subpart 6 Prohibition on charges: It is necessary to include this subpart in the state licensure rules to assure that residents in all licensed nursing homes will receive the activity and recreation programming appropriate to their needs, as part of the services routinely offered by the nursing home, without being charged any money for that programming over and above their per diem rate. The regular activity and recreation program is a part of the basic services that must be provided by a licensed nursing home, and so must be included in the per diem rate charged to residents. The language is reasonable because it clarifies that nursing homes may not charge for the programming based on the residents' assessed needs, but may charge for social events and entertainment offered outside the scope of the regular programming. This subpart allows residents to have their assessed needs met, and also allows nursing homes to arrange additional activities, outings, and so on, outside the scope of the regular programming, to enable residents

who choose to participate in additional opportunities and diversions. The proposed language is consistent with federal certification regulations. If those federal regulations are changed, and if Minnesota decides to make changes based on those federal changes, this is one area that will be looked at for revision.

4658.0950 PENALTIES FOR ACTIVITIES AND RECREATION PROGRAM RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for proposed rules which are based directly on current rule language have not been changed. This includes the proposed part 4658.0900, subparts 1 through 5.

The proposed part 4658.0900, subpart 6 would be new language in the state licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.0900, subpart 6 is \$300. The \$300 penalty assessment has been assigned to those rules which are necessary to assure that the service is properly provided, e.g. staffing, general orientation and inservice requirements, development of policies and procedures governing the provision of care, availability of equipment and supplies, etc. Noncompliance with these rules would affect the quality of care that is provided to the residents. This rule is directly related to the actual provision of services and compliance with the rule is necessary to assure that the actual provision of services by direct care staff, and the provision of the services based on the residents' assessed needs without additional charges, is done in a safe and effective manner. Noncompliance with this rule would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

SPIRITUAL NEEDS

4658.0960 SPIRITUAL NEEDS.

The proposed part 4658.0960 is a revision of the current rule part 4655.5300. This language is reasonable because it updates the terminology used in the rule, and allows residents opportunities to have their spiritual needs met by the nursing home. It is necessary to include this part in the licensing rule because spiritual needs are an area of interest for residents, and for their family members and friends. By including minimum expectations in this licensing rule, the department is allowing facilities flexibility in determining how to best provide those opportunities to residents within the specific situations at that nursing home.

4658.0990 PENALTIES FOR SPIRITUAL NEEDS RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for proposed rules which are based directly on current rule language have not been changed. This includes the proposed part 4658.0960.

SOCIAL SERVICES

4658.1000 DEFINITIONS.

Subpart 1 Scope: The language proposed in part 4658.1000 provides a definition of terms used in the subsequent parts addressing social services. It is necessary and reasonable to include definitions of these terms in rule so that consumers, providers, and regulators have a common, specific definition to follow when interpreting the rule.

Subpart 2 Medically related social services: Although many nursing home staff are responsible for providing services to meet the physical, mental, and psychosocial needs of residents, the public workgroup reviewing this section of the rules felt it appropriate to include a definition of medically related social services to clarify the meaning of the term. The definition of medically related social services is consistent with the interpretive guidelines for the federal certification requirements at 42 CFR 483.15(g)(1).

Subpart 3 Qualified social worker: The definition of a qualified social worker is consistent with the social work licensure statutes which were revised by the 1995 Minnesota Legislature, as well as federal certification language found at 42 CFR 483.15(g)(3)(i) and (ii). The public workgroup reviewing this portion of the rules felt that making requirements stricter than the federal requirements would create problems finding qualified social workers in greater Minnesota. It is necessary and reasonable to include this definition in the rule because it clarifies who would be considered a qualified social worker for the purposes of the nursing home licensure rules, while complying with state law. Minnesota Statutes, sections 148B.18 to 148B.28 address the state licensure requirements for social workers. Social workers employed by hospitals and nursing homes have traditionally been exempted from those licensure requirements by Minnesota Statutes, section 148B.28, subdivision 6 (1994). However, that section of state law was repealed in 1995. Effective July 1, 1996, anyone calling themselves a "social worker" must have met the social worker licensure requirements in Minnesota Statutes, Chapter 148B. There are some grandparenting provisions in that new law for current nursing home social workers. It must be noted that, even with the mandatory licensure of nursing home social workers, nursing homes may still employ a "social services designee", for whom there are no statutory licensure requirements.

4658.1005 SOCIAL SERVICES.

Subpart 1 General requirements: Current state nursing home rules do not require a separate social service department. The current part 4655.5200, subpart 1, requires the nursing home to have an organized social and recreational activity program, and the current part 4655.5200, subpart 3, requires a resident to function at the resident's maximum physical, mental, social, and emotional capacity. These current rules are directly related to the nursing home's activity program. Current part 4655.0100, subpart 8, item C, states in part that the social needs of residents must be fulfilled. The public workgroup responsible for reviewing this section of the rules felt strongly that social services must be in its own section of the proposed rules because of the importance of the provision of social services, and to reflect current standards of practice

in the nursing home industry. Language in the proposed part 4658.1005, subpart 1, as developed by the public workgroup and the Steering Committee, is consistent with language in the interpretive guidelines for the federal certification requirements at 42 CFR 483.15(g)(1). It is necessary to include the proposed language in these rules to assure that the medically related social service needs of residents are met by the nursing home or through some other outside resource. The language being proposed is reasonable because it follows standards of practice established by social service professionals, and assures that residents will be provided with social services based on their assessed needs.

Subpart 2 Social worker: The public workgroup involved with the review of these regulations stated that each nursing home must have at least one social work designee assigned to social service duties and responsibilities and that at least one staff person in each nursing home must be a qualified social worker. Current federal regulations do not require the use of social service consultants in nursing homes, but only that facilities with more than 120 beds have a qualified social worker. The workgroup also wanted to require a minimum number of social work hours per number of beds in the nursing home. However, the Steering Committee determined that language in these proposed rules is to be more outcome oriented, and so did not choose to include a specific number of staffing hours in the proposed rule. If the social service designee is not "qualified", as defined by these rules, a qualified consultant could be used by the nursing home to provide the necessary services.

It is necessary to require specific social service staff to assure that there are designated staff responsible for the completion of social service duties and responsibilities. It is reasonable to require that there be a person designated as responsible for social services to assure accountability for the provision of those services, because social services is an important part of the package of services provided by the nursing home (and needed by residents) and because medically related social services covers such a wide range of issues.

The second sentence of the proposed language is necessary and reasonable because it will continue the assurance of protection of the residents' treatment, comfort, and well-being by establishing a minimum staffing level for the social worker for the nursing homes with the larger number of licensed beds. The proposed language is consistent with federal certification language found at 42 CFR 483.15(g)(2) and is already being followed in nursing homes having over 120 beds. This is a minimum staffing level standard set by the industry, the profession, and federal regulations, and it is appropriate to include it in the state licensing rules.

Subpart 3 Admission history and assessment: The public workgroup involved in reviewing these rules stated that trying to gather a detailed social history at the time of admission puts stress on both the resident and the family. This workgroup wanted to allow up to 21 days after admission to obtain a psychosocial history and assessment. The department feels that a 21 day timeframe would conflict with federal certification language found at 42 CFR 483.20(b)(4)(i), which states that the comprehensive assessment must be conducted no later than 14 days after admission. Because a social history can include information that may be used to develop the resident's psychosocial assessment, which is part of the comprehensive resident assessment, it is essential that this information be obtained within 14 days after admission. The comprehensive assessment is the basis for the development of the resident's plan of care and is essential to the provision of appropriate services by the nursing home. Because the results of the comprehensive resident assessment are used to develop, review, and revise the comprehensive plan of care for each resident, based on the identified needs and strengths of that resident, it is necessary that

the comprehensive resident assessment be completed within specific time periods that coincide with federal certification language. Without the initial psychosocial assessment, care plans would likely be incomplete, which could adversely affect the health, safety, comfort, treatment, or well-being of the resident. The proposed rule does not specify what items must be included in a social history nor does it preclude the social worker from obtaining additional social history following the 14 days after admission, as long as there is sufficient information gathered within the 14 days after admission to develop the initial care planning goals. By not specifying the items to be included in the social history, the rule allows flexibility and professional judgment to be used by the social worker or social services designee to determine the information necessary to be gathered. The proposed rule is reasonable because it assures that the nursing home will conduct a psychosocial history and assessment to enable the provision of cares and services specific to that resident.

It is necessary to require that a psychosocial history and assessment be included in the resident's clinical record to assure that the information is available to staff as needed to evaluate the resident and to appropriately provide services to each resident, not only services provided by the social services program but also services provided by nursing personnel and other nursing home staff. The proposed language is consistent with federal certification requirements.

Subpart 4 Updating the assessment: It is necessary and reasonable to require the nursing home to at least annually review, and update as necessary, the resident's psychosocial assessment to assure a continuum of care that is designed and provided to meet the changing needs of that individual resident. This timeframe is necessary to protect the health, comfort, treatment, and well-being of the resident.

Subpart 5 Providing social services: It is necessary that there be a rule requiring the nursing home to provide social services based on the results of the psychosocial history and assessment, to meet the needs of the residents, thus protecting their health, safety, comfort, treatment, and well-being. The rule language is reasonable because it requires the nursing home to provide services to meet the identified needs of the residents. The language proposed provides assurances for the provision of services to residents while allowing providers flexibility in meeting the identified social service needs of each resident. This is another example where the proposed rules are relying on the resident assessment and development of resident plan of care process to assure the resident receives the services that resident needs. The proposed part 4658.1005, subpart 5, combines existing federal certification language found at 42 CFR 483.15(g)(1), current Minnesota Rules, part 4655.5200, subpart 1, and part 4655.0100, subpart 8, item C.

4658.1090 PENALTIES FOR SOCIAL SERVICES RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

The proposed part 4658.1005, subpart 1, is new language in the state licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.1005, subpart 1, is \$300. The \$300 penalty assessment has been assigned to those rules which are necessary to assure that the service is properly provided, e.g. staffing, general orientation and inservice requirements, development of policies and procedures governing the provision of care, availability of equipment and supplies, etc. Noncompliance with these rules would affect the

quality of care that is provided to the residents. This rule is directly related to the actual provision of services and compliance with the rule is necessary to assure that the actual provision of services by social service staff and the provision of the services based on the residents' assessed needs, is done in a safe and effective manner. Noncompliance with this rule would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

The proposed part 4658.1005, subpart 2, would be new language in the state licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.1005, subpart 2, is \$350, the penalty assessment for rules that are related to the direct provision of services to residents. This rule directly relates to the provision of qualified social workers trained to provide care to residents. The department believes the direct relationship of these rules to the provision of the service in a safe manner justifies the fine level of \$350.

The penalty assessment for noncompliance with correction orders addressing part 4658.1005, subparts 3 and 4, have been set at \$300. These items require a psychosocial history and assessment containing sufficient information to develop care planning goals, be completed for each resident within 14 days. The \$300 penalty assessment has been assigned to those rules that are necessary to assure that the service is properly provided. Noncompliance with these rules would affect the quality of care that is provided to the residents. These rules are directly related to the actual provision of the service, and compliance with these rules is necessary to assure that the actual provision of the service is done in a safe and effective manner. Noncompliance with this proposed rule regarding psychosocial history and assessments would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

The penalty assessment for noncompliance with correction orders addressing part 4658.1005, subpart 5, has been set at \$350. This is the penalty assessment for rules that are related to the direct provision of services to residents. This rule directly relates to the provision of social services to residents, and compliance is necessary to assure that the resident's identified needs are met. This amount is reasonable because noncompliance with this rule part would directly affect the psychosocial needs of residents. The department believes that the \$350 fine is appropriate.

BARBER AND BEAUTY SERVICES

4658.1100 BARBER AND BEAUTY SHOP SERVICES.

Members of the public workgroup involved in reviewing these rules felt that it was more important to provide or arrange barber and beauty shop services than it was to specify that a room shall be provided with a shampoo sink, lavatory, and storage space as required in current part 4655.5810. The proposed language at 4658.1100 is necessary and reasonable because it allows the nursing home to determine how to meet the residents' hair care needs and assures residents the opportunity to decide if they wish to receive these services. Prospective residents must be informed of what services are included in the nursing home's basic per diem rate (which must include routine bathing and grooming services). The proposed language is not meant to imply that the nursing home will necessarily cover the cost for the barber and beauty shop services, if those services are not included in the nursing home's basic per diem rate. Rather,

the language requires that the nursing home provide or arrange for the provision of these services. It would be the residents' responsibility to pay for barber or beauty shop services if obtained, if not included in the basic per diem rate, or if a resident requests services provided over and above what are routinely provided through the basic per diem rate. Barber and beauty shop services could also be provided by volunteers or family members.

4658.1190 PENALTIES FOR BARBER AND BEAUTY SHOP SERVICES RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

The proposed part 4658.1100 states that the nursing home must provide or arrange for the provision of barber and beauty shop services. The fine proposed for noncompliance with this part is set at \$100, which is the penalty assessment level for rules that relate, in a general nature, to the administration and management of the nursing home. Compliance with this rule is necessary to assure that barber and beauty shop services are available to residents, for continued hair care and to assure continued self-esteem of residents relating to their appearance. The department believes the \$100 penalty assessment level is appropriate for noncompliance with correction orders for this rule part.

SPECIALIZED REHABILITATIVE SERVICES

4658.1200 SPECIALIZED REHABILITATIVE SERVICES.

Subpart 1 Definitions: The language proposed in part 4658.1200 provides a definition of terms used in subsequent rule parts relating to specialized rehabilitative services. It is necessary to include definitions of these terms in the rule to assure that consumers, providers, and regulators have a common, specific definition to follow when interpreting the rule.

It is necessary and reasonable to include this definition in the rule to specify that persons who provide specialized rehabilitative services must meet their professional licensure, certification, or registration requirements. This is necessary to assure the delivery of appropriate professional services to the residents. The definition of "qualified personnel", proposed in subpart 1, item A, is based on language found in the interpretive guidelines for the federal certification requirements at 42 CFR 483.45(b).

The public workgroup reviewing this section of the rules felt it necessary to have a separate section of rules for specialized rehabilitative services to differentiate these services from certain nursing services provided by nursing staff. A definition of the term is necessary and reasonable to clarify what is considered to be specialized rehabilitative services, including who provides such services. The definition of "specialized rehabilitative services" as included in subpart 1, item B, is consistent with federal certification language found at 42 CFR 483.45(a).

Subpart 2 Provision of services: It is necessary and reasonable to include this proposed language in rule to assure that residents receive specialized rehabilitative services if they need these services. The nursing home has the flexibility to determine if these services will be provided by nursing home staff or through an outside provider of rehabilitative services. If the

services are provided by an outside source, they must be provided in accordance with part 4658.0075. Language proposed in part 4658.1200, subpart 2, is consistent with federal certification language found at 42 CFR 483.45(a).

Subpart 3 Qualified personnel: The language proposed in part 4658.1200, subpart 3, requires that specialized rehabilitative services are actually provided by qualified personnel based on a written physician's order. The language being proposed is reasonable because it plainly states the expectation that there be a physician order for the services, and that those services are provided by professionals. The proposed language is consistent with federal certification requirements found at 42 CFR 483.45(b), which all certified nursing facilities in Minnesota already comply with. The proposed language is necessary because it assures that residents who have special rehabilitative needs have access to this service so those needs are met.

4658.1290 PENALTIES FOR SPECIALIZED REHABILITATIVE SERVICES RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

The proposed part 4658.1200, subpart 2, would be new language in the state licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.1200, subpart 2, is \$350. The \$350 penalty assessment is assigned to rules that are related to the direct provision of services to residents. This rule directly relates to the provision of specialized rehabilitative services to residents. The department believes the direct relationship of these rules to the provision of the service in accordance with the resident's comprehensive plan of care justifies the penalty assessment level of \$350. This amount is reasonable because noncompliance with this rule part would directly affect the resident and the resident's specialized rehabilitative services needs.

The proposed part 4658.1200, subpart 3, is also new language in the nursing home licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.1200, subpart 3, is \$300. The \$300 penalty assessment is assigned to those rules which are necessary to assure that the service is properly provided. This subpart requires that specialized rehabilitative services be provided under a written physician's order by qualified personnel. Compliance with this rule is necessary to assure that the actual provision of services by specialized rehabilitative staff and the provision of the services based on the residents' assessed needs, is done in a safe and effective manner. The amount is reasonable because noncompliance with this proposed rule regarding specialized rehabilitative services would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

PHYSICAL ENVIRONMENT

4658.1400 PHYSICAL ENVIRONMENT.

The proposed language is necessary and reasonable because it assures that the environment will be safe, clean, comfortable, and functional to meet resident needs for a secure and homelike environment. The resident must be able to keep and use, to the extent possible, personal

belongings that de-emphasize the institutional character of the setting and that support a homelike environment to make life more enjoyable and comfortable for the residents. The proposed part 4658.1400 is consistent with federal certification language at 42 CFR 483.15(h)(1) and language in the interpretive guidelines for the federal certification requirements at 42 CFR 483.70(g)(3).

4658.1405 RESIDENT UNITS.

Item A: Proposed part 4658.1405, item A is a revision to the current part 4655.5900, subpart 1, item A, and is also consistent with federal certification language found at 42 CFR 483.70(d)(2)(i), (ii), and (iii). The proposed language is necessary because it is directly related to the comfort of the resident, to assure that the resident will have a bed and appropriate bedding. It is reasonable to require that beds will be clean, comfortable and of convenient size in order to accommodate resident needs, and to require that clean bedding will be supplied for resident comfort. The language requiring a moisture-proof mattress or mattress cover is necessary and reasonable to provide a moisture barrier between the bedding and the mattress, to aid in infection control and alleviate odor problems that could be caused by incontinent residents.

Item B: Proposed language for item B matches current part 4655.1000, subpart 1, item B. This proposed language is necessary and reasonable because it allows the resident a place to sit other than the bed, which helps create a more homelike atmosphere for the resident, and provides some variety for placement. An additional chair is not required in the bedroom of a resident who has and uses a wheelchair because the wheelchair would meet the requirement for "at least one additional chair." However, that does not preclude the provision of one or more other chairs in such bedroom.

Item C: The proposed language for part 4658.1405, item C, is based on the current part 4655.7000, item D. The current requirement for a towel bar on the bedside table was deleted because it was not practicable to have the towel bar there. Residents were not always aware that towels were available behind the bedside table and the towels were often difficult for the resident to reach in this area. Current language requires a compartment in the bedside table for the storage of bedpans and urinals. Proposed language requires storage for resident equipment. The proposed language is necessary because it clarifies that this compartment may be used for any resident equipment rather than limit storage to bedpans and urinals.

Item D: The proposed language is necessary to assure that a resident receives clean bath linens at least daily, which can be an infection control issue and a personal hygiene issue. The current rule language requiring towels at the bedside table is not being carried over to these proposed rules. Rather, the proposed rule states simply that the resident is provided the clean bath linens, and does not specify the location for those linens. Proposed item D is reasonable because it assures that residents are provided towels, washcloths, and any other needed bath linens at least on a daily basis and more often if needed by the resident; this provision of clean linens daily is a standard of practice in the health care and hospitality industries, and provides for good sanitation and hygiene practices. Language proposed at item D is consistent with federal certification language at 42 CFR 483.15(h)(3).

Item E: Proposed item E is a revision of the current part 4655.7000, subpart 1, item I. The proposed language is necessary and reasonable because it requires a bed light be located for the convenience of the resident, and providing an intensity of light to meet the needs of the resident

for reading or doing handwork in bed or in an adjacent chair. It is the responsibility of the nursing home to determine the best location of this bed light, and the intensity of lighting, to meet the needs of the resident for the necessary lighting level while in bed or an adjacent chair. The proposed language in the rule sections on lighting do not include the requirement for minimum footcandles of lighting levels for various rooms and areas in the nursing home, as does the current nursing home rule language. A specification of a minimum number of footcandles of lighting does not necessarily assure that the needs of each resident are met by those mandated levels. Some residents may need more or less footcandles of lighting than other residents, depending on their needs.

4658.1410 LINEN.

Language addressing linen handling is proposed in part 4658.1410. The proposed language is necessary and reasonable because it makes the nursing home responsible for developing and implementing a linen handling process that will prevent the spread of infection, while following manufacturers' instructions for cleaning. Current state rule language pertaining to linen handling is outdated and more process-oriented than is currently necessary. For example, the current rule part 4655.8000, subpart 3 requires that linen be folded. Some nursing homes have purchased and use linen that does not require folding, according to the manufacturers instructions. The public workgroup reviewing this section of the rules stated that the proposed rules should be more outcome oriented and reflect current standards of practice in the nursing home industry today. The ultimate goal of this rule is to provide clean linen for the residents and to maintain infection control.

4658.1415 PLANT HOUSEKEEPING, OPERATION, AND MAINTENANCE.

One aspect of the revision and reorganization of the nursing home licensing rules is the creation of this section of rules addressing the operation and maintenance of the physical plant of the nursing home. The current Chapter 4655 includes rules on housekeeping and certain special wastes. The current Chapter 4660 addresses not only the construction and maintenance of the actual buildings, but also, interspersed, are rules addressing the operation and maintenance of the physical plant and the mechanical, electrical, and other systems which are a part of that physical plant. In these proposed rules, the rules addressing the operation and maintenance of the physical plant have been separated from the rules addressing construction standards, and have been placed with the rules addressing the operations, or provision of services, of the nursing home. This relocation is intended to clarify, and make easier to find, those ongoing responsibilities of the nursing home regarding environmental services provided to or on behalf of the residents.

Subpart 1 Direction of housekeeping and plant management: The proposed part 4658.1415, subpart 1, would be new language in the state licensing rules. The public workgroup reviewing this section of the rules stated that the rules need to require that a person or persons with knowledge and experience in environmental services must be responsible for the maintenance and operation of the physical plant. The proposed language is reasonable because it states that there be one or more persons assigned that responsibility, and it places the charge on the nursing home to determine what qualifications are necessary to determine competency to direct housekeeping and physical plant management in that nursing home. The proposed language is not intended to limit the nursing home to having only one person in charge of all housekeeping or environmental services plus maintenance of the physical plant. It is acceptable that the

responsibilities of directing these areas would be split up, and that there be persons assigned responsibility for portions of the duties listed in these rule parts. Many nursing homes already have a housekeeping director and a plant manager (and it should be noted that those positions may have different titles than "housekeeping director" and "plant manager"). The rule language does not limit what the operating title of the person or persons could be - that would be a business decision of the nursing home. It is necessary and reasonable to require that the person or persons responsible for the maintenance and operation of the nursing home have the knowledge and experience in environmental services to assure the health, safety, comfort, and well-being of the residents, since that person's responsibilities and competence directly affect the health, safety, comfort, and well-being of the residents.

Subpart 2 Physical plant: Language proposed at subpart 2 is based on language in current parts 4660.7800, subpart 1, and 4655.9000, subpart 1, and on federal certification language found at 42 CFR 483.70. Language being proposed in this rule is necessary to assure essential physical plant functions, maintenance of a comfortable environment, and preventive maintenance programs. This proposed rule is reasonable because it specifies areas of the nursing home that need to be kept in good repair and operation to assure the health, comfort, safety and well-being of residents as related to the physical plant of the nursing home. All the specified activities are currently required and performed as part of the provision of plant housekeeping, operation, and maintenance, according to existing rules.

Subpart 3 Grounds: The proposed subpart 3 is a revision to the current part 4660.7800, subpart 14 and is consistent with federal certification language found at 42 CFR 483.15(h)(1). This proposed subpart, which addresses the maintenance of the nursing home grounds, relates to the health, comfort, safety and well-being of residents. The proposed language is necessary and reasonable to assure that outside areas accessed by residents are maintained hazard free to prevent injury to residents, staff, and visitors, and to encourage mobility and independence for those residents able to be outdoors.

Subpart 4 Housekeeping: Language found at the proposed subpart 4 is a combination of federal certification language found at 42 CFR 483.15(h)(2) and the current part 4655.9000, subpart 1. This proposed language is necessary and reasonable because it assures the cleanliness of the nursing home's interior which directly affects the health, safety, comfort, and well-being of the residents.

Subpart 5 Written program: Proposed language at subpart 5 is a revision of the current part 4655.9000, subpart 2. Because the number and qualifications of the housekeeping staff, the type of environment, and the housekeeping needs vary for each nursing home, it is necessary that each nursing home develop written housekeeping programs to meet its needs and to provide a clean, safe environment for the residents and staff. A written housekeeping program assures that there are defined standards and procedures to be followed to maintain the nursing home in an acceptably clean and orderly condition. The proposed language requiring both the existence of a written program, and the implementation of that program, is necessary and reasonable to assure that the written program is followed and the appropriate tasks are completed to provide a clean and safe environment for the residents.

Subpart 6 Heating, air conditioning, and ventilation: "Comfortable and safe temperatures", as defined in the interpretive guidelines for the federal certification requirements at 42 CFR 483.15(h)(6), means that the surrounding temperature should be in a relatively narrow range that

minimizes a resident's susceptibility to the loss of body heat and risk of hypothermia or susceptibility to respiratory ailments and colds. It is necessary and reasonable to state that the mechanical systems in the nursing home must be operated and maintained to provide comfortable and safe temperature and humidity levels to assure resident health, comfort, well-being, and safety. The proposed language for subpart 6 is based on the current part 4660.7800, subpart 6, and on federal certification language found at 42 CFR 483.15(h)(6).

Item A is consistent with Minnesota Statutes, section 144A.08, subdivision 1b. Proposed language stating a temperature range for interior temperature ranges for newly constructed nursing homes is necessary and reasonable because it provides an assurance to residents of comfortable and safe temperatures, while being consistent with both federal certification language and current industry standards as found in chapter 7 of the 1982 applications of the handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., as amended. The temperatures ranges to be provided in newly constructed nursing homes apply to all seasons of the year.

Item B is a revision of the current part 4660.7800, subpart 6 which requires a heating system capable of maintaining a minimum temperature of 75 degrees Fahrenheit in living areas. This proposed language would revise that minimum temperature to 71 degrees Fahrenheit. This revision is necessary and reasonable to match the minimum temperature required during the heating seasons in the federal certification language. It is necessary and reasonable to provide a minimum temperature requirement to assure the health, safety, well-being, and comfort of the residents. Air conditioning would not be required to be installed in existing nursing homes, since the proposed language only addresses the heating season.

Item C is new language to the state nursing home licensing rules. This item allows for variations to the air temperatures required under items A and B based on resident preferences. Some residents may prefer a higher or lower temperature for their own health or comfort reasons; this rule item would enable the nursing home to provide an air temperature higher or lower than the required temperatures to meet a resident's preferences. The language is reasonable because it clarifies the acceptability of temperature variations based on resident preference, for both the resident and the nursing home.

Subpart 7 Hot water temperature: The proposed subpart 7 is a revision of the current part 4660.7800, subpart 15 which requires water temperatures not to exceed 110 degrees Fahrenheit in lavatories and bathing fixtures. The intent of this proposed rule is to provide comfortable and safe water temperatures for residents. It is necessary to include some specification in the proposed rule to assure residents a comfortable and safe water temperature for bathing, washing hands and face, etc. The proposed language allows a temperature range in these areas (between 105 degrees and 115 degrees Fahrenheit). This proposed language is reasonable because it establishes a standard for the provision of water which will promote sanitary conditions, while being realistic regarding possible fluctuations in water temperatures, whether those fluctuations occur at certain times of the day, certain areas of the nursing home, or some other reason.

Subpart 8 Janitor's closet: Language proposed at subpart 8 is a revision of the current part 4655.9020, subpart 1. It is essential that janitors' closets and other areas used by environmental staff be kept clean to avoid bringing contaminated equipment or items into resident areas. This proposed rule is reasonable because it protects the health, comfort, safety, and well-being of residents.

Subpart 9 Storage of supplies: The proposed subpart 9 is a revision and combination of three current parts. These parts include 4655.9020, subpart 1, 4655.9020, subpart 4, and 4655.7400, subpart 2. It is necessary and reasonable to require that supplies be identified and safely stored to prevent contamination and to assure that injury or harm does not come to residents. These cleaning supplies, which are often poisonous or otherwise toxic, must be stored separately from all food and drugs to maintain the safety and packaging integrity of those foods and drugs (in the event of a spill or splash of a cleaning substance, it is very possible that anything in proximity would become contaminated). It is reasonable to combine those current rules into this proposed rule language because they all relate to the storage of supplies; this streamlines the rules and assures consistency of rule requirements.

Subpart 10 Boiler water additives: Proposed language at subpart 10 matches the current part 4660.7800, subpart 8. It is necessary and reasonable to include this language in the proposed rule regarding the operation of boilers, to assure resident health, safety, and well-being from boiler water additives which may affect the air quality and food items.

Subpart 11 Insect and rodent control: Subpart 11 of the proposed part 4658.1415 is a revision to the current part 4655.9040. The proposed language in this subpart does not include the requirement to identify and store chemical substances of a poisonous nature in a locked place (as found in the current part 4655.9040) because that is now addressed in the proposed subpart 9 of this part. A pest control program can reasonably be expected to contain and eradicate common household pests such as roaches, ants, mosquitoes, flies, mice, and rats. Because vermin can be injurious to resident health and safety, it is essential to require a pest control program in the proposed rule. Proposed language is reasonable because it establishes a readily attainable standard, and is consistent with federal certification language found at 42 CFR 483.70(h)(4).

4658.1420 SOLID WASTE DISPOSAL.

The proposed part 4658.1420 is a compilation of the current parts 4655.9010, subpart 1, and 4655.9000, subpart 1. Part of the process of the revision of the nursing home licensing rules includes the relocation and uniting of related topics or requirements. Current part 4655.9010, subpart 1 was revised by adding "recyclables" to the list of items that must be collected, stored, and disposed of. This addition to the proposed rule is necessary and reasonable because it updates the language to reflect current and responsible waste disposal methods used today.

A portion of the current part 4655.9000, subpart 1 dealing with general requirements of housekeeping, has been relocated to this area of the rules because current rule also contains language pertaining to waste. The remaining language in that current part has been incorporated elsewhere in these proposed rules. The inclusion of a separate part on solid waste disposal is necessary and reasonable because it incorporates the intent of the current rule in a more readily accessible location. The proposed language is reasonable because it groups related rule parts into one part to make the rule easier to locate and easier to read, while establishing a standard of operation to protect the health and safety of the residents and staff of the nursing home.

4658.1425 OZONE GENERATORS.

Language proposed in part 4658.1425 is a revision of current part 4655.9030. It is necessary and reasonable to maintain a requirement for the prohibition of ozone generators to assure the

health and well-being of residents. Occasionally, certain types of deodorizers are necessary for the comfort and well-being of residents, such as residents with certain types of cancer. However, there are health risks associated with the use of an ozone generator, and the department will not allow the use of an ozone generator because of those risks.

4658.1490 PENALTIES FOR ENVIRONMENTAL SERVICES RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Some parts of this section of proposed rules are not significantly different from current rule language. The proposed fine for noncompliance with those sections are the same as those for the comparable sections in the current rules. This includes the fines for proposed parts 4658.1405, 4658.1415, subpart 8, 4658.1420, and 4658.1425.

The fines for noncompliance with correction orders for parts 4658.1400, 4658.1410, 4658.1415, subpart 1, 4658.1415, subparts 2 to 7, and 4658.1415, subparts 9 to 11 have been established in accordance with the 8 tier level of fines developed to correlate with the impact of noncompliance on the resident.

The proposed part 4658.1400 would be new language in the state licensing rules. The proposed penalty assessment for noncompliance with a correction order for part 4658.1400 is \$200, which is the level of penalty assessment for rules that could impact the health or safety of residents in the facility. Rules which are designed to promote safety, proper sanitation, or the prevention of infection have also been included in this category. A violation of one of these parts could jeopardize the health or safety of residents. The department believes the direct relationship of these rules to the health and safety of residents justifies the fine. This amount is reasonable because noncompliance with this rule part would affect the health, comfort, safety, and well-being of residents.

The penalty assessment for noncompliance with correction orders addressing part 4658.1410 has been set at \$200. This part requires the handling of linen be done to prevent the spread of infection. The \$200 penalty assessment has been assigned to those rules that could impact the health or safety of residents in the facility. Rules which are designed to promote safety, proper sanitation, or the prevention of infection have also been included in this category. Noncompliance with this rule would affect the health of residents by causing infection control problems if linens are inappropriately handled.

Part 4658.1415, subpart 1 addresses plant housekeeping, operation, and maintenance. The proposed fine for noncompliance with this part is set at \$300, the penalty assessment for rules that are necessary to assure that services are properly provided. This amount is reasonable because noncompliance with these rule parts would affect the quality of the environment that the residents live in. These rules are directly related to the actual provision of housekeeping services, and compliance with these rules is necessary to assure that the actual provision of housekeeping service is done in a safe and effective manner. Noncompliance with this proposed rule would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

The proposed penalty assessment for noncompliance with a correction order for part 4658.1415, subparts 2 to 7 is also \$200. This level of fines is assigned to those rules that could impact the health or safety of residents in the nursing home. These rules relate to the environment and do have an impact on the health and safety of residents. Compliance with these rules is necessary to assure that all areas of the physical plant and grounds are maintained in good repair and operation.

The penalty assessment for the proposed part 4658.1415, subparts 9 to 11 is set at \$200. Again, the \$200 level of fines is assigned to those rules which are designed to promote safety, proper sanitation, or the prevention of infection. Examples of rules contained in this category include the provision that toxic supplies are safely stored in locked enclosures and requirements to assure that the physical plant is designed and maintained in a manner to protect the health and safety of residents. Violation of these rules could jeopardize the health and safety of the residents and the department believes that the \$200 is appropriate.

RELOCATION OF RESIDENTS FROM NURSING HOMES

The text found in the proposed parts 4658.1600 to 4658.1610 is virtually identical to the language in the current parts 4655.6810 to 4655.6830. There are some consistent differences, however, between the current and the proposed text. As directed by the rule writing standards issued by the Office of the Revisor of Statutes, the term "shall" has consistently been changed to the term "must". To be consistent with the scope of Chapter 4658, the references to "boarding care home" are not included in these proposed rules, and the term "facility" has been replaced with the term "nursing home."

4658.1600 DEFINITIONS

Other than the revisions discussed above, there is only one difference between current and proposed rule language. The reference to the federal law governing the Medicare and Medicaid programs has been updated to include the most recent edition of those program requirements.

4658.1605 NOTICE TO DEPARTMENT OF HEALTH

The only differences between the proposed part 4658.1605 and the current part 4655.6820 are the grammatical changes discussed above.

4658.1610 NURSING HOME RESPONSIBILITIES

Again, differences between the proposed part 4658.1610 and the current part 4655.6830 are the grammatical changes discussed above. There is one other difference to note. In the proposed part 4658.1610, subpart 8, the reference to the applicable rule part addressing resident care information to be sent to the new nursing home has been revised to the correct rule part in Chapter 4658.

4658.1690 PENALTIES FOR RELOCATION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

This section of proposed rules is not significantly different from current rule language. The proposed fines for noncompliance with these rules are the same as those for the comparable current rules found in Chapter 4655. The \$250 penalty assessment is assigned to those rules and statutes that relate to the protection of the individual rights of residents. That is the appropriate fine level for noncompliance with correction orders on these rules.

SPECIALIZED UNITS

During the course of soliciting information for revising the nursing home rules, information and opinions were provided to the Department about the development and use of specialized units within nursing homes. Some of these specialized units are "locked units", and others are not locked units but do specialize in providing services to a specific population. We found there are variations in the definitions of terms commonly used; for example, many people on the public workgroup thought "specialized unit" referred only to locked units, while others understood it to mean a unit that was somehow different from other units in a nursing home, because of the specific population served or the services provided in that unit. There are nursing homes where the entire facility can be considered a "specialized unit", or is a "locked unit" (with a waiver of the current Minnesota Rules, part 4655.6600).

One of the first tasks of the public workgroup was to establish, for discussion purposes, common definitions for and understanding of terms such as "specialized unit", "specialized care unit", "secured unit", and "locked unit". Although many people think of specialized units as only for persons with Alzheimer's Disease or other dementias, there are actually many types of nursing home units which specialize in the care of persons with specific conditions. These include, for example, units which specialize in serving ventilator-dependent persons, persons with the AIDS virus, persons with traumatic brain injuries, or persons with short - term rehabilitation needs.

There was much discussion as to whether there needs to be any additional rules for specialized units, since they would already be required to be in compliance with the state nursing home licensing rules, and, if the facility is certified, with the federal certification regulations. Some people felt the current state rules and federal regulations were sufficient, while others felt there needed to be something in addition to those current regulations. One point that was made clear to the Department was that the public was in favor of requiring specialized units to have basic guidelines to follow to determine whether they are meeting the needs of the residents in that unit; whether those guidelines needed to be in state rule or simply facility policy was a topic of discussion. Some of the issues which the workgroups discussed as possible areas of rule or guideline included staff training, staff qualifications, and staffing levels, the services or programming offered to residents in the unit, restraints, environmental considerations, physical layout of the unit, locking arrangements, and unit admission and discharge policies.

Currently, a nursing home which establishes and operates a locked unit is required to request, and be granted, a waiver of Minnesota Rules, part 4655.6600. Detailed information regarding the process of requesting that waiver and guidelines for locked nursing home units is contained in Information Bulletin 91-1/NH-1.⁵ These guidelines relate to program policies and physical

⁵ Minnesota Department of Health, Health Resources Division, Information Bulletin 91-1 / NH-1, "Guidelines for Locked Nursing Home Units"; September 1991.

plant, as well as listing the guidelines for locked areas from the Minnesota State Fire Marshal Division. It should be noted that these guidelines apply only to locked units, and not to any other type of specialized unit or special care unit. Workgroup members suggested those other types of units may find that some general guidelines for services, programs, quality of life issues, and similar issues would be beneficial to residents and staff of those units.

In September 1992, the federal Office of Technology Assessment released its report entitled, "Special Care Units for People with Alzheimer's and Other Dementias; Consumer Education, Research, Regulatory and Reimbursement Issues." One section of this report addressed the implications of the study findings for regulation of special care units. The report stated:

"The diversity of special care units, the fact that existing units often do not incorporate the features recommended for special care units, and pervasive claims that some special care units just use the words *special care* as a marketing tool and actually provide nothing special for their residents lead many Alzheimer's advocates, State officials, and others to support the development of special regulations for special care units. On the other hand, the lack of agreement among experts about what features are most important in the care of residents with dementia and the lack of research-based evidence showing that any particular features are associated with better resident outcomes make it difficult to justify the selection of particular features that should be required in special care units.

... OTA concludes that OBRA-87 provides a better framework for regulating special care units than any special regulations that could be devised at this time...

For the purpose of consumer protection, nursing homes could be required to disclose certain information about their special care units to potential residents and their families. In particular, they could be required to disclose what is special about the unit; how the unit differs from nonspecialized units in the same facility; how physical restraints and psychotropic medications are used in the unit; whether there are behavioral problems that cannot be handled on the unit; whether it is expected that individuals who are admitted to the unit will be discharged before their death and, if so, for what reasons."⁶

The general consensus of the public workgroup, the internal workgroup, and the Steering Committee was that it would be more appropriate to have some sort of very general rule to provide guidance to nursing homes, residents, family members, and regulators. The general rule (as proposed here) would basically require a nursing home to develop and implement their own standards for that specialized unit (over and above any current federal and state regulation), and that nursing home would be required to inform prospective residents of, and comply with, those self-generated standards for that unit, as well as comply with the current federal and state regulations. The need for and reasonableness of the proposed rules are discussed in detail below.

⁶ U.S. Congress, Office of Technology Assessment. Special Care Units for People with Alzheimer's and Other Dementias: Consumer Education, Research, Regulatory, and Reimbursement Issues, OTA-H-543. Washington, DC: U.S. Government Printing Office, 1992; p. 37.

4658.2000 SECURED UNITS.

Subparts 1 and 2: Many of the definitions used in Chapter 4658 are grouped together in part 4658.0010. However, there are instances in rules where a definition may appropriately be placed within a rule part to provide a better location for that definition and greater clarity to that part. In this instance, these rules for specialized units will not necessarily apply to all nursing homes, but rather only to those nursing homes that choose to establish and operate a specialized unit. For that reason, the definitions of "secured unit" and "locked unit" are included in subparts 1 and 2 of part 4658.2000, rather than in the general definition part.

For the purposes of this rule chapter, a "secured unit" is one in which a resident's horizontal and vertical access within or out of the unit is restricted. This includes units with locked doors into and out of the unit, locked elevators, elevators with hidden operating mechanisms, and other similar egress limitations. A "locked unit" is a form of "secured unit" because it limits the resident's exit from or entry to that unit. In these proposed rules and in the federal certification regulations, a secured unit is considered a form of restraint. It is necessary and reasonable to include this information in the rule language here to provide necessary information to providers, consumers, and regulators who are implementing these rules. The requirements of part 4658.0300, Use of Restraints, must also apply to secured units. The only exception to that is the exception specified in the rule language, that part 4658.0300, subpart 5, does not apply to secured units. The language found in part 4658.0300, subpart 5, is intended more for the forms of physical restraints that actually come in contact with a resident's body.

Subpart 3: It is necessary and reasonable to establish criteria in rule for assignment of a resident to a secured unit to ensure that residents are appropriately placed in such units, based on their needs. As stated above, a secured unit is a form of restraint, and an assessment and physician orders are required for the use of any restraints. This subpart is necessary to clarify the applicability of those other rule requirements, and to protect residents' rights, safety, comfort, and well-being. This subpart would also allow those residents who desire to live in a secured unit and for whom such placement is determined appropriate through an assessment, to reside in a secured unit by choice.

Subpart 4: This proposed subpart is necessary and reasonable to include in the rule to ensure that nursing homes are aware that the State Fire Marshal must review and approve the fire safety system and unit locking arrangements prior to the opening of the unit to residents. This requirement is necessary and reasonable to ensure that the physical plant of the secured unit meets the applicable Life Safety Code requirements as enforced by the State Fire Marshal, to ensure the health and safety of the residents and staff of the secured unit.

Subpart 5: This proposed subpart is necessary and reasonable to include in the rule to ensure that nursing home providers of secured units are aware of the requirements that the Department must approve the operation of the unit prior to its commencement of providing services to residents, and any change in its statement of operations must be approved by the Department prior to implementing that change. These requirements are necessary to ensure the health and safety of the residents being placed in that unit, and the provision of services to meet the needs of those residents.

4658.2010 PHYSICAL PLANT REQUIREMENTS

The proposed part 4658.2010 specifies the minimum required physical plant features of a secured unit. These physical plant features, or rooms, must be located within the secured unit. It is necessary and reasonable to require these rooms to be within the secured unit to ensure that the unit has the space and locations to provide basic services and living arrangements to the residents of that unit. As Information Bulletin 91-1/NH-1 states, "Residents in a secured (locked) unit are entitled to the same physical plant provisions as residents in other units of the nursing home. The unit must therefore be self-sufficient with its own space and service areas."⁷

In order for a unit to be self-sufficient with its own space and service areas, the unit must include, at a minimum, resident bedrooms, central bathing, dayroom and dining room space, a nurses station, a clean utility room, and a soiled utility room. The dining room and dayroom space for the secured unit must comply with the proposed part 4648.4200, which requires a minimum of 40 square feet of space per resident bed for dining room, dayroom, and activities space, with a minimum of 5 square feet per bed for any one of those three types of areas (that is, of the dining, dayroom, or activities spaces). It is necessary to require a nurses station within the secured unit to have some place for storage of records and medications, and a location for nurse calls to register at. For maintenance of a safe and sanitary unit, it is necessary to have a clean utility room and a soiled utility room within the unit, in order that clean linens are readily available when needed, and to enable appropriate infection control practices and environmental services. It is reasonable to require the same physical plant conditions for the secured unit as for the rest of the nursing home because those residents are entitled to those same minimum standards for their physical plant as the residents in any part of a licensed nursing home. It is necessary and reasonable to specify these physical plant requirements in this rule part to ensure that this information is available to any nursing home considering developing and operating a secured unit, to ensure the residents placed in that unit have adequate living arrangements.

4658.2020 STATEMENT OF OPERATIONS

The proposed part 4658.2020 requires that there be a statement of operations developed and implemented for each secured unit, including a statement of the philosophy and objectives of the unit, a description of the population to be served in that secured unit, a list of the admission and discharge criteria for that unit, and a list of any environmental interventions or adaptations for the unit and any waivers requested of and granted by the Department for that unit. It is necessary to require a statement of operations for each secured unit to ensure that, as the unit is being developed, there is a clear purpose and target population for that unit, and that the physical plant, services, and programs provided in that unit are appropriate and adequate for that group of residents who will be placed in that unit. In other words, there needs to be a written description of the unit, which will discuss how that unit will be different from other units, and how those differences might affect the residents. The proposed rule language is reasonable because it requires that there be forethought into the development and operation of the secured unit prior to its being opened to serving residents, ensuring that the health, safety, comfort, treatment, and well-being of those residents will be enhanced or at least maintained by residence in that secured unit.

⁷ Minnesota Department of Health, Health Resources Division, Information Bulletin 91-1 / NH-1, "Guidelines for Locked Nursing Home Units"; September 1991.

4658.2030 SPECIALIZED CARE UNIT

Subpart 1: The proposed language in part 4658.2030 would apply to specialized care units, which are defined in subpart 1 as "any nursing unit within a nursing home designed and advertised for a specific population." This definition is not intended to limit specialized care units to a portion of a nursing home; it is possible that a nursing home could be a specialized care unit in its entirety. For purposes of these rules, a "specialized care unit" is not a "secured unit." A specialized care unit is one which has a philosophy and objectives designed for a specific population of residents. There may be a certain type of programming offered, or it may specialize in services to, for example, children, persons with traumatic brain injuries, or a specific illness or disease process. A specialized care unit exists because the licensee, or board of directors, or administrator of a nursing home has determined that the nursing home will dedicate space and resources to serving that specific population.

As discussed above under part 4658.2010, it is necessary and reasonable to include a definition of "specialized care unit" within this rule part to clarify the units or nursing homes which are affected by this rule part. Not all nursing homes have a specialized care unit, so it is appropriate to include that definition within this rule part in order that providers, consumers, and regulators can readily understand which nursing homes or units within nursing homes this rule part applies to.

Subpart 2: The proposed part 4658.2030 subpart 2 requires the nursing home to develop and implement a statement of operations of the specialized unit, and lists the minimum elements of that statement of operations. These minimum elements include the philosophy and objectives of the unit, the intended population of the specialized care unit, and the admission and discharge criteria for the specialized care unit. The minimum elements of that statement of operations are necessary and reasonable to ensure that there is forethought in the planning, development, and implementation of the specialized care unit so that the needs of the targeted population are adequately and appropriately met, and there is some distinction between the specialized care unit and the rest of the nursing home. In addition to all other existing statutes and rules, the specialized care unit is expected to comply with this proposed part.

Subpart 3: Subpart 3 would require the statement of operations for the specialized care unit be made available to the Department as well as to the public. This is a necessary and reasonable requirement to ensure that the information specific to that specialized care unit is available to regulators and consumers, both groups which are interested in the development and operation of the unit. It is reasonable and necessary to require this written information to be provided to the Department so that the public and the surveyors have adequate information about the philosophy and objectives of the unit in order to verify whether or not the unit is meeting its own claims and expectations for services provided to the residents, and as such protecting the health, safety, comfort, treatment, and well-being of those residents. It is reasonable and necessary to require that information be available to the public so consumers are able to make an informed decision as to whether or not that might be an appropriate placement for themselves or other prospective resident.

4658.2090 PENALTIES FOR SPECIALIZED UNITS RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

The penalty for noncompliance with the proposed part 4658.2000, subpart 2, is set at \$300. That proposed rule part addresses the criteria to be followed for placing a resident in a secured unit. The failure to follow those criteria in accordance with the minimum standards contained in the rules has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents. The \$300 penalty assessment has been assigned to those rules that are necessary to assure that the service is properly provided. These rules are directly related to the actual provision of the service, and compliance with these rules is necessary to assure that the actual provision of the service is done in a safe and effective manner. Noncompliance with these rules would result in the inability to adequately meet the needs of the residents and the Department believes that the \$300 fine is appropriate.

The penalty for noncompliance with the proposed part 4658.2000, subpart 3, is set at \$200. That proposed rule part addresses approval of the secured unit by the State Fire Marshal prior to commencing operation. The \$200 penalty assessment has been assigned to those physical plant rules for which noncompliance could impact on the health or safety of residents in the facility. These rules relate to the physical environment and do have an impact on the health and safety of residents. It is appropriate to require approval of the secured unit by the State Fire Marshal to assure the required fire safety provisions are included in the unit, and the \$200 penalty assessment is appropriate to ensure the safety and health of the residents.

The penalty for noncompliance with the proposed part 4658.2000, subpart 4, is set at \$200. That proposed rule part addresses approval of the secured unit by the Department of Health prior to commencing operation and prior to commencing a change in operation. This proposed rule relates to the physical environment and does have an impact on the health and safety of residents. It is appropriate to require approval of the Department of the unit and its statement of operations prior to the placement of residents in that unit to ensure their health, safety, comfort, treatment, and well-being, and the \$200 penalty assessment is appropriate to ensure compliance with this rule provision.

The penalty for noncompliance with the proposed part 4658.2010 is set at \$200. This proposed rule part addresses the physical plant requirements of the secured unit, and clarifies that all secured units approved by the Department after the effective date of these rules must be in compliance with the physical plant requirements found in Chapter 4658. The \$200 penalty assessment has been assigned to those rules for which noncompliance could impact on the health or safety of residents in the facility. These minimum physical plant requirements do impact on the health or safety of residents, so the Department feels the \$200 penalty assessment is appropriate for noncompliance with a correction order for this rule part.

The penalty for noncompliance with the proposed part 4658.2020 is set at \$100. This rule part addresses the requirement for a statement of operations of a secured unit. The \$100 penalty assessment is assigned to those rules which relate, in a general nature, to the administration and management of the nursing home. While noncompliance with one of these provisions need not necessarily create a substantial risk of harm, the failure to comply has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents. The statement of operations of the secured unit is an essential part of the appropriate development and operation of a secured unit, and the \$100 penalty assessment is appropriate for noncompliance with a correction order for this rule part.

The penalty for noncompliance with the proposed rule part 4658.2030, subpart 2, is set at \$100. This rule part addresses the requirement for a statement of operations of a specialized care unit. As with part 4658.2020, the statement of operations of a specialized care unit is an essential component of the development and operation of the specialized care unit which indicates how the nursing home has planned for and operates the specialized care unit to meet the needs of the population of that unit. Failure to comply with this rule part has the potential for jeopardizing the health, safety, comfort, treatment, or well-being of the residents, and the \$100 penalty assessment is appropriate for noncompliance with a correction order for this rule part.

The penalty for noncompliance with the proposed rule part 4658.2030, subpart 3, is set at \$50. The penalty assessment of \$50 is assigned to those rules that do not directly jeopardize the health, safety, treatment, comfort or well-being of residents. While these rules are required minimum standards necessary to promote the proper operation of the nursing home, the potential for harm presented to residents as a result of noncompliance is not direct. Noncompliance with the requirement that the nursing home make the statement of operations for the specialized care unit available to the Department and to the public will not directly jeopardize the residents. Noncompliance could indirectly jeopardize residents by not providing to residents, or potential residents, information on the philosophy and objectives of the unit, the intended population, and admission and discharge criteria for the unit, thus limiting consumer information and education on the specialized care unit. The \$50 penalty assessment is appropriate for this proposed rule part.

PHYSICAL PLANT LICENSURE, EXISTING AND NEW

PART 4658.3000 LICENSURE.

The proposed part 4658.3000 is based on portions of the current part 4660.0200. The proposed part 4658.3000 requires that the commissioner of health be notified directly, in writing, of proposed planning for all new construction, remodeling, changes in existing service, function, or bed capacity of the nursing home, the addition of new services, sale of the nursing home, and change of ownership of the nursing home. It is necessary to require the notification of the commissioner of any of these occurrences in order that the department's records are accurate as to the physical layout, capacity, and availability of services of each nursing home, and who is the owner of that nursing home, so that compliance with the applicable rules and responsibility for that compliance can be readily determined. It is reasonable to require that notification be made, and that it be made in writing, because that is a legal method of notification, and will assure that there is a method of verifying that the information was provided by the nursing home, and received by the Department.

PART 4658.3005 COMPLIANCE WITH RULES.

Subpart 1: The proposed part 4658.3005, subpart 1 clarifies that all new construction (as defined in part 4658.0010, subpart 6a) must be in compliance with the new construction requirements of Chapter 4658. This language mirrors that found in the current part 4660.0300, subpart 2. It is necessary and reasonable to state this rule to clarify to providers, consumers, and regulators which rules are applicable to new construction. The current Minnesota Rules, Chapter 4660, intermingles the requirements for new construction and existing construction within rule parts. These proposed physical plant rules, to be located in Chapter 4658, have

separate section for the new construction rules and the existing construction rules. It was necessary and reasonable to re-format the physical plant rules in this manner to provide a greater ease in locating the rules that are applicable in a given situation. This is an effort to make the rules more "user-friendly", or easier to use.

It should be noted that the definition of new construction includes more than what may commonly be thought of as new construction, that is, the building of a new nursing home. The term "new construction" as used in this chapter includes the erection of new facility space, addition to existing facility space, and any existing facility space converted in some manner in order to be licensed under the provisions of this chapter. Any of those situations require compliance with the rules for new construction, found in parts 4658.3500 to 4658.4790. This is consistent with the requirements of the Minnesota State Building Code.

Subpart 2: The proposed part 4658.3005, subpart 2, requires that all existing facilities be deemed to be in substantial compliance with the physical plant requirements for new construction, except as noted in this chapter. "Substantial compliance" means that the space, equipment, and systems meet the intent of the rule requirements rather than fully complying with the prescriptive requirements of the rule. This language mirrors that found in the current part 4660.0300, subpart 3. When an existing facility adds beds or other space, those additions must be in compliance with the requirements for new construction, but the remainder of the facility may continue to comply with the requirements for existing construction. It is necessary and reasonable to include this rule part to define the applicability of the physical plant rules for existing construction to provide guidance to providers, consumers, and regulators on that applicability.

Subpart 3: The proposed part 4658.3005, subpart 3, matches the current part 4660.0300, subpart 4. It is necessary and reasonable to state in rule the conditions for reclassification of a boarding care home to a nursing home so those conditions are available and established in rule for any persons interested in that situation.

Subpart 4: The proposed part 4658.0300, subpart 4, based on the current part 4660.0300, subpart 5, requires fire protection provided in accordance with the Minnesota Uniform Fire Code, and initial and ongoing approval of the fire safety features of the facility by the state fire marshal for licensure. It is necessary and reasonable to include these fire protection requirements in the licensing rules to ensure the health and safety of the residents.

Subpart 5: The proposed part 4658.0300, subpart 5, provides clarification of the requirements on the nursing home when planning for a redecoration project. It is necessary and reasonable to include this rule to provide information to the nursing homes as to the requirements when there is a redecorating project, to assure that the nursing home continues to provide a safe and comfortable environment for the residents.

Subpart 6: The proposed part 4658.0300, subpart 6, provides clarification of the requirements on the nursing home when there is a remodeling project. It is necessary and reasonable to include this rule to provide information to the nursing homes as to the requirements when there is a remodeling project, to assure that the nursing home continues to provide a safe and comfortable environment for the residents.

Subpart 7: The proposed part 4658.0300, subpart 7, provides clarification of the requirements on the nursing home when there is a need to replace a piece of equipment with a similar piece of equipment, or "replace in kind." It is necessary and reasonable to include this rule to provide information to the nursing homes as to the requirements when there is a replace-in-kind project, to assure that the nursing home continues to provide a safe and comfortable environment for the residents.

PART 4658.3090 PENALTIES FOR PHYSICAL PLANT LICENSURE RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed parts 4658.3000 and 4658.3005, subparts 1 to 4. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessments for noncompliance with a correction order for the proposed part 4658.3005, subparts 5, 6, and 7 are set at \$100. The \$100 penalty assessment is assigned to those rules that are related to the administration or management of the nursing home. The proposed part 4658.3005, subpart 5 addresses redecoration projects in the nursing home. The proposed part 4658.3005, subpart 6 addresses remodeling projects in the nursing home. The proposed part 4658.3005, subpart 7 addresses replace-in-kind projects in the nursing home. The projects themselves must generally follow new construction rules, but the requirements for Department notification vary. Since that notification can reasonably be assumed to be done by the administrator or the management of the nursing home, the Department believes that the \$100 fine level is appropriate.

NEW CONSTRUCTION

4658.3500 INCORPORATION BY REFERENCE; NEW CONSTRUCTION

The proposed part 4658.3500 is a revision of the current part 4660.8610. The term "shall" has been replaced with "must", as recommended by the Office of the State Revisor of Statutes. The format has been changed to provide a more user-friendly listing of the documents or standards which are incorporated into this chapter by reference. By incorporating these documents by reference, nursing homes must maintain compliance with those other rules and standards as well as the text included in Chapter 4658. The language has been updated to incorporate the most recent edition of applicable codes and regulations, and to provide additional information on where those documents can be found. It is necessary and reasonable to include this language in the proposed rule because it clarifies the reference or source that one would use if there was a question on a particular code or regulation for new construction. New construction projects in nursing homes must be in compliance with all construction, installation, and equipment codes

and standards incorporated by reference to assure the provision of a facility designed and built to protect the health, safety, comfort, and well-being of the residents. It is much easier and less expensive in the long run to build a safe, comfortable space initially, rather than trying to go back and retrofit an existing facility to provide an appropriate measure of safety and comfort.

4658.3590 PENALTIES FOR INCORPORATION BY REFERENCE; NEW CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule part 4658.3590. The penalty assessment for this rule part is consistent with penalties for related topics found in other rule parts. It is reasonable because it takes into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

NEW CONSTRUCTION; PLANS

PART 4658.4000 PREPARATION OF PLANS; NEW CONSTRUCTION.

Part 4658.4000 is based on the current part 4660.0400, except that the reference to the state Board has been updated to match the requirements of licensure and the title of the Minnesota Board of Architects, Engineers, Land Surveyors, Landscape Architects, and Interior Design. These revisions are necessary and reasonable to assure that the persons preparing architectural and engineering plans and specifications are licensed in accordance with state law.

4658.4005 APPROVAL OF PLANS; NEW CONSTRUCTION.

Part 4658.4005 is identical to the current part 4660.0500, except for the replacement of the term "shall" with the term "must" where it occurs in each of the three sentences. The Office of the State Revisor of Statutes strongly suggests the use of the term "must" in rules because that is a stronger and clearer term than "shall." It is necessary and reasonable to make these revisions to comply with the standards established by the Office of the State Revisor of Statutes.

4658.4010 PRELIMINARY PLANS; NEW CONSTRUCTION.

Part 4658.4010 is almost identical to the current part 4660.0600, except for the replacement of the term "shall" with the term "must" wherever it occurs, and by technical revisions to the second paragraph by combining two sentences. To comply with the standards established by the Office of the State Revisor of Statutes, it is necessary and reasonable to make these revisions.

4658.4015 FINAL PLANS; NEW CONSTRUCTION.

Part 4658.4015 is identical to the current part 4660.0700, except for the replacement of the term "shall" with the term "must" wherever it occurs. It is necessary and reasonable to make these revisions to comply with the standards established by the Office of the State Revisor of Statutes.

4658.4020 FINAL MECHANICAL AND ELECTRICAL PLANS; NEW CONSTRUCTION.

Part 4658.4020 is identical to the current part 4660.0800, except for the replacement of the term "shall" with the term "must" wherever it occurs. These revisions to comply with the standards established by the Office of the State Revisor of Statutes.

4658.4025 START OF CONSTRUCTION; NEW CONSTRUCTION.

Part 4658.4025 is practically identical to the current part 4660.0900, except for some technical language changes ("~~not less than~~ within") to clarify the requirements of reporting the commencement of construction to the department, and the replacement of the term "shall" with the term "must", to comply with the standards established by the Office of the State Revisor of Statutes. These revisions are necessary and reasonable to provide clarification and for consistency with other rules.

4658.4030 FINAL INSPECTION; NEW CONSTRUCTION.

Part 4658.4030 is practically identical to the current part 4660.1000, except for the replacement of the term "shall" with the term "must", which is necessary and reasonable to comply with the standards established by the Office of the State Revisor of Statutes; the deletion of the reference to "patients", which is necessary and reasonable to comply with the definition in this Chapter of the persons residing in nursing homes; and the revision of the term "involves" to the term "means" in the second sentence, which is necessary and reasonable to clarify the meaning of the rule, in accordance with instructions from the State Revisor.

4658.4035 PLAN SAFEKEEPING; NEW CONSTRUCTION.

Part 4658.4035 is identical to the current part 4660.1100, with two exceptions. The first revision is the replacement of the term "shall" with the term "must", which is necessary and reasonable to comply with the standards established by the Office of the State Revisor of Statutes. The second revision is the replacement of the term "licensed facility" (at the end of the sentence) with the term "nursing home." This revision is necessary and reasonable to provide consistency of terms in this Chapter.

4658.4040 SITE; NEW CONSTRUCTION.

Part 4658.4040 is a revision to the current part 4660.1200. The first sentence has been revised by replacing the term "shall" with the term "must", and by replacing the term "A care facility" with the term "A nursing home", which is necessary and reasonable to more accurately reflect the applicability of this Chapter, which is specific to nursing homes, while the current Chapter 4660 has applied to both nursing homes and boarding care homes. The second sentence has been revised by replacing the term "a new facility" with "a new nursing home"; again, this is necessary and reasonable to reflect the scope and applicability of the rule.

Item A: Part 4658.4040, item A is a revision to the current part 4660.1200, item A. Item A has been revised by replacing the term "shall" with the term "must", and by streamlining the language. These changes are necessary and reasonable to comply with standards established by the Office of the State Revisor of Statutes, to provide stronger terms and for purposes of brevity while retaining clarity in the rule.

Item B: Part 4658.4040, item B is a revision to the current part 4660.1200, item B. Item B has been revised by referencing the applicable rules for a non-public water supply system, which is necessary and reasonable to provide greater clarity and more specific information to persons selecting a site at which to construct a new nursing home. The term "shall" has also been replaced by the term "must" where it occurs in this item.

Item C: Part 4658.4040, item C is a revision to the current part 4660.1200, item C. Item C has been revised by referencing the applicable rules for a non-public sewage disposal system, which is necessary and reasonable to provide greater clarity and more specific information to persons selecting a site at which to construct a new nursing home. The term "shall" has also been replaced by the term "must" where it occurs in this item.

Item D: Part 4658.4040, item D is a revision to the current part 4660.1200, item D. Item D has been revised by removing the reference to "insect-breeding swamps" because it was felt that the industry has progressed to the point that the market of potential residents would not select a nursing home built in or near an insect-breeding swamp", and so such a site would not be considered for a new nursing home, and it is not necessary to include a rule prohibiting that type of site. The reference to industrial developments which are "nuisance-producing or hazardous to health" has been qualified to those so categorized under state or local law. This revision is necessary and reasonable to provide specificity and enforceability to this rule item. The current rule language in part 4660.1200, item D prohibiting the site to be contiguous to or in immediate view of a cemetery or a funeral home has not been included in this proposed rule because it is not necessary to include such specificity in the proposed rules.

Item E: Part 4658.4040, item E is a revision of the current part 4660.1200, item F. The language was revised to remove unnecessary and limiting specificity for safety considerations relating to flammable liquid storage tanks. These revisions were necessary and reasonable to provide a greater assurance of the health and safety of residents.

Item F: Part 4658.4040, item F is a revision of the current part 4660.1200, items E, K, and L. The revisions were necessary and reasonable to provide plainer and more concise rule language addressing the accessibility of fire department services, medical services, and community activities.

Item G: Part 4658.4040, item G is a revision of the current part 4660.1200, item G. The language has been revised to include plainer language, which is necessary and reasonable to better express the intent of the rule.

Item H: Part 4658.4040, item H is almost identical to the current part 4660.1200, item H, except for the replacement of the term "shall" with the term "must", which is necessary and reasonable to comply with standards for rule-writing established by the Office of the State Revisor of Statutes.

Item I: Part 4658.4040, item I is a revision to the current part 4660.1200, item I. The revisions are necessary to reflect current terminology regarding accessibility of the primary entrance, and the replacement of the term "shall" with the term "must."

Item J: Part 4658.4040, item J is almost identical to the current part 4660.1200, item J, with the exception of the replacement of the term "shall" with the term "must", which is necessary

and reasonable to comply with standards for rule-writing established by the Office of the State Revisor of Statutes.

4658.4090 PENALTIES FOR PLANS; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes all of the proposed rule parts in this section on plans for new construction, parts 4658.4000 to 4658.4040.

RESIDENT AREAS; NEW CONSTRUCTION

4658.4100 RESIDENT BEDROOM REQUIREMENTS, CAPACITIES; NEW CONSTRUCTION

The proposed part 4658.4100 is a revision of the current part 4660.1400. The requirement that at least five percent of the rooms must be designed for single person occupancy and have private toilet rooms remains the same as the current rule. The proposed rule would require that, for new construction, no resident bedroom may have more than two beds. This proposed rule is consistent with department policy regarding the process for approving exceptions to the moratorium in state law on creating new resident beds and remodeling existing nursing homes. It is necessary and reasonable to place this requirement in the rules for new construction to assure that new resident bedrooms are designed and constructed for no greater than double occupancy. By limiting the number of beds in a bedroom to two, infection control is enhanced, resident privacy is heightened, and the quality of life is often improved. Concurrently, by requiring that no toilet room is shared by more than two bedrooms in new construction, the department is requiring that no more than four persons be forced to share a toilet room. Again, greater infection control, resident privacy, and the quality of life are the outcomes of this proposed requirement, and it is necessary and reasonable to place this requirement in the rules for new construction to assure those outcomes for the residents.

4658.4105 BEDROOM DESIGN; NEW CONSTRUCTION

Subpart 1 Design: This is a general statement addressing the design and equipping of resident bedrooms, and is necessary and reasonable to include in the rules to assure that newly constructed resident bedrooms are designed and equipped to meet the needs of residents in regards to nursing care, comfort, and privacy. The resident bedroom is the place where the resident spends the majority of time, and it is necessary and reasonable to provide for minimum space and some comforts in the environment. The proposed part 4658.4105, subpart 1 is consistent with the federal certification requirement found at 42 CFR 483.70(d).

Subpart 2 Usable floor area: The proposed part 4658.4105, subpart 2 is a revision of the current part 4660.1430, subparts 1 and 3. The required usable floor area per bed has been increased from the current amounts because nursing home staff and architects have stated that there needs to be more usable floor area in the rooms because of an increased use of

technological equipment, wheelchairs, and other large objects in the resident rooms which limit the amount of open floor area in many current resident bedrooms. It is necessary and reasonable to increase the requirements for usable floor area for new construction to assure some greater measure of safety and comfort for residents and staff.

Subpart 3 Access to exit: The proposed subpart 3 is identical to the second sentence in the current part 4660.1410, except for the replacement of the term "shall" with the term "must". This revision is necessary and reasonable to comply with rule-writing standards established by the Office of the State Revisor of Statutes.

Subpart 4 Bedroom shape: The proposed part 4658.4105, subpart 4 is a revision to the second sentence in the current part 4660.1440, subpart 1. The revision of the term "shall" to "must" is necessary and reasonable to comply with rule-writing standards. It is necessary and reasonable to edit the language by specifying the rule part addresses the shape of the bedroom, to provide greater clarity and plainer language in this rule part. It is reasonable to require that the room be designed to allow for bedside nursing care, and to accommodate movement of residents in wheelchairs or with walkers.

Subpart 5 Window: The proposed part 4658.4105, subpart 5 is a clarification of the intent of the language in the current part 4660.1410 which requires each bedroom to be "naturally lighted." It is necessary and reasonable to require that each bedroom have at least one window to the outdoors to assure that at least one window to the outdoors will be provided. The proposed language is clearer and more easily understood than the current language.

Subpart 6 Window area: The proposed part 4658.4105, subpart 6 is a revision of the current part 4660.1450, and has been enhanced by adding a diagram to depict the expectations of the window space and viewing area allowed by the building and landscaping design. These revisions are necessary and reasonable to more clearly explain and illustrate the requirements of the rule, which is intended to provide for an adequate and appropriate outside viewing area for residents.

Subpart 7 Floor at grade level: The proposed part 4658.4105, subpart 7 is derived from the final sentence in the current part 4660.1410, and from the federal certification requirement at 42 CFR 483.70(d)(1)(vii). It is necessary and reasonable to require newly constructed resident bedrooms to be located at or above grade level to assure that the residents will not have to live in basement bedrooms, which are prone to cold and damp floors and walls and do not allow for a normal view of the outdoors. Three diagrams have been included to illustrate acceptable methods of compliance with the rule language.

Subpart 8 Distance from nurses station: The proposed part 4658.4105, subpart 8 is based on the current part 4660.1420. However, the proposed language allows for greater maximum distances between resident bedrooms and the nurses station. It is necessary and reasonable to have a maximum distance in rule to assure that a resident call to the nurses station can be answered readily, and to assure that the travel distances for nursing staff are not so great as to compromise nursing care, infection control, and other services provided to the residents or for the resident bedrooms. It is necessary and reasonable to increase the allowable maximum distances from 120 feet to 140 feet to correspond to requirements in part 4658.4105, subpart 2.

4658.4110 BEDROOM DOORS; NEW CONSTRUCTION.

Subpart 1 Written policy: The proposed part 4658.4110, subpart 1 is almost identical to the current part 4660.1460, subpart 1, item A. The revisions, changing the term "shall" to "must" where it occurs, are necessary and reasonable to comply with standards for rule-writing established by the Office of the State Revisor of Statutes.

Subpart 2 Door locks: The proposed part 4658.4110, subpart 2 is almost identical to the current part 4660.1460, subpart 1, item B. Revisions consist of clarification that the locks addressed in this subpart are on resident bedroom doors, and changing the term "shall" to "must". These revisions are necessary and reasonable to provide clarification and specificity, and to comply with rule-writing standards. It is necessary and reasonable to require that exit from the room can be obtained without a key, to assure that residents have freedom to exit the bedroom. It is also necessary and reasonable to require that a pass key be available at the nurses station to allow for entrance to a locked resident bedroom in an emergency.

Subpart 3 Door: The proposed part 4658.4110, subpart 3 is a revision of the current part 4660.1460, subpart 2. Technical edits were done to the language from the current rule. These edits are necessary and reasonable to provide for clarification of terms, to assure resident safety and privacy.

4658.4115 CLOTHES WARDROBE OR CLOSET; NEW CONSTRUCTION

It is necessary and reasonable to require the nursing home to provide individual wardrobe or closet space in the resident's bedroom to assure that there is a location readily accessible to the resident for the storage of the resident's clothing and personal belongings. It is necessary and reasonable to state in rule that locks may be provided, with a pass key at the nurses station, to allow nursing homes to determine whether to provide locks for the resident's wardrobe or closet space. The proposed part 4658.4115 is based on the current part 4660.1470, subpart 1, and on the federal certification regulation at 42 CFR 483.70(d)(2)(iv).

4658.4120 HANDRAILS AND CORRIDORS; NEW CONSTRUCTION.

Subpart 1 Handrails: The proposed part 4658.4120, subpart 1, is based on the current part 4660.1500, subparts 1 and 2. It is necessary and reasonable to include a rule requiring handrails on both sides of corridors to assure that handrails are provided for the comfort and safety of residents. It is necessary and reasonable to provide specificity on the design and placement of handrails to assure they are located and designed to provide the maximum security for residents and other persons using the handrails. Two diagrams have been included to illustrate two acceptable handrails.

Subpart 2 Corridor width: The proposed part 4658.4120, subpart 2, is based on the current part 4660.1500, subpart 2. It is necessary and reasonable to include a rule on corridor width to provide for an acceptable corridor width for the safety and convenience of residents and staff. A narrower width would not allow for the moving of beds, the simultaneous passing of two wheelchairs or service carts, or other combinations of traffic.

4658.4125 NURSING AREA; NEW CONSTRUCTION.

Subpart 1 Nurses' station: The proposed part 4658.4125, subpart 1, is based on the current part 4660.1600, subpart 1, and is consistent with the federal certification regulation at 42 CFR

483.70(f). Editorial changes were done to the current rule language to provide for a clearer and easier to understand rule. It is necessary and reasonable to include a requirement for a nurses station to assure that there is some place for nursing staff to be based at, and to provide for a place where resident calls are sent to and received by nursing staff, to assure residents have a method of communicating with nursing staff from their bedrooms, even if that communication consists only of indicating by bell or light or some other method that the resident requires assistance.

Subpart 2 Location: The proposed part 4658.4125, subpart 2, is based on the current part 4660.1600, subpart 2, and part 4660.1700. It is necessary and reasonable to address the location of the nurses station, to assure it is located to provide for resident safety and the prompt provision of nursing cares. It is necessary and reasonable to require the provision of private space to assure that nursing staff have a secure area to document in the clinical record while assuring privacy and confidentiality of those records, to store charts and supplies away from the general traffic areas, and to prepare medications for administration to the residents, to assure safety and accuracy of the medication preparation. It is necessary and reasonable to require facilities for cleanup and handwashing in the nurses station to provide for infection control to protect the health and safety of the residents and staff.

Subpart 3 Staff toilet: The proposed part 4658.4125, subpart 3, is a revision of the current part 4660.2100. It is necessary and reasonable to require a staff toilet room near the nurses station so that nursing staff have a toilet room readily accessible for their use while they are on the job, without necessitating them to use a resident toilet room; this assures privacy for residents as well as staff.

Subpart 4 Clean utility room: The proposed part 4658.4125, subpart 4, is a revision of the current part 4660.1800. It is necessary and reasonable to require a clean utility room within each nursing area to assure that there is a place for storage of clean items and supplies to be stored nearby the resident bedrooms.

Subpart 5 Soiled utility room: The proposed part 4658.4125, subpart 5, is a revision of the current part 4660.2200. It is necessary and reasonable to require a soiled utility room within each nursing area to assure that there are facilities for cleanup and disposal of waste materials readily accessible to the resident bedrooms, to assure appropriate cleaning and infection control. Handwashing facilities are necessary to provide a place where persons may clean their hands after handling soiled items, and a clinical service sink is necessary to provide a place to dispose of liquid wastes and to allow for at least rinsing of soiled linen and utensils, for infection control purposes.

4658.4130 NOURISHMENT AREA; NEW CONSTRUCTION.

Subpart 1 Equipment: The proposed part 4658.4130 is a revision of the current part 4660.2300. It is necessary and reasonable to require a nourishment area and to specify the minimum equipment for that area to assure that there are facilities for providing refreshments to residents between meals, to provide for their comfort and well-being, and to provide for a more homelike environment where people can have a snack when they want one (in accordance with their plan of care, if there are restrictions on the resident's food intake). If the nourishment area is not used as a part of the dietary department (in other words, used to prepare meals or parts of meals for residents), the equipment in the nourishment area may be residential type,

rather than commercial type. If the nourishment area is used as part of the dietary department, to provide meals or parts of meals, it would be considered part of the kitchen area and would have to be equipped in accordance with the requirements of parts 4658.4300 to 4658.4310.

Subpart 2 Range disconnect switch: The proposed part 4658.4130, subpart 2, is new language to the nursing home licensing rules. It is necessary and reasonable to require a key operated disconnect switch for an electric range in the nourishment area to provide for a method of controlling the use of the range to provide protection to the health and safety of residents.

4658.4135 TOILET ROOMS AND SANITARY FIXTURES; NEW CONSTRUCTION.

Subpart 1 Design and equipment: The proposed part 4658.4135, subpart 1, is a revision to the current part 4660.2400. It is necessary and reasonable to address the design and equipment of toilet rooms and sanitary fixtures to assure that nursing homes are constructed with at least the minimum standards, to provide for resident health, safety, comfort, and well-being. The minimum numbers of sanitary fixtures required are based on the numbers of residents sharing toilet rooms and on the number of showers or tubs necessary to provide for ample time for individual resident use.

Subpart 2 Showers and tubs: The proposed part 4658.4135, subpart 2 is new language to the state nursing home licensing rules. It is necessary and reasonable to require, in these new construction rules, that each nursing home be equipped with at least one shower and at least one tub to assure that resident choice will be allowed in their method of cleaning their body. This requirement will also assure that there be both a shower and a tub to provide flexibility to the nursing home staff in methods of providing cares and treatments to the residents.

4658.4140 PROVISION OF RESIDENT TOILET ROOMS; NEW CONSTRUCTION

The proposed part 4658.4140 is a revision of the current part 4660.2500. This rule is necessary to establish minimum design features for resident toilet rooms, and the operation of toilet room doors. The specified ratio of toilet rooms to resident beds is necessary and reasonable to assure that residents have ready availability of their toilet room, and there is some measure of privacy obtained by limiting the number of persons required to share a toilet room. The specified requirements for doors are necessary and reasonable to assure that doors are capable of being opened from either direction in an emergency or when a resident requires assistance.

4658.4145 TOILET ROOM LAYOUT; NEW CONSTRUCTION

The proposed part 4658.4145 is a revision of the current part 4660.2600. It is necessary and reasonable to include specifications for the design and layout of resident toilet rooms to assure accessibility, privacy, comfort, and safety for residents, without imposing restrictions that will limit their ability to function independently. The proposed language was drafted so as not to conflict with requirements for toilet rooms found in the federal Americans With Disabilities Act [ADA]⁸ and the accompanying appendix, "Accessibility Guidelines for Buildings and

⁸ Americans With Disabilities Act, Public Law 101-335, 42 U.S.C. § 12101 et seq.

Facilities"⁹. Section 6:1(3) of that appendix requires that "at least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible."

Any differences between these proposed rules and those federal guidelines reflect the different target populations. The state nursing home licensing rules are intended to provide protection for nursing home residents, who are, in general, an older population requiring more nursing cares than the physically or mentally disabled population protected by the ADA. Data from the state Case Mix Assessment System from state fiscal year 94 (July 1, 1993 to June 30, 1994) show that the average age of persons newly admitted to nursing homes is 79.152 years, and the average age of all nursing home residents is 81.901 years. MDH worked closely with staff from the Department of Administration's Building Codes and Standards Division during their recent rule promulgation process to assure that state regulations for the construction of nursing homes would not conflict with each other, and a reasonable interpretation of the requirements of the ADA could be made.

The specified door opening is necessary to accommodate entrance by residents using crutches, walkers, or wheelchairs. The side wall location is necessary to provide support and reach from the water closet position to the wall-mounted grab bar and paper holder. The unobstructed space in front of the bowl and minimum interior room dimensions are necessary to provide adequate space to maneuver in the toilet room, whether independently or with some assistance. Grab bar dimensions will assure sufficient vertical and horizontal grip for pulling or pushing to accommodate a variety of assistance needs, and the clearance from the wall prevents arms from being wedged between bars and walls in the case that hands slip off the grab bar. The rule for anchorage of grab bars prevents bar supports from being torn off the wall should a heavy resident fall and need support. The proposed height of the toilet seat is needed to obtain a fixture installation that offers convenient accessibility for all residents, whether they need special accessibility considerations. Specific dimensions are necessary to the lavatory to provide clearance and a height that is within reach. Towel bar and shelf requirements are necessary to make these accessories useable by residents. The rule is reasonable since it establishes design conditions for standard toilet rooms that will provide at least minimal access for residents who may be weak or be in need of partial assistance from mobility devices.

The proposed item D is new to the licensing rules. This item would require that the flush valves must be a quiet operating type. This is necessary and reasonable to require to assure that residents will not be unnecessarily subject to loud noises in the toilet room, and will be provided the same type of equipment as found in most private homes.

4658.4150 HANDICAPPED ACCESSIBLE TOILET ROOMS; NEW CONSTRUCTION.

The proposed part 4658.4150 is a revision of the current part 4660.2610. It is reasonable and necessary to include specifications for the design and layout of handicapped accessible toilet rooms to assure the accessibility, useability, privacy, comfort, and safety for persons using wheelchairs. The specifications for a handicapped accessible toilet room need to be somewhat different from those of a standard toilet room to allow for mobility, safety, and ease of use of the toilet room by a handicapped person. As with part 4658.4145, the requirements of the ADA

⁹ "Accessibility Guidelines for Buildings and Facilities", July 26, 1991 *Federal Register*, Vol. 56, No. 144.

were considered when this proposed language was developed. And, as mentioned above, the ADA requires that at least 50 percent of resident bedrooms and toilets must be accessible. The proposed rule is reasonable because it assures that new construction will contain resident toilet rooms that are handicapped accessible and will provide the necessary space and accessories for self-help with personal sanitary needs and for staff assistance.

The required arrangement requiring space for frontal, oblique, and lateral angle approach from a wheelchair to the toilet seat is necessary to provide accessibility. The specified door opening is necessary to accommodate entrance by residents using crutches, walkers, or wheelchairs. The side wall location is necessary to provide support and reach from the water closet position to the wall-mounted grab bar and paper holder. The unobstructed space in front of the bowl and minimum interior room dimensions are necessary to provide adequate space to maneuver in the toilet room, whether independently or with some assistance. Grab bar dimensions and locations will assure sufficient vertical and horizontal grip for pulling or pushing to accommodate a variety of assistance needs, and the clearance from the wall prevents arms from being wedged between bars and walls in the case that hands slip off the grab bar. The rule for anchorage of grab bars prevents bar supports from being torn off the wall should a heavy resident fall and need support. The proposed height of the toilet seat is needed to obtain a fixture installation that offers convenient accessibility for all residents, whether they need special accessibility considerations. Specific dimensions are necessary to the lavatory to provide clearance for wheelchairs and a height that is within reach of a person in a wheelchair. Mirror, towel bar, and shelf requirements are necessary to make these accessories accessible and useable by residents. The rule is reasonable since it establishes design conditions for handicapped accessible toilet rooms that will provide access for residents in wheelchairs and residents in need of staff assistance in the toilet room.

The proposed item E is new to the licensing rules. This item would require that the flush valves must be a quiet operating type. This is necessary and reasonable to require to assure that residents will not be unnecessarily subject to loud noises in the handicapped accessible toilet room, and will be provided the same type of equipment as found in most private homes.

4658.4155 CENTRAL BATHING AREA; NEW CONSTRUCTION.

Subpart 1 Fixtures: The proposed part 4658.4155, subpart 1, is almost identical to the current part 4660.2630, subpart 1, with the exception of the replacement of the term "shall" with the term "must".

Subpart 2 General requirements: The proposed part 4658.4155, subpart 2, is a revision of the current parts 4660.2620 and 4660.2630, subparts 2 and 3. The proposed rule is necessary and reasonable to assure resident privacy, accessibility, and safety in the central bathing area.

Subpart 3 Shower areas: The proposed part 4658.4155, subpart 3, is a revision of the current part 4660.2630, subpart 3, items D, E, F, and G. The revisions to the current rule include changing "shall" to "must", changing "patient" to "resident", and replacing the dimensions given in feet with dimensions given in inches. These edits are necessary and reasonable to provide stronger and more specific, plain language rules.

Subpart 4 Bathtub areas: The proposed part 4658.4155, subpart 4, is a revision of the current part 4660.2630, subpart 3, items I, J, K, and L.

Item A: Part 4658.4155, subpart 4, item A is a revision of the current part 4660.2630, item I. The current language talks about an elevated, free-standing tub and the working space around that tub. Because of the advances in technology for bathing, there are many different types of tubs or bathing units that provide for a more comfortable and safe bathing situation for residents, but do not fit the classic image of a tub. The proposed language would allow for the installation of a variety of types of tubs, and would continue to require a minimum of four feet of clearance around the working areas of the tub to allow for staff assistance, lifts, wheelchairs, or other means of assisting residents into and out of the tub. This is necessary and reasonable to provide a workable, practical means of providing baths for residents in a safe manner.

Item B: Part 4658.4155, subpart 4, item B is identical to the current part 4660.2630, subpart 3, item J, with the exception of the replacement of the term "shall" with the term "must."

Item C: Part 4658.4155, subpart 4, item C is a revision of the current part 4660.2630, subpart 3, item K. The language in the current rule regarding a soap holder has not been carried forward to these proposed rules because there are many different types of soap containers that did not exist when the current rules were written, and many of those do not conveniently fit into a traditional soap holder. It is not reasonable to require an accessory which may not be used at all, depending on the type of soap used by the nursing home. It is necessary and reasonable to continue to require a flexible hose hand shower to provide a method for rinsing the resident's body which will be effective and easy to use, so the resident will be adequately rinsed.

Item D: Part 4658.4155, subpart 4, item D is a revision of the current part 4660.2630, subpart 3, item L. Because of the variety of tub models, wall-mounted grab bars may not always be necessary to provide for the safety and mobility of residents getting into or out of the tub. Some tub models have built-in grab bars which are strategically placed for maximum effectiveness, while other tub models are a self-contained unit where the resident may remain in a wheelchair and the tub closes around them, so there is no need to transfer the resident. Depending on the type of tub, grab bars may or may not be needed. If they are needed, they must be provided within the area of the tub to provide safety, security, and mobility for the residents.

4658.4160 DRINKING FOUNTAINS; NEW CONSTRUCTION.

The proposed part 4658.4160 is a revision of the current part 4660.2900. The changes from the current language include changing "shall" to "must", changing the reference to "patients" to "residents", and adding a requirement for a drinking fountain in or near the dining area. It is necessary and reasonable to require a drinking fountain in or near the dining area to assure that there is provision for residents to get a drink of water when they are in that area of the nursing home. In many nursing homes, residents spend a great deal of time in or near the dining area because that is an area where residents frequently congregate, and where activities are often offered.

4658.4165 HANDWASHING FACILITIES; NEW CONSTRUCTION.

In the current Chapter 4660, handwashing facilities are required in many locations throughout the nursing home. Many of those specific locations have not been carried forward to these proposed rules because there are alternate methods of cleaning and sanitizing hands other than the traditional soap and hot water, which are acceptable in many situations. However, there is a need for handwashing facilities for persons providing services to residents, to be located

somewhere in the nursing home, because there are times and situations where the only acceptable method of washing a person's hands is in a sink with warm or hot water and soap. It is necessary to require these handwashing facilities, and single service towels, to adequately and appropriately control the spread of infections in the nursing home. The proposed language is reasonable because it provides for that infection control while allowing some flexibility for the location or locations of the handwashing facilities.

4658.4170 STORAGE; NEW CONSTRUCTION.

Subpart 1 Equipment and supplies: The current Chapter 4660 includes requirements for storage throughout various sections of those rules. That includes portions of the current parts 4660.1600, 4660.1700, 4660.1800, 4660.2000, 4660.2200, 4660.2700, 4660.4840 subpart 3, 4660.5040, 4660.5100, and 4660.5810. In these proposed rules, a new rule part is created which contains the general storage requirements for the nursing home. It is necessary to require that there be a storage room or rooms in the nursing home because there are many items, some purchased in bulk quantities, which need to be kept somewhere, and it appropriate that they be kept away from general traffic areas to maintain the integrity of packaging and to maintain a safe environment. It is reasonable to group all the storage requirements together in one rule part for new construction to enable designers to include ample storage space in the nursing home. The amount of fifteen square feet per bed of storage was developed by reviewing the amount of storage space required under the current rules, and determining how much space would be necessary to include storage for all the listed items, supplies, and equipment. Many nursing home staff reported that the amount of storage in existing nursing homes is deficient, especially with the use of many more disposable items than were used when the current rules were originally written. The proposed language allows flexibility to the designers and nursing home owners to determine how best to meet their storage needs, whether that entails one main storage area plus storage areas in each nursing area, or a storage area in each nursing area, or some other configuration.

Subpart 2 Housekeeping supplies: The proposed part 4658.4170, subpart 2, is based on a portion of the current part 4660.2800. It is necessary to require that there be an area for storage of housekeeping supplies and equipment in the janitor's closet so those items are readily available to the environmental services staff or other staff needing to use them. It is reasonable to require there be storage in that closet so those items can be safely and securely stored away from general traffic areas and away from nursing care supplies and food items.

Subpart 3 Yard maintenance equipment and supplies: The proposed part 4658.4170, subpart 3 is a revision of the current part 4660.5300. The revisions include the specification that the storage for yard maintenance equipment and supplies must be enclosed (rather than, for example, a fenced area), changing "shall" to "must", and changing the term "facility" to "nursing home" to reflect the specificity of this rule chapter. The requirement for "enclosed" storage is necessary and reasonable for safe storage of equipment and flammables, and for protection from vandals, weather, and animals.

4658.4175 JANITOR'S CLOSET; NEW CONSTRUCTION.

The proposed part 4658.4175 is almost identical to the first sentence of the current part 4660.2800, with minor exceptions. The term "shall" has been replaced with the term "must", and the term "patient" has been replaced with the term "resident." The intent of this rule is that

there be a janitor's closet readily available for cleaning areas in the nursing home. For the sake of these minimum new construction standards, this means that there must be a minimum of one janitor's closet for each resident floor or nursing area.

4658.4180 ROOM LABELING; NEW CONSTRUCTION.

The proposed part 4658.4180 is a revision of the current part 4660.3000. The requirement for labeling resident bedrooms using a system of numbers is the same as the current rule. The language for labeling services has been revised somewhat to allow some flexibility in the labeling of those rooms. It is necessary to require that service rooms be labeled to assure that the contents of those rooms can be readily ascertained by persons that are looking for a certain room or item, and for purposes of resident safety. Nursing homes may continue to choose to label services rooms using a system of numbers, or may choose to label the service rooms using text or even pictures to identify the room.

4658.4190 PENALTIES FOR RESIDENT AREAS; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4100, 4658.4105 subparts 2 to 8, 4658.4110, 4658.4115, 4658.4120, 4658.4125, 4658.4130 subpart 1, 4658.4135 subpart 1, 4658.4140, 4658.4145 items A to C and E to J, 4658.4150 items A to D and F to M, 4658.4155, 4658.4160, 4658.4165, 4658.4170 subparts 2 and 3, 4658.4175, and 4658.4180. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4105, subpart 1 is set at \$200. The \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. The proposed part 4658.4105, subpart 1 addresses the design and equipment of resident bedrooms. If a resident bedroom is not conducive to the provision of nursing care, or the comfort and privacy of a resident, that can have a direct effect on the health of the resident. The Department believes that the \$200 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4130, subpart 2 is set at \$200. The \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. This proposed part addresses the need for a range disconnect switch if an electric range is installed in the nourishment area. Because of the large number of residents in many nursing homes that are confused and also mobile, there is a great potential for danger to the health and safety of residents by the potentially unsupervised use of a range in the nourishment area. If there is no disconnect switch, it would be possible for a resident to turn on the range and staff not be aware of that, which could result in burns to that resident or another resident, or in a fire. The Department believes that the \$200 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4135, subpart 2 is \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4135, subpart 2 requires that there be at least one tub and at least one shower in each nursing home. Many residents have a strong preference for one or the other type of fixture for cleaning their body, and some residents have conditions which require the use of one or the other. The absence of a shower or tub can have a direct impact on the comfort of residents who wish to use a shower or tub. The Department believes that the \$150 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4145, item D is \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4145, item D requires that flush valves in resident toilet rooms must be a quiet operating type. This requirement would provide for a more comfortable toilet area for residents by allowing for lower noise levels when the toilet is flushed. The Department believes that the \$150 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4150, item E is \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4150, item E requires that flush valves in handicapped accessible toilet rooms must be a quiet operating type. This requirement would provide for a more comfortable toilet area for residents by allowing for lower noise levels when the toilet is flushed. The Department believes that the \$150 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4170, subpart 1 is \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4170, subpart 1 is a compilation of many of the current parts in Chapter 4660 which address storage areas. Some of those current rule parts have been assigned a penalty assessment of \$150, while others have been assigned a penalty assessment of \$200. The \$150 penalty assessment assigned to the proposed part 4658.4170, subpart 1 is necessary to assure that the design of new construction includes an adequate amount of storage space for a variety of items, supplies and equipment to assure that those things are not stored in corridors, resident rooms, or other service areas because that could impact the comfort or well-being of residents. While there could also be an impact of the health or safety of residents, it is less likely that impact would directly affect the residents because of mandated compliance with other regulations such as the Life Safety Code. The Department believes that the \$150 fine level is appropriate.

SUPPORTIVE SERVICES; NEW CONSTRUCTION

4658.4200 DINING, DAYROOM, AND ACTIVITY AREAS, REQUIRED FLOOR AREA; NEW CONSTRUCTION.

Subpart 1 Total area: The proposed part 4658.4200, subpart 1 is a revision of the current part 4660.4810, subpart 1. The minimum amount of required space for dining, dayroom, and

activities areas is increased in these proposed rules from the current 30 square feet per bed to 40 square feet per bed. Also, the current rule parts 4660.4810, subpart 1 and 4660.4820 "recommend" that a separate activities area be provided. These proposed rules require that there be a separate activities area (or areas) because of the increased importance of the activities and recreation program in the lives of the residents. Many nursing home staff and architects reported that there is insufficient space in many of those areas in existing nursing homes, and the dining room, dayroom, or activities area are the locations where the majority of the resident's time is spent when they are not in their bedroom. Because of the number of residents in wheelchairs, many dining rooms are overcrowded and actually not safe (in terms of potential evacuation) due to their small size and other regulations which require residents to eat in dining rooms and the required schedule for mealtimes. It is necessary to require that, for new construction, there be a minimum of a total of 40 square feet for the dining, dayroom, and activities areas to provide adequate space for residents to safely move around and to be comfortable in those areas. The rules are reasonable because the areas involved form an integral part of the total psychosocial environment needed by nursing home residents. In addition to being a nursing care institution, the nursing home is also a home for its residents. It should be as home-like as possible, provide space and amenities that can support a normal reasonable living pattern, and offer opportunities for the pursuit of personal interests. The amount of space required is reasonable because it assures that there will be space for residents to spend time in, other than in their bedroom, and because the proposed language allows flexibility in the design of that space to accommodate resident needs and choices, and to provide the necessary cares and services offered by that nursing home. By requiring a minimum of 5 square feet per bed for each area, these rules will assure that there be a variety of spaces provided for residents' comfort and well-being, outside of their bedroom.

Subpart 2 Space for adult day care: The proposed part 4658.4200, subpart 2 is a revision of the current part 4660.4810. The changes to the current language, as proposed in this subpart, provide clarification of the applicable state rules for adult day care provided in a nursing home. It is necessary and reasonable to reference those rules in this subpart to provide guidance to providers, consumers, and regulators on the existence of those rules, to assure that there be sufficient space provided in new construction to meet the needs of both the nursing home residents and those persons coming in to the nursing home for adult day care services.

4658.4205 DAYROOM; NEW CONSTRUCTION

The proposed part 4658.4205 is a revision of the current part 4660.4820. It is necessary to assure that there will be adequate space available in new construction for social functions in accordance with resident needs and program requirements, while maintaining a homelike environment to the extent possible. The rule is reasonable because it assures that new construction will contain an area on each bedroom floor for private conversations, solitude, and small gatherings of residents and visitors. This provides for socialization and for convenient access to the dayroom space. It is necessary and reasonable to require the dayroom to be provided with natural lighting to allow some visual contact with the outside world, without needing to specify window size or height. The language allows for flexibility in the design and location of the windows in the dayroom.

4658.4210 DINING AREA; NEW CONSTRUCTION

The proposed part 4658.4210 is a revision of the current part 4660.4830. The proposed

language continues the necessary and reasonable requirement that the dining area must be separate from the kitchen to assure the area is separate from the food preparation area for food sanitation purposes. The proposed language requires that, for new construction, the dining area must have windows facing outdoors. It is necessary and reasonable to include this requirement to assure that residents have some visual contact with the outside world during the time they spend in the dining area.

4658.4215 ACTIVITIES AREA; NEW CONSTRUCTION

The proposed part 4658.4215 is a revision of the current part 4660.4840. The proposed language is necessary and reasonable to assure that there is space available for residents to display their projects from the activity and recreation program, to share those with other residents, staff, and visitors. The language is necessary to assure that there will be a counter with handwashing facilities available for activities areas. The counter is needed as a work surface when preparing craft materials, especially those requiring wetting, and for subsequent storage while cleaning up. The handwashing facility is necessary as a drainage area for liquid wastes and for the cleaning of hands after completion of an activities or recreation program. and the single service towel dispenser is necessary to maintain infection control during handwashing. The proposed rule is reasonable because the above described activities could not conveniently take place without the required provisions.

4658.4290 PENALTIES FOR SUPPORTIVE SERVICES; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4200, 4658.4205, 4658.4210, and 4658.4215. Each of these proposed rule parts have been assigned the penalty assessment level of \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter. The Department believes that the \$150 fine level is appropriate for the proposed parts 4658.4200, 4658.4205, 4658.4210, and 4658.4215.

DIETARY, LAUNDRY, AND OTHER FACILITIES; NEW CONSTRUCTION

4658.4300 KITCHEN AREA; NEW CONSTRUCTION

Subpart 1 In general: The proposed part 4658.4300, subpart 1 is a revision of the current part 4660.4900, subpart 1. The term "shall" has been replaced with the term "must" throughout this subpart, and some editorial changes were made to clarify the applicability of the rule part. The current rule "recommends" that doors with locks be provided; the proposed rule requires that doors with locks "must" be provided. It is necessary and reasonable to require that the doors to the kitchen area must have locking capability in order assure the safety and security of the

food supplies and equipment when there is no one on duty in the dietary department. It is necessary and reasonable to locate kitchen areas convenient to the area of the service entrance to reduce the traffic and congestion in the corridors caused by delivery and transport of food cartons and the return of refuse and garbage to the trash storage area. Also, the time taken by the staff to carry out the movement of food and refuse will be reduced when the dietary areas are so located and will assure that the staff will not need to leave the area in these delivery type activities but will be available in the dietary area as much as possible when on duty to respond to requests of food service personnel from the nursing staff in regard to resident dietary needs. It is necessary and reasonable to require that the traffic within the dietary and food service area be limited to travel which is related or essential for the food service operation. Unnecessary traffic in the food preparation areas can not only be a disruptive factor, but travel by persons other than trained dietary personnel can also be a source of contamination of the food. It is necessary to design the food service so that there will be a progressive flow of foodstuff beginning with the raw, canned, or packaged supply storage areas and then going to the preparation area and baking or cooking area, followed by the serving, tray set-up, and beverage areas so that the various separate activities in the process will not conflict and be disruptive of the end result, which is the production of a quality and uncontaminated food supply. If the food is to be prepared and served in such a manner that renders it a high quality and uncontaminated product for the residents, it is reasonable to require in rule that the food service areas be designed and equipped to provide an orderly flow of foodstuffs from storage to preparation and serving, and that traffic be limited to only necessary personnel.

Subpart 2 Storage for nonperishable food: The proposed part 4658.4300, subpart 2 is a revision of the current part 4660.4900, subpart 2. The term "shall" has been replaced with the term "must" where it occurs throughout the language. It is necessary and reasonable to add a maximum allowable temperature for the storeroom to assure the safety of the nonperishable foods. The requirement for the bottom shelf of storage has been changed from the current 8 inches to 6 inches, to coordinate with other state rules addressing food safety (especially Minnesota Rules, Chapter 4625, Food & Beverage Establishments). This is necessary and reasonable to develop rules that are consistent among different licensure levels, and to allow for compliance with both sets of rules when a nursing home provides meals to persons in addition to their residents (such as to adult day care, a Meals on Wheels program, residents of an adjoining board and lodging facility, and so on).

Subpart 3 Storage facilities: The proposed part 4658.4300, subpart 3 is a revision to the current part 4660.4900, subpart 3. Much of the revision consists of the replacement of current text with text from the current part 4625.3401, subpart 2, to provide for consistency between the two rule chapters. It is necessary and reasonable to address storage facilities to assure the quality and safety of the food supplies, to assure the health and safety of residents.

Subpart 4 Storage for dishes and utensils: The proposed part 4658.4300, subpart 4 is a revision to the current part 4660.4900, subpart 4. The term "shall" has been replaced with the term "must" throughout the subpart, in accordance with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 5 Janitor's closet: The proposed part 4658.4300, subpart 5 is a revision of the current part 4660.4900, subpart 6. The term "shall" has been replaced by the term "must" in accordance with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 6 Lavatories: The proposed part 4658.4300, subpart 6 is a revision of the current part 4660.4900, subpart 7. The term "shall" has been replaced with the term "must" throughout the subpart, in accordance with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 7 Toilet room: The proposed part 4658.4300, subpart 7 is a revision of the current part 4660.4900, subpart 8. The term "shall" has been replaced with the term "must" throughout the subpart, in accordance with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4305 FOOD SERVICE EQUIPMENT; NEW CONSTRUCTION.

Subpart 1 In general: The proposed part 4658.4305, subpart 1 is a revision of the current part 4660.4910, subpart 1. The term "shall" has been replaced with the term "must" throughout the subpart, in accordance with rulewriting standards established by the Office of the State Revisor of Statutes. NSF International is the main organization in the United States doing research in food service equipment with respect to materials, cleanability, and sanitation of surfaces. It is utilized by most health related organizations as a consulting and equipment testing and listing body. It is necessary to require that new food service equipment comply with the standards established by the NSF International to assure that this equipment will be constructed in such a manner that the food contact surfaces are cleanable, that the food, ice, drink, or water stored within the equipment (such as refrigerators or icemakers) is maintained in a sanitary condition, and that equipment such as a dishwasher will clean and sanitize the surface of the dishes. To assure that new food service equipment will meet the highest standards with respect to durability, toxicity, cleanability, and sanitation of surfaces, it is reasonable to require in rule that new food service equipment must comply with the standards of NSF International.

Subpart 2 Food carts: The proposed part 4658.4305, subpart 2 is a revision of the current part 4660.4910, subpart 2. The term "shall" has been replaced with the term "must" throughout the subpart, in accordance with rulewriting standards established by the Office of the State Revisor of Statutes. Editorial changes made to the second sentence are necessary and reasonable to clarify that there needs to be designated space for the storage of food carts, and that storage space needs to be in the dietary area to assure the security and sanitation of those food carts.

Subpart 3 Cutting boards: The proposed part 4658.4305, subpart 3 is a revision of the current part 4660.4910, subpart 3. The term "shall" has been replaced by the term "must", which is necessary and reasonable to comply with official rulewriting standards. The description of the material which the cutting board must be constructed of has been shortened, while retaining the necessary and reasonable intent that the cutting board be constructed of materials which are easy to clean so as to prevent the spread of infection through the use of that board.

Subpart 4 Scullery sink: The proposed part 4658.4305, subpart 4 is a revision of the current part 4660.4910, subpart 4, and is revised to match language in the current part 4625.3801, subpart 5, item A. Chapter 4625 contains the rules for the licensing and operation of food and beverage establishments. The revisions do not substantially change the intent of the language. The revisions are necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes, and to better coordinate Department of Health rules.

4658.4310 DISHWASHING AREA; NEW CONSTRUCTION.

The proposed part 4658.4310 is a revision of the current part 4660.4920. There were some technical edits done to provide clearer language so providers, consumers, and regulators can have an explicit understanding of the expectations of this rule part.

Item A: The term "shall" was replaced by the term "must" in both sentences of this item. This revision is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Item B: The term "shall" was replaced by the term "must" in both sentences of this item. This revision is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Item C: The term "shall" was replaced by the term "must" in this item. This revision is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Also, rather than requiring a "commercial type" dishwasher as a minimum requirement for nursing homes with 30 beds or less, that has been clarified as meaning that the dishwasher must meet the standards established by the NSF International (formerly known as the National Sanitation Foundation). It is necessary and reasonable to require compliance with those international standards, which are for commercial grade dishwashers, to assure the equipment in the nursing home is sturdily constructed and operates appropriately to keep up with the demands of the dietary and food services department.

Item D: The term "shall" was replaced by the term "must" in all three sentences of this item. This revision is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4315 WASHING OF FOOD CARTS; NEW CONSTRUCTION.

The proposed part 4658.4315 is a revision of the current part 4660.4930. The term "shall" was replaced by the term "must" in this item, to comply with official rulewriting standards. Also, a requirement was added for a floor drain in the area for washing food carts. This is necessary and reasonable to assure there is provision in the construction of the area for the draining of the water used to wash the food carts.

4658.4320 WASHING OF GARBAGE CANS; NEW CONSTRUCTION.

The proposed part 4658.4320 is a revision of the current part 4660.4940. The term "shall" was replaced by the term "must" in this item, to comply with official rulewriting standards. Also, a requirement was added for a floor drain in the area for washing garbage cans. This is necessary and reasonable to assure there is provision in the construction of the area for the draining of the water used to wash the garbage cans.

4658.4325 LAUNDRY, SIZE AND LOCATION; NEW CONSTRUCTION.

Subpart 1 Laundry: The proposed part 4658.4325, subpart 1 is a revision of the current part 4660.5000, subpart 1. The term "shall" was replaced by the term "must" in this item, to comply with official rulewriting standards. An appropriately sized and equipped laundry is

necessary and reasonable to maintain an adequate supply of clean linens for the entire nursing home, and to maintain each resident's supply of clean personal clothing.

Subpart 2 Entrance: The proposed part 4658.4325, subpart 2 is a revision of the current part 4660.5000, subpart 2. The term "shall" was replaced by the term "must" in this item, to comply with official rulewriting standards. The term "patients" was eliminated to reflect the terminology now used to refer to the persons living in nursing homes, namely "residents". It is necessary and reasonable to address the location of the entrance to a soiled linen collection room or to a laundry processing room in rule to assure the design of the nursing home will promote good infection control practices.

4658.4330 SOILED LINEN COLLECTION ROOM; NEW CONSTRUCTION.

Subpart 1 Soiled linen collection room: The proposed part 4658.4330, subpart 1 is a revision of the current part 4660.5010, subpart 1. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary and reasonable to require in rule that there be a soiled linen collection room to assure that the nursing home is designed to confine the soiled linens and minimize the possibility of contamination of linens as they move through and out of the laundry processing area.

Subpart 2 Location: The proposed part 4658.4330, subpart 2 is a revision of the current part 4660.5010, subpart 2. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. A "soiled to clean" flow of the laundry process is required to minimize the possibility of contamination of clean linen by soiled linen. The location of a door from the soiled linen collection room directly into the laundry processing room contributes to a continuous and efficient flow of linens, and more importantly restricts the area in the processing room where movement of soiled linen takes place, thereby minimizing the possibility of contamination of linens already sanitized, and of the spread of infections from linens not yet cleaned.

4658.4335 LAUNDRY PROCESSING ROOM; NEW CONSTRUCTION.

The proposed part 4658.4335 is a revision of the current part 4660.5020. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. A "soiled to clean" flow of the laundry process is required to minimize the possibility of contamination of clean linen by soiled linen. Separation of the laundry process from other functions of the nursing home is necessary and reasonable to provide the greatest degree of care for the items to be laundered and to minimize the possibility of the spread of infection from the soiled items to other areas and functions of the nursing home, and to minimize the possibility of contamination of cleaned items.

4658.4340 LAUNDRY EQUIPMENT; NEW CONSTRUCTION.

The proposed part 4658.4340 is a revision of the current part 4660.5030. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The rule is necessary and reasonable to assure that there will be sufficient equipment to perform all the necessary functions of a complete laundering process. The rule does not specify a certain number or size of equipment, but leaves the

selection of specific equipment to the nursing home. It is necessary and reasonable to require that any new or replacement washers have some method of measuring and displaying internal water temperatures to assure there is an effective way of determining whether the washer is using sufficiently high water temperatures to eliminate bacteria in the linens and clothing being washed, to maintain an appropriate level of infection control through the laundry operations.

4658.4345 CLEAN LINEN STORAGE; NEW CONSTRUCTION.

The proposed part 4658.4345 is a revision of the current part 4660.5040. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Separate, enclosed clean linen rooms, closets, or carts are necessary and reasonable to minimize the possibility of contamination by direct exposure to the laundry processing room or other areas of the nursing home over possibly relatively long periods of time. The separate clean linen room, closet, or carts (or a combination of those) provides a place for the clean linens outside of the laundry processing area, and provides a well-defined location (or locations) for staff to pick up clean linen efficiently for use in resident rooms and living areas.

4658.4350 LAUNDRY FOR PERSONAL CLOTHING; NEW CONSTRUCTION.

The proposed part 4658.4350 is a revision of the current part 4660.5050. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Language would be added to the current language to clarify that residential-grade equipment may be used for the washing of personal clothing for the residents. This is necessary and reasonable to legitimize a practice which has been allowed by the Department, and to provide an alternate method for washing residents' clothing (besides the commercial grade equipment necessary for linens) that should be less destructive to the clothing items which do not need sanitization or disinfection.

4658.4355 REFUSE; NEW CONSTRUCTION.

Subpart 1 Refuse area: The proposed part 4658.4355, subpart 1 is a revision to the first two sentences of the current part 4660.5200. The term "shall" was replaced by the term "must" in this item, to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 2 Incinerator: The proposed part 4658.4355, subpart 2 is a revision to the third sentence of the current part 4660.5200, and to the current part 4660.7100. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The two current rule parts addressing incinerators were combined into this proposed subpart to provide greater continuity of the rule and to group together all the language on incinerators. The applicable rule parts promulgated by the Minnesota Pollution Control Agency are included to provide specific information on where to locate those applicable rules.

4658.4360 COVERED ENTRANCE AREA; NEW CONSTRUCTION.

The proposed part 4658.4360 is new language in these state licensing rules. A covered entrance is necessary and reasonable to require in rule to assure the provision of a place where residents

can enter or leave the nursing home without being rained or snowed on, or without having sunlight glaring into their eyes. This is especially important to those residents being transported by stretcher or gurney. It is also important to residents (and staff) in the winter, when snowy or icy conditions can be threatening to the many residents who have some difficulty with mobility or steadiness on their feet. A covered entrance will provide for an area of relative safety from the elements, and an area which is relatively easier to maintain in a safe condition.

The accessibility guidelines implementing the federal Americans With Disabilities Act include a requirement for a protected entrance for medical care facilities, which includes nursing homes. The requirement reads:

6.2 Entrances. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.6.¹⁰

4658.4365 FACILITIES FOR PERSONNEL; NEW CONSTRUCTION.

The proposed part 4658.4365 is a revision of the current part 4660.5600. The term "shall" was replaced by the term "must", which is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes. This proposed part is necessary and reasonable to ensure that there will be a place for personnel to store their personal belongings, such as purses, coats, boots, and similar items, while they are duty, so those items do not need to be in the areas of the nursing home where services are provided, which could be a safety hazard for residents and also could be a problem for ensuring the security of personnel belongings. It is necessary and reasonable to require the provision of toilet facilities for personnel so that resident toilets are not routinely used by personnel, which could be a violation of resident privacy and accessibility to toilet facilities.

4658.4370 REHABILITATIVE SERVICES AREAS; NEW CONSTRUCTION.

Subpart 1 Specialized rehabilitative services area: The proposed part 4658.4370 is a revision to the current part 4660.5800. The proposed language also reflects the wider range of rehabilitations provided in many nursing homes, rather than just physical therapy (as the current rules address). In the twenty-some years since the current rules were promulgated, there has been an increase in the types of therapies being offered in nursing homes, and in the number of residents admitted to a nursing home for a short-term, therapy-intensive stay. The proposed language is necessary because it assures that all types of therapies provided by the nursing home will have adequate space and equipment to meet the therapy needs of the residents in that nursing home. It is reasonable to require visual privacy during treatment because privacy during treatment is a resident's right. It is necessary and reasonable to require a lavatory or sink to be conveniently located to the rehabilitation areas for infection control and comfort purposes, such as handwashing for residents and staff. It is necessary and reasonable to require space for administrative services to assure that there is provision made in construction for an administrative area so the therapists can document therapies provided and to store that documentation or other materials, and to require space for the storage of supplies and equipment to assure that access to them is convenient for staff and residents.

¹⁰ "Accessibility Guidelines for Buildings and Facilities", July 26, 1991 *Federal Register*, Vol. 56, No. 144.

Subpart 2 Physical therapy area: The proposed part 4658.4370, subpart 2 is a revision of one sentence of the current part 4660.5800, subpart 2. It is necessary and reasonable to require that the physical therapy area be provided with handwashing facilities (rather than just having them "conveniently located", as for the other therapies) because the nature of the services provided in physical therapy include the use of residents' and staff's hands, and it is appropriate to do handwashing for infection control and comfort purposes. The current rule language requires these handwashing facilities in the physical therapy area, so this is not a substantial change from current practice.

Subpart 3 Physical therapy area toilet room: The proposed part 4658.4370, subpart 3 is a revision of a portion of the current part 4660.5800, subpart 2 and of subpart 3 of that part. It is necessary to require that a toilet room be located within or adjacent to the physical therapy area to provide toilet facilities to residents utilizing physical therapy services without necessitating their going through a general use corridor to use a toilet. Often, residents in physical therapy sessions have loosened clothing, or have put on special clothing, and to have to readjust their clothing or redress to get to the toilet can be an obstacle to the timely use of the toilet. It is necessary and reasonable, then, to provide a toilet room within or adjacent to the physical therapy area to protect the health, comfort, and well-being of the residents.

4658.4375 BARBER AND BEAUTY SHOP SERVICES; NEW CONSTRUCTION.

The proposed part 4658.4375 is a revision of the current part 4660.5810, subpart 2. The term "shall" was replaced by the term "must", which is necessary and reasonable to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The language was revised to provide greater clarity and flexibility for new construction, while assuring that there will be space and equipment to provide for residents' grooming, hair washing, and hair drying, which directly affects the comfort and self-esteem of the resident.

4658.4390 PENALTIES FOR DIETARY, LAUNDRY, AND OTHER SERVICES; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4300, 4658.4305, 4658.4310, 4658.4315, 4658.4320, 4658.4325, 4658.4330, 4658.4335, 4658.4350, 4658.4355, 4658.4365, and 4658.4375. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4360 is set at \$200. The \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. The proposed part 4658.4360 addresses the covered entrance to the nursing home. The absence of a covered entrance to the nursing home can have a direct effect on the health, safety, and comfort of a resident. The Department believes that the \$200 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.4370 is \$150. The \$150 penalty assessment is assigned to those rules that do not directly impact on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4370 addresses the design of rehabilitative services areas and the convenient location of toilet rooms and handwashing facilities to those areas. The \$150 penalty assessment assigned to the proposed part 4658.4370 is necessary to assure that the design of new construction includes appropriate space and equipment for the specialized rehabilitative services offered by that nursing home. That space must also provide for resident privacy, and there be a lavatory or sink conveniently located to all specialized rehabilitative services areas, and handwashing facilities in and a toilet room in or adjacent to a physical therapy area. This language is not significantly different from current language, but merely provides standards for the construction of space and the provision of equipment for any rehabilitative services area provided in the nursing home. The Department believes that the \$150 fine level is appropriate.

CONSTRUCTION DETAILS, CHUTES, AND ELEVATORS; NEW CONSTRUCTION

4658.4400 AREA HEAT PROTECTION; NEW CONSTRUCTION.

The proposed part 4658.4400 is a revision of the current part 4660.6100. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4405 DOOR HANDLES; NEW CONSTRUCTION.

The proposed part 4658.4405 is a revision of the current part 4660.6400. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The language has been simplified to better reflect the intended applicability of the rule requiring the provision of lever type door handles.

4658.4410 DUMBWAITERS AND CONVEYORS; NEW CONSTRUCTION.

The proposed part 4658.4110 is a revision of the current part 4660.6500. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The language was also revised to more accurately cite the applicable state rules for the operation of dumbwaiters.

4658.4415 ELEVATORS; NEW CONSTRUCTION.

Subpart 1 Elevators: The proposed part 4658.4415, subpart 1 is a revision of the current part 4660.6600. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The language has been revised to more accurately reflect the applicable code to be followed for the design and construction of elevators. This is not a substantial change from the current rule, since the cited code is what must be complied with currently.

Subpart 2 Elevator cab size: The proposed part 4658.4415, subpart 2 is a revision of the current part 4660.7600. This size of elevator cab provides a method for the transporting of resident beds in the elevator, for the relocation of a bed within the nursing home or the

movement of a resident in bed. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4420 EXTERIOR MECHANICAL SHAFTS; NEW CONSTRUCTION.

The proposed part 4658.4420 is a revision of the current part 4660.6800. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The term "patients" was deleted to accurately reflect the proposed rule terminology and applicability.

4658.4425 FLOOR JOINTS; NEW CONSTRUCTION.

The proposed part 4658.4425 is a revision of the current part 4660.6910. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4430 NONSKID SURFACES; NEW CONSTRUCTION.

The proposed part 4658.4430 is a revision of the current part 4660.6920. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4435 GLASS PROTECTION; NEW CONSTRUCTION.

The proposed part 4658.4435 is a revision of the current part 4660.7000, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4440 LINEN AND TRASH CHUTES; NEW CONSTRUCTION.

The proposed part 4658.4440 is a revision of the current part 4660.7200. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The proposed language is not as specific as the current rule language because linen and trash chutes are adequately addressed in the State Building Code, which must be complied with.

4658.4445 OVERHEAD PIPING; NEW CONSTRUCTION.

The proposed part 4658.4445 is a revision of the current part 4660.7300. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary and reasonable to include greater specificity in the proposed rule language to provide assurance of construction to maintain infection control and sanitation.

4658.4450 PROTECTION RAILINGS; NEW CONSTRUCTION.

The proposed part 4658.4450 is a revision of the current part 4660.7400. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of

the State Revisor of Statutes. The language was streamlined in this part because the State Building Code addresses protection railings; it would be unnecessary to duplicate that language here.

4658.4455 CEILING HEIGHTS; NEW CONSTRUCTION.

The proposed part 4658.4455 is a revision to the current part 4660.6200, subpart 3. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4460 CEILINGS, WALLS, AND FLOORS; NEW CONSTRUCTION.

The proposed part 4658.4460 is a revision and compilation of the current parts 4660.6200, subpart 1, 4660.6900, and 4660.7500. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The language has been streamlined to provide one single rule part to reference for the special construction details for ceilings, walls, and floors.

4658.4490 PENALTIES FOR CONSTRUCTION DETAILS, CHUTES, AND ELEVATORS; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4400, 4658.4405, 4658.4410, 4658.4415, 4658.4420, 4658.4425, 4658.4430, 4658.4435, 4658.4440, 4658.4445, 4658.4450, 4658.4455, and 4658.4460. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

MECHANICAL SYSTEMS; NEW CONSTRUCTION

4658.4500 PLUMBING SYSTEMS; NEW CONSTRUCTION.

Subpart 1 Installation: The proposed part 4658.4500, subpart 1 is a revision of the current part 4660.8000, subpart 1. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The applicable rule chapter was included in the language to provide clarity and specificity to rule users on where to locate the Minnesota Plumbing Code in the state rules.

Subpart 2 Area drainage: The proposed part 4658.4500, subpart 2 is a revision of the current part 4660.8000, subpart 2; the only change is replacing "shall" with "must".

Subpart 3 Pipe insulation: The proposed part 4658.4500, subpart 3 is a revision of the current part 4660.8000, subpart 7; the only change is replacing "shall" with "must".

Subpart 4 Hot water supply: The proposed part 4658.4500, subpart 4 is a revision of the current part 4660.8000, subpart 8. The term "shall" was replaced by the term "must". The applicable rule chapter was included in the language to provide clarity and specificity to rule users on where to locate the Minnesota Plumbing Code in the state rules. A new Item D would be added to the rules that requires the capacity to supply water at a minimum temperature of 180 degrees for the mechanical sanitizing of nursing utensils. This item is necessary and reasonable to assure that new construction contains the capability to use hot water to effectively sanitize nursing utensils, in order to prevent the spread of infection, thereby protecting the health and safety of the residents and staff.

Subpart 5 Dishwashing machine: The proposed part 4658.4500, subpart 5 is a revision of the current part 4660.8000, subpart 9. The term "shall" was replaced by the term "must". The term "following" was replaced by the term "immediately after", which was necessary and reasonable to clarify the requirement for the location of the pressure gauge in relation to the reducing valve. This revision should not cause any problems since these are new construction standards for nursing homes, and will work with usual plumbing installation practices.

Subpart 6 Floor drains: The proposed part 4658.4500, subpart 6 is a revision of the current part 4660.8000, subpart 11. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4505 PLUMBING; NEW CONSTRUCTION.

Subpart 1 Institutional fittings: The proposed part 4658.4505, subpart 1 is a revision of the current part 4660.8010, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 2 Flushing rim service sinks or clinical sinks: The proposed part 4658.4505, subpart 2 is a revision of the current part 4660.8010, subpart 3. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 3 Sterilizer vent systems: The proposed part 4658.4505, subpart 3 is a revision of the current part 4660.8010, subpart 4. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4510 HEATING AND COOLING; NEW CONSTRUCTION.

Subpart 1 Design and installation: The proposed part 4658.4510, subpart 1 is a revision of the current part 4660.8200, subpart 1. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The required temperature range is consistent with the temperature range allowed in the federal certification regulations at 42 CFR 483.15(h)(6). This range does not conflict with the current state rules or statute which address temperatures in nursing homes, so there is not expected to be any significant change in operations or construction for nursing homes. Allowing a temperature range is necessary to provide some flexibility to nursing homes to vary the temperature in the facility according to the season and according to resident preferences, while still maintaining safe and comfortable air temperatures.

Subpart 2 Isolation of major components: The proposed part 4658.4510, subpart 2 is a revision of the current part 4660.8200, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 3 Controls and gauges: The proposed part 4658.4510, subpart 3 is a revision of the current part 4660.8200, subpart 3. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 4 Heating and cooling elements: The proposed part 4658.4510, subpart 4 is a revision of the current part 4660.8200, subpart 4. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The rule language was modified to include a reference to cooling units, to acknowledge and incorporate the requirements of Minnesota Statutes, section 144A.08, subdivision 1b, which addresses summer temperatures and humidity in newly constructed nursing homes.

Subpart 5 Forced flow room units: The proposed part 4658.4510, subpart 5 is a revision of the current part 4660.8200, subpart 5. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The recommendation found in the current rule has been made a requirement in these proposed rules; this means that, for new construction, the heating and cooling system must be so designed that recirculated air must be passed through the air filter. It is necessary to specify this in rule to assure that the system is designed to filter all air sent into areas in the nursing home. This is reasonable to provide for a relatively clean air supply for residents and staff, which can directly affect their health and safety.

4658.4515 VENTILATION REQUIREMENTS; NEW CONSTRUCTION.

The proposed part 4658.4515 is a revision of the current part 4660.8310, subpart 2. The term "shall" was replaced by the term "must" in this part, to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The text was expanded to provide necessary specificity in this rule part on the general ventilation requirements for new construction. The proposed language is reasonable because there are no significant differences from current rules nor current construction practices.

4658.4520 VENTILATION PRESSURE RELATIONSHIPS AND VENTILATION FOR CERTAIN AREAS IN NURSING HOMES, EXISTING AND NEW CONSTRUCTION.

The proposed part 4658.4520 is a revision of the current part 4660.9930. The term "shall" was replaced by the term "must." The term "patient" has been replaced by the term "resident" to reference the proposed rule terminology. The ventilation requirements for an examination and treatment room are not included in the proposed chart, because that room is not required in the proposed rules. Requirements are added for ventilation pressure relationships and ventilation for an isolation room and for a smoking room. While neither of these rooms are required rooms in the rules for new construction, they are commonly included in new construction plans, and it is necessary and reasonable to include the ventilation requirements for them to assure that there is proper and adequate ventilation to those rooms if included in new construction, to protect the health, safety, comfort, and well-being of the residents.

4658.4525 FRESH AIR INTAKES; NEW CONSTRUCTION.

The proposed part 4658.4525 is a revision of the current part 4660.8320. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The term "not less than", in the first and second sentences, has been replaced by the term "at least" to provide greater clarity and make the rule easier to understand.

4658.4530 HEIGHT OF REGISTERS; NEW CONSTRUCTION.

The proposed part 4658.4530 is a revision of the current part 4660.8330. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4535 DIETARY AREA; NEW CONSTRUCTION.

Subpart 1 Food preparation areas: The proposed part 4658.4535, subpart 1, is a revision of the current part 4660.8350. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary and reasonable to provide greater specificity in the proposed rules for ventilation in the food preparation area or areas to assure that there is adequate and proper ventilation provided in that area. Mechanical ventilation is necessary in the food preparation area to remove heat, humidity, and odors generated by equipment in the area.

Subpart 2 Dishwashing area: The proposed part 4658.4535, subpart 2, is a revision of the current part 4660.8350. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary and reasonable to provide greater specificity in the proposed rules for ventilation in the dishwashing area to assure that there is adequate and proper ventilation provided in that area. Mechanical ventilation is necessary in the dishwashing area to remove heat and humidity generated by equipment in that area, to provide comfortable working conditions for the staff.

Subpart 3 Exhaust ducts: The proposed part 4658.4535, subpart 2, is a revision of the last sentence in the current part 4660.8350. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4540 LAUNDRY AREA; NEW CONSTRUCTION.

The proposed part 4658.4540 is a revision of the current part 4660.8360. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4545 MECHANICAL ROOMS; NEW CONSTRUCTION.

The proposed part 4658.4545 is a revision of the current part 4660.8370. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The proposed language is necessary to ensure that there will be mechanical ventilation installed in those mechanical rooms with equipment using liquified petroleum gas (commonly known as LPG or LP gas) or other flammable liquid fuels. This rule

is necessary and reasonable to ensure there is the capability to eliminate dangerous vapors that can accumulate within these rooms. The requirement for mechanical ventilation, rather than gravity ventilation, is based on the vulnerability of the building population (generally, the nursing home population cannot evacuate the building quickly in the event of a fire or explosion), which is a possibility when LPG or flammable liquid fuels are in use.

4658.4550 FILTERS; NEW CONSTRUCTION.

Subpart 1 Air supply: The proposed part 4658.4550, subpart 1 is new language to the nursing home licensing rules, although it does encompass the intent of existing rules here and in other applicable codes. This subpart requires that any air supplied to the nursing home must be free from harmful particulate matter, any type of combustion products or contaminants, obnoxious odors, or exhausted air from the building or adjoining property. There is a need to assure that air intakes are not located where they would be so near sources of such contaminants that the contaminants would be drawn into the ventilation system and introduced into the resident's environment. The long term effects of a wide range of airborne contaminants in the continuous 24 hour environments of the nursing home resident is of great concern. Levels of contaminants in the air cannot be assumed to be acceptable just because they meet requirements imposed on industry for healthy workers in an 8 hour a day environment. It is reasonable to require provisions to minimize the introduction of any contaminants into the environment of nursing home residents because this is a highly susceptible population with a high percentage of already existing respiratory problems.

Subpart 2 Filters: The proposed part 4658.4550, subpart 2 is a revision of the current parts 4660.8340 and 4660.8380, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Additional language was added to this subpart to clarify the requirements for air filters in new construction. The filtration requirement is necessary to provide for the removal of contaminants which are carried to the air intakes by wind, and for re-circulated air, to remove contaminants generated within the nursing home which have become airborne through such actions as handling of soiled linen or clothing, vigorous bed making, vacuuming, coughing, sneezing, and smoking. The filtration requirement is reasonable because it is a standard provision in ventilation systems.

Subpart 3 Filter efficiencies: The proposed part 4658.4550, subpart 3 is a revision and expansion of the current part 4660.8380, subpart 2. The minimum number of filter beds and minimum filter efficiencies are based on standards developed by the American Society of Heating, Refrigeration, and Air-conditioning Engineers, Inc. (ASHRAE). ASHRAE is the main organization in the United States developing and publishing standards for air supply and air filters. It is necessary and reasonable to incorporate industry standards in these rules to assure the provision of safe air in the nursing home.

Subpart 4 Autoclave room: The proposed part 4658.4550, subpart 4 is a revision of the current part 4660.8380, subpart 3. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The text was reorganized to provide an easier understanding of the requirements, and to clarify that this subpart only applies when the nursing home decides to install an autoclave. There is no specific requirement that the nursing home must install an autoclave, but if one is installed, it is necessary and reasonable that adequate and appropriate ventilation is installed in the room where the autoclave is located.

4658.4590 PENALTIES FOR MECHANICAL SYSTEMS; NEW CONSTRUCTION RULE VIOLATIONS.

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4500, 4658.4505, 4658.4510, 4658.4515, 4658.4520, 4658.4525, 4658.4530, 4658.4535, 4658.4540, 4658.4545, and 4658.4550, subparts 2 to 4. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The only portion of this section of rules that could arguably be considered a new requirement is part 4658.4550, subpart 1. The proposed penalty assessment for noncompliance with a correction order for all of part 4658.4550 is set at \$200. The \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. The proposed part 4658.4550 addresses the air supply and air filters in new construction. The quality of the air in the nursing home can have a direct effect on the health, safety, comfort, and well-being of the residents. The Department believes that the \$200 fine level, for the entire part, is appropriate.

ELECTRICAL SYSTEMS; NEW CONSTRUCTION

4658.4600 DISTRIBUTION PANEL BOARDS; NEW CONSTRUCTION.

Subpart 1 Circuit index: The proposed part 4658.4600, subpart 1 is a revision of the current part 4660.8420, subpart 1. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 2 Panel boards: The proposed part 4658.4600, subpart 2 is a revision of the current part 4660.8420, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4605 CORRIDOR RECEPTACLES; NEW CONSTRUCTION.

The proposed part 4658.4605 is a revision of the current part 4660.8430. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4610 SWITCHES AND RECEPTACLES; NEW CONSTRUCTION.

The proposed part 4658.4610 is a revision of the current part 4660.8440. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4615 INTERIOR LIGHTING; NEW CONSTRUCTION.

The proposed part 4658.4615 is a revision of the current parts 4660.8450, 4660.8510, 4660.9900, and 4660.9910. The text is consistent with the interpretive guidelines for the federal certification regulation at 42 CFR 483.15(h)(5), which requires "adequate and comfortable lighting levels in all areas." Lighting is necessary and reasonable to generally move about and function safely, and to provide services and treatments for residents. Safety from falls and other accidental self injury, such as from bumping into things, is highly dependent on sight, and sight is highly dependent on adequate lighting. Increased lighting extends the view range and field of view, as well as depth perception, all of which are important to move about safely. Lighting and lighting patterns must be controlled to reduce accidents, as well as to invite use of areas by residents, and to permit residents to carry out tasks and increase functional ability.

This proposed rule part allows great flexibility in the construction of the nursing home to provide "adequate" and "comfortable" lighting. Both those terms are defined in the rule. "Adequate lighting" is defined as levels of illumination suitable to the tasks the resident chooses to perform or the nursing home staff must perform. The term "comfortable lighting" is defined in the proposed rule as minimizing glare and providing maximum resident control, where feasible, of the intensity, location, and direction of illuminations so that visually impaired residents can maintain or enhance independent functioning. The necessary minimum levels of illumination are explicitly spelled out in the current rules. However, the department continues to receive complaints from residents and staff about the lighting levels found in nursing homes. And those complaints vary - some residents and staff complain that the lighting level is too high in a certain area, while others complain the lighting level in an area is too low. It can be assumed that an acceptable lighting level varies from person to person and from task to task. By allowing the installation of rheostats, or dimmer switches as they are sometimes called, these rules will provide for an easy variation of the lighting level in an area of the nursing home, to fit the needs of the residents or staff.

Adequate and comfortable lighting is necessary for the well-being of the resident in more ways than just minimizing accident potential and improving ability to function. It also serves to minimize eye strain and the accompanying physical and psychosocial tension due to poor vision. Visual problems have sometimes been misinterpreted as mental impairment where inadequate lighting has impaired functional ability. Older people require a higher lighting level to perform a specific task than younger people do because the aging process affects the eyes. Colors can affect people psychologically, and the intensity and type of illumination can affect the perception of color. Enough light must be provided to allow distinguishing between different colors, because colors are a major orienting mechanism for nursing home residents. Required lighting provisions are reasonable because they relate directly to resident health, safety, and well-being.

4658.4620 FIRE ALARM SYSTEMS; NEW CONSTRUCTION.

The proposed part 4658.4620 is a revision of the current part 4660.8460. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The applicable rules promulgated by the State Fire Marshal regarding fire alarms and sprinkler systems have been cited to provide specificity for the users of these rules.

4658.4625 BEDROOM RECEPTACLES; NEW CONSTRUCTION.

The proposed part 4658.4625 is a revision of the current part 4660.8520. The term "shall" was

replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. In addition, greater specificity has been included to provide for an adequate number and location of receptacles for resident use. The requirement for at least one receptacle located between 16 inches and 20 inches above the floor is necessary and reasonable to provide at least one location for a resident in a wheelchair to have accessibility to a receptacle.

4658.4630 NIGHT LIGHTS; NEW CONSTRUCTION.

The proposed part 4658.4630 is a revision of the current part 4660.8530. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

4658.4635 NURSE CALL SYSTEM; NEW CONSTRUCTION.

Proposed language at 4658.4635 is a revision of current part 4660.8540. "Shall" has been replaced with "must" as recommended by the Office of the State Revisor of Statutes. The deletion of the reference to "patients", is necessary and reasonable to comply with the definition in this Chapter of the persons residing in nursing homes. Current rule requires an "electrical nurse call system" to be provided. Proposed language requires that the nursing home have a "communication system". The proposed language is reasonable because newer communication systems do not necessarily require electrical wiring through the network. This proposed change allows newer technology to be adapted to and used in the nursing home environment. This new technology might include, for example, communication through radio waves. The proposed language is consistent with federal certification language at 42 CFR 483.70(f), which most nursing homes in Minnesota are currently required to comply with.

Language at 4658.4635 also proposes the communication system be installed at both the nurses station and the nursing service areas (as found in current part 4660.8540). The proposed language in this part is necessary and reasonable because it clarifies which areas of the nursing home must be equipped to register an emergency call from a resident. Registering an emergency call at these areas would allow staff to be aware of residents in need of assistance, to enable them to provide timely assistance even when staff is not at the nurses station or in the corridors, and to enable staff to communicate to other staff when they need assistance in providing cares to residents.

Language is also proposed that requires the call cord, button, or other communication device to be placed within the resident's reach. The current part 4660.8540 states that a "nurse call" be provided at the head end of each resident's bed. The proposed language is necessary and reasonable because it clearly states that the call device must be within the resident's reach so the resident may activate the call. The location of the "nurse call" could be anywhere on or near the bed or on another object the resident is able to access. For many residents, trying to reach a nurse call button or switch that is not within their reach could lead to injury from falls or strains. Often, call lights are connected to the head of the bed; when the resident is located elsewhere in the room, the resident is unable to reach the call device. It is especially important for residents who do not ambulate or have another means of mobility to have access to the call device. The proposed language is reasonable because it is meant to assure resident access to a call device at all times should assistance from staff be needed to meet their physical or psychosocial health, safety, or well-being needs.

4658.4640 EMERGENCY ELECTRIC SERVICE; NEW CONSTRUCTION.

The proposed language at part 4658.4640 is a revision of the current part 4660.8560. In addition to grammatical changes, language proposed in this part requires that an emergency source of electrical power be provided and connected to the nurse call system. It is necessary to require an emergency source of electrical power to the nurse call system to assure that there is continuity of care for the residents. Nursing homes can be periodically without power from the normal utility service because of interruptions caused by storms, flooding, and failures of utility system components such as switches, fuses, and transformers. Power outages can last for anywhere from a few minutes to several days. Without emergency power to the nurse call system during these outages, there would be no way for many residents to communicate needs to the staff. The provision of an auxiliary source of electricity is reasonable as it provides for basic resident safety. The proposed rule assures that residents' health, safety, and well-being are able to be met during times of power failure.

4658.4690 PENALTIES FOR ELECTRICAL SYSTEMS; NEW CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.4600, 4658.4605, 4658.4610, 4658.4620, 4658.4625, 4658.4630, 4658.4635, and 4658.4640. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessment for the proposed part 4658.4615 is set at \$200. The \$200 penalty assessment level is assigned to those rules that may impact on the health or safety of residents. The proposed part 4658.4615 requires adequate and comfortable lighting in every room in the nursing home. This is not significantly different from the current rules which specify minimum footcandle levels in areas of the nursing home. The provision of lighting is necessary to protect the safety of residents. The Department believes that the \$200 fine level is appropriate.

EXISTING CONSTRUCTION

RESIDENT AREAS; EXISTING CONSTRUCTION

4658.5000 BEDROOM DESIGN; EXISTING CONSTRUCTION

Subpart 1 Design: The proposed language is a general statement addressing the design and equipment of resident bedrooms. The proposed language is necessary and reasonable because it assures that resident bedrooms are designed and equipped to meet the needs of residents in regards to nursing care, comfort, and privacy. The resident bedroom is the place where the

resident spends the majority of time, and it is necessary and reasonable to provide for minimum space and some comforts in the environment. Subpart 1 of the proposed part 4658.5000 is consistent with the federal certification language found at 42 CFR 483.70(d) and 42 CFR 483.70(d)(1)(iv).

Subpart 2 Usable floor area: The proposed part 4658.5000, subpart 2 is a revision of current part 4660.1430, subparts 1 and 2. The requirements for room sizes remains the same as current rule. The required usable floor area per bed is necessary and reasonable to assure some greater measure of safety and comfort for residents and staff.

Subpart 3 Access to exit: The proposed subpart 3 is identical to the second sentence in the current part 4660.1410, except for the replacement of the term "shall" with the term "must". This revision is necessary and reasonable to comply with rule-writing standards established by the Office of the State Revisor of Statutes. Proposed language is consistent with federal certification language at 42 CFR 483.70(d)(1)(iii).

Subpart 4 Bedroom shape: The proposed part 4658.5000, subpart 4 is a revision to the second sentence in the current part 4660.1440, subpart 1. The revision of the term "shall" to "must" is necessary and reasonable to comply with rule-writing standards. It is necessary and reasonable to edit the language by addressing the shape of the bedroom in the rule part to provide greater clarity and plainer language in this rule part. It is reasonable to require at least three feet of floor space at both sides and the foot end of each bed because it allows for bedside nursing care, and accommodates movement of residents in wheelchairs or with walkers.

Subpart 5 Distance from nurses' station: The proposed part 4658.5000, subpart 5 is based on the current part 4660.1420. However, the proposed language allows for greater maximum distances between resident bedrooms and the nurses' station. It is necessary and reasonable to have a maximum distance in rule to assure that a resident call to the nurses' station can be answered readily, and to assure that the travel distances for nursing staff are not so great as to compromise nursing care, infection control, and other services provided to the residents or for the resident bedrooms.

4658.5005 BEDROOM DOOR LOCKS; EXISTING CONSTRUCTION.

Subpart 1 Written policy: The proposed part 4658.5005, subpart 1 is almost identical to the current part 4660.1460, subpart 1, item A. The revisions, changing the term "shall" to "must" are necessary and reasonable to comply with standards for rule-writing established by the Office of the State Revisor of Statutes.

Subpart 2 Door locks: The proposed part 4658.5005, subpart 2 is almost identical to the current part 4660.1460, subpart 1, item B. Revisions consist of clarification that the locks addressed in this subpart are on resident bedroom doors, and changing the term "shall" to "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. These revisions are necessary and reasonable to provide clarification and specificity, and to comply with rule-writing standards. It is necessary and reasonable to require that exit from the room can be obtained without a key, to assure that residents have freedom to exit the bedroom. It is also necessary and reasonable to require that a pass key be available at the nurses' station to allow for entrance to a locked resident bedroom in an emergency.

4658.5010 CLOTHES WARDROBE OR CLOSET; EXISTING CONSTRUCTION

It is necessary and reasonable to require the nursing home to provide individual wardrobe or closet space in the resident's bedroom to assure that there is a location readily accessible to the resident for the storage of the resident's clothing and personal belongings. It is necessary and reasonable to state in rule that locks may be provided, with a pass key at the nurses' station, to allow nursing homes to determine whether to provide locks for the resident's wardrobe or closet space. The proposed part 4658.5010 is based on the current part 4660.1470, subpart 1, and is consistent with the federal certification regulation at 42 CFR 483.70(d)(2)(iv).

4658.5015 CORRIDOR HANDRAILS; EXISTING CONSTRUCTION.

The proposed part 4658.5015 is based on the current part 4660.1500, subpart 1. It is necessary and reasonable to include a rule requiring handrails on both sides of corridors to assure that handrails are provided for the comfort and safety of residents.

4658.5020 NURSING AREA; EXISTING CONSTRUCTION.

Subpart 1 Nurses' station: The proposed part 4658.5020, subpart 1 is based on the current part 4660.1600, subpart 1, and is consistent with federal certification regulation at 42 CFR 483.70(f). Editorial changes were done to the current rule language to provide for a clearer and easier to understand rule. It is necessary and reasonable to include a requirement for a nurses' station to assure that there is some place for nursing staff to be based at, and to provide for a place where resident calls are sent to and received by nursing staff, to assure residents have a method of communicating with nursing staff from their bedrooms, even if that communication consists only of indicating by bell or light or some such method that the resident requires assistance.

Subpart 2 Clean utility room: The proposed part 4658.5020, subpart 2, is a revision of the current part 4660.1800, subpart 1. It is necessary and reasonable to require a clean utility room within each nursing area to assure that there is a place for storage of clean items and supplies near the resident bedrooms.

Subpart 3 Soiled utility room: The proposed part 4658.5020 subpart 3, is a revision of the current part 4660.2200, subpart 1. It is necessary and reasonable to require a soiled utility room within each nursing area to assure that there are facilities for cleanup and disposal of waste materials. This soiled utility room must be readily accessible to the resident bedrooms, to assure appropriate cleaning and infection control. Handwashing facilities are necessary to provide a place where persons may clean their hands after handling soiled items, and a clinical service sink is necessary to provide a place to dispose of liquid wastes and to allow for at least rinsing of soiled linen and utensils, for infection control purposes.

4658.5025 TOILET ROOMS AND SANITARY FIXTURES; EXISTING CONSTRUCTION.

Subpart 1 Required number of sanitary fixtures: The proposed part 4658.5025, subpart 1, is a revision to the current part 4660.2400, subpart 1. It is necessary and reasonable to address the number of sanitary fixtures to assure that nursing homes meet minimum standards to protect the health, safety, comfort and well being of the facility's residents. The minimum numbers of sanitary fixtures required are based on the numbers of residents sharing toilet rooms and on the

number of showers or tubs necessary to provide for ample time for individual resident use. This is not a change from existing rules, so there will be no change for existing construction. It is necessary and reasonable to require toilet rooms to have lavatories that provide hot and cold water for cleanup and handwashing to provide for infection control to protect the health and safety of the residents and staff.

Subpart 2 Showers and tubs: The proposed part 4658.5025, subpart 2 is new language to the state nursing home licensing rules. It is necessary and reasonable to require, in these rules, that each nursing home be equipped with at least one shower and at least one tub to assure that resident choice will be allowed in their method of cleaning their body. This requirement will also assure that there be both a shower and a tub to provide flexibility to the nursing home staff in methods of providing cares and treatments to the residents.

4658.5030 CENTRAL BATHING AREA; EXISTING CONSTRUCTION.

Subpart 1 Fixtures: The proposed part 4658.5030, subpart 1, is almost identical to the current part 4660.2630, subpart 1, with the exception of the replacement of the term "shall" with the term "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes.

Subpart 2 General requirements: The proposed part 4658.5030, subpart 2, is a revision of the current part 4660.2630, subpart 2. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The proposed rule is necessary and reasonable to assure resident privacy, accessibility, and safety in the central bathing area.

4658.5035 HANDWASHING FACILITIES; EXISTING CONSTRUCTION.

The proposed part 4658.5035 is a revision of the current part 4655.7200. Also, in the current Chapter 4660, handwashing facilities are required in many locations throughout the nursing home. Many of those specific locations have not been carried forward to these proposed rules because, in addition to the traditional soap and hot water, there are alternate methods of cleaning and sanitizing hands which are acceptable in many situations. However, there is a need for handwashing facilities for persons providing services to residents, to be located somewhere in the nursing home, because there are times and situations where the only acceptable method of washing a person's hands is in a sink with warm or hot water and soap. It is necessary to require these handwashing facilities, and single service towels, to adequately and appropriately control the spread of infections in the nursing home. The proposed language is reasonable because it provides for that infection control while allowing some flexibility for the location or locations of the handwashing facilities.

4658.5040 ROOM LABELING; EXISTING CONSTRUCTION.

The proposed part 4658.5040 is a revision of the current part 4660.3000. The requirement for labeling resident bedrooms using a system of numbers is the same as the current rule. The language for labeling services has been revised somewhat to allow some flexibility in the labeling of those rooms. It is necessary to require that service rooms be labeled to assure that the contents of those rooms can be readily ascertained by persons that are looking for a certain room or item, and for purposes of resident safety. Nursing homes may continue to choose to

label services rooms using a system of numbers, or may choose to label the service rooms using text or even pictures to identify the room.

4658.5090 PENALTIES FOR RESIDENT AREAS; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed rule parts 4658.5000 subparts 2 to 5, 4658.5005, 4658.5010, 4658.5015, 4658.5020, 4658.5025 subpart 1, 4658.5030, 4658.5035, and 4658.5040. The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to assure compliance with applicable statutes and this rule chapter.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.5000, subpart 1 is set at \$200. The \$200 penalty assessment is assigned to those rules that may impact on the health or safety of residents. The proposed part 4658.4105, subpart 1 addresses the design and equipment of resident bedrooms. If a resident bedroom is not conducive to the provision of nursing care, or the comfort and privacy of a resident, that can have a direct effect on the health of the resident. The Department believes that the \$50 fine level is appropriate.

The proposed penalty assessment for noncompliance with a correction order for the proposed part 4658.5025, subpart 2 is \$150. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health or safety of residents but do impact on the comfort or well-being of residents. The proposed part 4658.4135, subpart 2 requires that there be at least one tub and at least one shower in each nursing home. Many residents have a strong preference for one or the other type of fixture for cleaning their body, and some residents have conditions which require the use of one or the other. The absence of a shower or tub can have a direct impact on the comfort of residents who wish to use a shower or tub. The Department believes that the \$150 fine level is appropriate.

SUPPORTIVE SERVICES; EXISTING CONSTRUCTION

4658.5100 DINING, DAYROOM, AND ACTIVITY AREAS; EXISTING CONSTRUCTION

Subpart 1 Area: The proposed part 4658.5100, subpart 1 is based on the current part 4660.4810, subpart 1, except there is no minimum requirement for square footage in the dining, dayroom and activity areas. Current part 4655.7300, subparts 1 and 2 imply that there must be dining rooms and dayrooms because those subparts refer to furnishings for these rooms. The current part 4655.5200, subpart 8 requires appropriate space for activities. It is necessary to require that there be a dining room, dayroom, and activities areas to assure that residents are able to move around and to be comfortable in those areas. The rules are reasonable because the areas involved form an integral part of the total psychosocial environment needed by nursing home residents. In addition to being a nursing care institution, the nursing home is also a home

for its residents. It should be as home-like as possible, provide space and amenities that can support a normal reasonable living pattern, and offer opportunities for the pursuit of personal interests. The proposed rule is reasonable because it assures that there will be space for residents to spend time in, other than in their bedroom, and because the proposed language allows flexibility in the design of that space to accommodate resident needs and choices, and to provide the necessary cares and services offered by that nursing home. The lack of specific square footage requirements allows the nursing home to have areas that are performance oriented. Space would be expected to support specific resident needs as identified in the resident's comprehensive plan of care.

Subpart 2 Space for adult day care: The proposed part 4658.5100, subpart 2 is a revision of the current part 4660.4810, subpart 2. The changes to the current language, as proposed in this subpart, provide clarification of the applicable state rules for adult day care provided in a nursing home. It is necessary and reasonable to reference those rules in this subpart to provide guidance to providers, consumers, and regulators on the existence of those rules, to assure that sufficient space is provided to meet the needs of both the nursing home residents and those persons coming to the nursing home for adult day care services.

4658.5190 PENALTIES FOR SUPPORTIVE SERVICES; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

This section of proposed rules is not significantly different from current rule language. The proposed fine for noncompliance with the proposed part 4658.5190 is the same as that for the comparable section in the current rules. That fine is set at \$150. The \$150 penalty assessment is assigned to those rules that may impact on the comfort or well-being of residents. The Department believes that the \$150 fine level is appropriate.

DIETARY, LAUNDRY, AND OTHER FACILITIES; EXISTING CONSTRUCTION

4658.5200 FOOD SERVICE EQUIPMENT; EXISTING CONSTRUCTION

Subpart 1 Food service equipment: Language in the proposed part 4658.5200, subpart 1 is patterned after the current part 4660.4910, subpart 5. "Shall" has been replaced with "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary to include the proposed language to assure that food service equipment meets the necessary standards if the equipment is replaced. Proposed language referencing the incorporated NSF International standard is reasonable because NSF International is the main national organization researching and issuing standards for food service equipment, and those standards are routinely used in industry.

Subpart 2 Cutting boards: The proposed part 4658.5200, subpart 2 is a modification of existing part 4660.4910, subpart 3. The current language relating to "hard rubber and high-pressure laminate" is outdated and has been deleted and the term "shall" has been replaced by "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Proposed language is necessary to assure that cutting boards or similar use table tops

are constructed of material conducive to cleaning and maintained in a sanitary manner to prevent the harborage of organisms that could cause the health or welfare of residents to be encroached.

Subpart 3 Scullery sink: The proposed subpart 3 is modeled after current parts 4660.4910, subpart 4 and 4655.8830. The requirement for specific sizes of drainboards and sink compartments is not included in these proposed rules. The proposed language allows the nursing homes flexibility to install equipment that meets the specific needs of each nursing home. The proposed language, "for manual washing, rinsing, and sanitizing of utensils and equipment", has been added to clarify the purpose of the scullery sink. In addition, the proposed language expands on current language to clarify the rule intent, by requiring the drainboards to be located at each end of the sink "for proper handling of soiled utensils before washing and for cleaned utensils following sanitizing" and "to be located so as not to interfere with the proper use of the utensil washing facilities". Proposed language is necessary and reasonable because it clarifies the reason for the scullery sink and drainboards and also explains when the third compartment would not be required.

4658.5205 LAUNDRY; EXISTING CONSTRUCTION

Language addressing laundry at the proposed part 4658.5205 contains identical language to the current part 4660.5000, subpart 1 except that "nursing home" replaces "facility", and "shall" is replaced by "must" to comply with rulewriting standards. The proposed language is necessary and reasonable because it places responsibility on the nursing home to have a laundry system that effectively cleans linen and personal clothing of the residents. The proposed language allows the nursing home to determine the size of the laundry and how the laundry will be equipped to meet the laundering needs of the nursing home.

4658.5210 SOILED LINEN COLLECTION ROOM; EXISTING CONSTRUCTION

The proposed part 4658.5205 matches current language at 4660.5010, subpart 1. The term "shall" was replaced by the term "must", to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The proposed language is necessary and reasonable because it promotes infection control practices by keeping soiled linen separate from clean linen.

4658.5215 LAUNDRY EQUIPMENT; EXISTING CONSTRUCTION

The proposed language for part 4658.5215 is a revision of the current part 4660.5030. Specific equipment such as "washers, extractors, tumblers, or combinations of these as well as ironers", as currently found in part 4660.5030, has not been included in this proposed rule. It is reasonable to make the proposed rule more general in nature because it allows the nursing home to determine the equipment required to meet the needs of the nursing home, and to use equipment that incorporates technological advances. The last sentence in the proposed rule is necessary to assure that any newly installed or replacement washer contains a method to assure that the washer provides the hot water temperature required in part 4658.4500, subpart 4, item C. The language proposed in this rule is necessary to protect the health and safety of residents in the nursing home by ensuring the provision of necessary hot water temperatures.

4658.5220 CLEAN LINEN STORAGE; EXISTING CONSTRUCTION

Language proposed in this part is a revision of the current part 4660.5040. "Closets or enclosed

carts" has been added to the proposed rule to allow for flexibility in the manner of storage of clean linens. It is necessary to update the proposed language to reflect the current standards of practice. The language is reasonable because it allows several types of storage to be used to meet the goal of keeping linens clean, and allows greater flexibility on keeping those clean linens readily accessible to nursing home staff.

4658.5225 LAUNDRY FOR PERSONAL CLOTHING; EXISTING CONSTRUCTION

The proposed part 4658.5225 is a revision of the current part 4660.5050. The term "shall" has been replaced with "must", as recommended by the Office of the State Revisor of Statutes. A sentence has been added to the current language clarifying that residential-grade equipment may be used for the washing of personal clothing. This language is necessary and reasonable because it clarifies, and puts into rule, that a nursing home does not necessarily have to use the commercial grade washers to wash residents' personal clothing. Those commercial grade washers can do damage to personal clothing, either through the operating cycle or through the water temperatures used. The proposed language protects the comfort and well-being of residents by allowing a method of preserving their personal clothing in a better condition.

4658.5230 REFUSE; EXISTING CONSTRUCTION

Subpart 1 Refuse area: The proposed language at part 4658.5230, subpart 1 matches the first two sentences of the current part 4660.5200, with the exception that all references to "shall" have been changed to "must" as recommended by the Office of the State Revisor of Statutes.

Subpart 2 Incinerator: Subpart 2 of this proposed part matches the last sentence of current parts 4660.5200 and 4660.7100, except "shall" has been replaced with "must" as recommended by the Office of the State Revisor of Statutes. The proposed rule requires an incinerator, if provided, to comply with the applicable rule requirements of the Minnesota Pollution Control Agency. This language is necessary because it clarifies that incinerators must be in compliance with those other rules, which were promulgated since the promulgation of the current nursing home licensing rules.

4658.5235 FACILITIES FOR PERSONNEL; EXISTING CONSTRUCTION

Proposed language dealing with facilities for personnel is based on the current part 4660.5600. The inclusion of this proposed part is necessary and reasonable to inform the users of these rules of those other applicable rules. This proposed part is necessary and reasonable to ensure that there will be a place for personnel to store their personal belongings, such as purses, coats, boots, and similar items, while they are duty, so those items do not need to be in the areas of the nursing home where services are provided, which could be a safety hazard for residents and also could be a problem for ensuring the security of personnel belongings. It is necessary and reasonable to require the provision of toilet facilities for personnel so that resident toilets are not routinely used by personnel, which could be a violation of resident privacy and accessibility to toilet facilities.

4658.5240 REHABILITATIVE SERVICES AREAS; EXISTING CONSTRUCTION

Subpart 1 Specialized rehabilitative therapy area: Language at the proposed part 4658.5240 is patterned after the current part 4660.5800. The proposed language is separated into 2

subparts to clarify the responsibilities of the nursing home to provide appropriate space and equipment for all therapies provided, not just physical therapy. There is an increase in therapies being offered in nursing homes and in the number of short-term, therapy-intensive stays. Proposed language is necessary because it assures that all types of therapies have adequate space and equipment to meet the needs of the residents. It is reasonable to require visual privacy during treatment because privacy during treatment is a resident's right. It is necessary to require a lavatory or sink to be conveniently located to the rehabilitative areas for sanitation purposes, such as cleaning residents' and staff's hands when necessary. Lastly, it is reasonable to require space for administrative services and for storage of supplies to assure that access to these areas or supplies is convenient for residents.

Subpart 2 Physical therapy area: Subpart 2 pertains specifically to physical therapy and includes language as currently found in part 4660.5800. A lavatory or sink and a single-service towel dispenser are necessary for infection control purposes if a physical therapy area is provided in the nursing home. It is reasonable to require a toilet room to be conveniently located to the physical therapy area to accommodate residents who need to use the toilet. Frequently, the physical therapy area is located a considerable distance from the resident rooms and it would not be feasible to return a resident to the resident's room to use the toilet.

4658.5245 BARBER AND BEAUTY SHOP SERVICES ROOM; EXISTING CONSTRUCTION

Proposed language at part 4658.5245 is patterned after current part 4660.5810. The term "shall" has been replaced with "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. The stipulation that this rule part only apply to nursing home buildings constructed after 1972 is necessary and reasonable to include because these are requirements for existing construction, and these requirements were not in place until 1972 for any nursing home. To require a room equipped for barber and beauty shop services to be placed in those buildings constructed prior to the promulgation of the 1972 nursing home licensing rules would not be reasonable nor necessary. Current requirements for a shampoo sink, lavatory and storage space have not been included in the proposed language in order to allow for flexibility in the equipping of that room. Proposed language requires the room to be "equipped" for the provision of barber and beauty shop services. This could include providing items such as a shampoo sink, lavatory and storage space, or other items necessary to provide the barber and beauty shop services offered by or through the nursing home. The proposed language is necessary because it allows residents to decide if they wish to receive these services in a setting similar to the community or to leave the nursing home for this service. Proposed language is reasonable because it would be difficult for many residents to leave the nursing home to receive this service, and so ensures that there is a room in the nursing home equipped to provide barber and beauty shop services.

4658.5290 PENALTIES FOR DIETARY, LAUNDRY, AND OTHER SERVICES; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

This section of proposed rules is not significantly different from current rule language. The proposed fines for noncompliance with this section is the same as those for the comparable

sections in the current rules. This includes the fines for proposed parts 4658.5200, 4658.5205, 4658.5210, 4658.5215, 4658.5220, 4658.5225, 4658.5230, 4658.5235, 4658.5240 and 4658.5245.

CONSTRUCTION DETAILS; EXISTING CONSTRUCTION

4658.5300 AREA HEAT PROTECTION; EXISTING CONSTRUCTION

The proposed language for part 4658.5300 is based on the current part 4660.6100. The term "patients" has been deleted, and "shall" was changed to "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. Proposed language is necessary to protect residents while at the same time providing comfortable and safe temperatures to assure resident health, comfort, well-being, and safety. It is reasonable to expect that the nursing home will maintain living areas that support resident safety and comfort.

4658.5305 NONSKID SURFACES; EXISTING CONSTRUCTION

Language at proposed part 4658.5305 is the same as that found in current part 4660.6920. It is necessary and reasonable to include this language in the proposed rule because of the safety and security it affords residents. Without these precautions, residents would be prone to slipping and possibly being injured. This proposed language assures that the health, safety, and comfort of residents is protected through the provision of non-slip surfaces.

4658.5310 GLASS PROTECTION; EXISTING CONSTRUCTION

Proposed language at part 4658.5305 is the same language as is currently found in part 4660.7000, except the term "shall" has been replaced with "must" to comply with rulewriting standards established by the Office of the State Revisor of Statutes. It is necessary for the nursing home to be concerned about resident, visitor, and staff safety. Language in this proposed rule is reasonable because it supports resident safety. People would be more apt to walk into windows, glass partitions or glass doors if they were left unmarked. Some residents having poor vision could possibly be spared an injury if the glass was marked to draw their attention to it.

4658.5315 CEILINGS, WALLS, AND FLOORS; EXISTING CONSTRUCTION

Language addressing ceilings, walls and floors is patterned after current parts 4660.6200, 4660.7800, subpart 2, 4660.7500, subpart 1, and 4660.6900, subpart 1. This proposed language is necessary and reasonable because it promotes resident comfort, safety, and well-being. Because walls and floors are subject to frequent spills or splashes it is necessary that they be easily cleanable. Easily cleanable surfaces promote a better use of staff time in addition to maintaining a clean appearance, and frequent cleaning will not significantly damage that surface. Ceilings in high humidity areas such as tub or shower rooms need to be provided with a finish that is able to be easily maintained and will not absorb the moisture, thus prevent unnecessary damage to that ceiling. The provision of nonabsorbent surfaces will help eliminate the harborage of molds and mildews which could adversely affect residents. Good finish and maintenance of ceilings and walls is necessary to avoid the falling of chipped paint into residents' food or eyes. Many nursing home residents are frail, unsteady, and do not get around easily. It is essential

that all residents are able to ambulate safely without the fear of falling on a slippery surface. Staff in the dietary department would also be especially prone to falling on slippery floors without having the protection of grease resistant surfaces. The dishwashing area of the dietary department frequently becomes wet and would pose a danger to staff if the flooring was not constructed of nonslip material. Because many residents in nursing homes are mobile through the use of wheelchairs, carpeting must be constructed in a way that promotes resident mobility while at the same being cleanable, for sanitation purposes.

4658.5390 PENALTIES FOR CONSTRUCTION DETAILS; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

This section of proposed rules is not significantly different from current rule language. The proposed fines for noncompliance with this section is the same as those for the comparable sections in the current rules. This includes the fines for proposed parts 4658.5300, 4658.5305, 4658.5310, and 4658.5315.

HEATING AND VENTILATION SYSTEMS; EXISTING CONSTRUCTION

4658.5400 HEATING SYSTEM; EXISTING CONSTRUCTION

The proposed part 4658.5400 is a revision of portions of the current part 4660.7800, subpart 6. The term "shall" has been replaced with "must" as recommended by the Office of the State Revisor of Statutes. "Living" areas in the current rule has been replaced with "resident" areas and "during the heating season" has been added to the proposed rule. These changes were made for clarification purposes. The current part 4660.7800, subpart 6 requires a heating system capable of maintaining a minimum temperature of 75 degrees Fahrenheit in living areas. This proposed language would revise that minimum temperature to 71 degrees Fahrenheit. This revision is necessary and reasonable to assure protection of residents, and to be consistent with the minimum temperature required during the heating seasons in the federal certification language. It is necessary and reasonable to provide a minimum temperature requirement to assure the health, safety, well-being, and comfort of the residents. With this proposed language, air conditioning would not be required to be installed in existing nursing homes, since the proposed language only addresses the heating season.

4658.5405 VENTILATION REQUIREMENTS; EXISTING CONSTRUCTION

Language proposed in the first sentence of part 4658.5405 is a revision of the current part 4660.8310, and contains some grammatical changes. The last sentence of the proposed rule is new language requiring ventilation to be provided in accordance with part 4658.4520. It is necessary and reasonable to state that there must be mechanical exhaust ventilation in nursing homes and to specify that ventilation must be in accordance with the chart in 4658.4520 to provide exhaust ventilation that assures residents' health, comfort, and well-being.

4658.5410 MECHANICAL ROOMS; EXISTING CONSTRUCTION

The proposed part 4658.5410 is a revision of the current part 4660.8370, which applied to new construction projects following the promulgation of that rule part in 1972. It is necessary and reasonable to address ventilation in those below-grade mechanical rooms where liquid petroleum gas (LPG or LP gas) is used in equipment, to ensure that nursing homes continue to provide continuous mechanical ventilation to ensure that vapors do not build up in that room. A buildup of vapors can be a fire or explosion hazard, which is especially dangerous in a nursing home where it is not generally possible to rapidly evacuate the residents in the event of a fire or explosion. By providing the ventilation, the risk of fire or explosion from the LPG is greatly diminished.

4658.5415 FILTERS; EXISTING CONSTRUCTION

The proposed part 4658.5415, dealing with filters, is the same language contained in the current part 4660.6300, except the term "facility" has been changed to "nursing home", and "shall" has been replaced with "must" to comply with rule-writing standards. The inclusion of this language in the proposed rules is necessary and reasonable to assure resident health, safety, and well-being from air contaminants which may affect the air quality for residents and staff.

4658.5490 PENALTIES FOR HEATING AND VENTILATION SYSTEMS; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

Penalty assessments for proposed rules which are based directly on current rule language have not been changed. This includes the proposed parts 4658.5400, 4658.5405, 4658.5410, and 4658.5415. The Department believes that the assigned fine levels are appropriate.

ELECTRICAL SYSTEMS; EXISTING CONSTRUCTION

4658.5500 DISTRIBUTION PANEL BOARDS; EXISTING CONSTRUCTION.

The proposed language in part 4658.5500 is a revision of the current part 4660.8420, subpart 1. It is necessary and reasonable to require a typewritten index to facilitate finding circuits whenever needed. The current rule *recommends* that doors on electrical panel boards accessible to patients be equipped with a lock. The proposed language requiring locks on the electrical panel board door is necessary to assure resident safety by limiting access to a potentially hazardous area.

4658.5505 INTERIOR LIGHTING; EXISTING CONSTRUCTION.

Rule language proposed at part 4658.5505 requires a source of general illumination in every room that is suitable to tasks performed. This language is a revision of current part 4660.8450, subpart 1, which requires a specific number of footcandles in various areas in the nursing home. While both the current rule and the proposed rule require a reading light in the resident's bedroom, proposed language allows the nursing home flexibility by not specifying a minimum number of footcandles to be provided. The proposed language is necessary because it clarifies that a source of illumination, or lighting, must be provided in every room to meet the needs of

residents and staff. Language proposed at 4658.5505 is reasonable because it allows the nursing home flexibility to meet to meet the residents' needs. One way that this can be done is to install rheostats which would permit the nursing home to adjust illumination levels that are suitable to tasks performed. Residents sometimes complain of lighting glare and inadequate lighting levels in specific areas of the nursing home. In addition, staff sometimes need additional lighting to examine residents and provide cares. The important issue in this proposed rule is to assure that residents and staff have lighting levels that meet their needs.

4658.5510 FIRE ALARM SYSTEMS; EXISTING CONSTRUCTION.

Language proposed at 4658.5510 is the same language contained in part 4660.8460 pertaining to existing construction, except the term "shall" has been changed to "must" to comply with rule-writing standards. The Office of the State Revisor of Statutes currently recommends using the term "must" rather than the term "shall" in state rules because it is a more appropriate and stronger term in which to express requirements. It is necessary and reasonable to include rules pertaining to fire alarm and sprinkler systems to assure that staff are warned of fires and are able to take precautions to keep residents safe. It is reasonable to require these systems be in accordance with the requirements of the state fire marshal because the nursing home would have to follow the fire marshal's rules and not be required to follow an additional set of rules.

4658.5515 NURSE CALL SYSTEM; EXISTING CONSTRUCTION

The proposed language is a revision of the current part 4660.8540. "Shall" has been replaced with "must" as recommended by the Office of the State Revisor of Statutes. The deletion of the reference to "patients", is necessary and reasonable to comply with the definition in this Chapter of the persons residing in nursing homes. "An electrical call system" has been replaced with "a communication system". Some newer communication systems do not require electrical wiring through the network. This proposed change allows newer technology to be adapted the nursing home environment, for example, communication through radio waves. It is reasonable to make this change because it continues the standard of providing protection for residents, as well as being consistent with federal certification language at 42 CFR 483.70(f). It is necessary to have a communication system to assure residents are able to alert staff to their needs. It is expected that call cords, buttons or other communication mechanisms be place within the resident's reach, so residents have a means of communicating with staff.

4658.5520 EMERGENCY ELECTRIC SERVICE; EXISTING CONSTRUCTION.

Language proposed at part 4658.5520 is a combination and revision of the current part 4660.8560, and is consistent with federal certification language at 42 CFR 483.70(b)(1). Language has been added to the proposed rule to help clarify what electrical services must be maintained in the nursing home if there should be an interruption of the normal electrical power supply. The proposed language is necessary and reasonable to assure that functioning of the systems which support the health, safety, and well-being of residents is maintained at all times. Proposed language was added which requires the emergency generator, if provided, to be operated and tested in accordance with the manufacturer's instructions. This proposed language gives a reasonable assurance that the generator will work in time of need, not unlike the testing of the civil defense warning systems tested the first Wednesdays of the month for the general population.

4658.5590 PENALTIES FOR ELECTRICAL SYSTEMS; EXISTING CONSTRUCTION RULE VIOLATIONS

See the discussion regarding the establishment of penalty assessment levels under parts 4658.0191, 4658.0192, and 4658.0193 above.

This section of proposed rules is not significantly different from current rule language. The proposed fines for noncompliance with this section is the same as those for the comparable sections in the current rules. This includes the fines for proposed parts 4658.5500, 4658.5505, 4658.5510, 4658.5515, and 4658.5520.

REVISIONS TO CHAPTER 4660:

PART 4660.0090 SCOPE

Following the promulgation of the proposed parts of Chapter 4658, and the repeal of the listed parts of Chapters 4655 and 4660, Chapter 4660 will only apply to the physical plant of boarding care homes. It is necessary and reasonable to revise part 4660.0090 to accurately reflect the applicable scope of that rule chapter.

REVISIONS TO CHAPTER 9050:

With this set of proposed rules, there are a number of revisions to *Minnesota Rules*, Chapter 9050, which governs the operations of the Minnesota Veterans Homes. The revisions to parts of Chapter 9050 are only to update the references to rules in the nursing home licensing rules. Where necessary, references to rules in Chapter 4655 would be revised to accurately reflect the location of those rules which are now found in Chapter 4658.

REPEALED PARTS

There are several parts of current rules found in Chapter 4655 which are being repealed as part of the process of promulgation of the new Chapter 4658, which is specific to licensing nursing homes in Minnesota. Being repealed are parts 4655.0100, subparts 4, 8, and 10; 4655.7500; 4655.8000; 4655.9070; 4655.9300; 4655.9320; 4655.9321; 4655.9322; 4655.9323; 465.9324; 4655.9325; 4655.9326; 4655.9327; 4655.9328; 4655.9329; 4655.9330; 4655.9331; 4655.9332; 4655.9333; 4655.9334; 4655.9335; 4655.9336; 4655.9337; 4655.9338; 4655.9339; and 4655.9341.

Parts 4655.0100, subparts 4, 8, and 10; 4655.7500; 4655.8000; and 4655.9070 are specific to nursing homes, and would be replaced by proposed parts in Chapter 4658. Part 4655.0100 contains definitions; those which only apply to nursing homes are no longer necessary to have in Chapter 4655. Part 4655.7500 was determined to be no longer necessary to have in rule, and is not specifically replaced in Chapter 4658. Part 4655.8000, Linen and Nursing Utensils, would be replaced by parts 4658.0800, Infection Control, and the proposed parts 4658.1410, Linen and 4658.1415, Plant Housekeeping, Operation, and Maintenance. Part 4655.9070, Housekeeping Rules Applicable Only to Nursing Homes, would be also replaced by part 4658.0800, Infection Control and the proposed part 4658.1415, Plant Housekeeping, Operation, and Maintenance.

Parts 4655.9300; 4655.9320; 4655.9321; 4655.9322; 4655.9323; 465.9324; 4655.9325; 4655.9326; 4655.9327; 4655.9328; 4655.9329; 4655.9330; 4655.9331; 4655.9332; 4655.9333; 4655.9334; 4655.9335; 4655.9336; 4655.9337; 4655.9338; 4655.9339; and 4655.9341 are part of the section of rules in Chapter 4655 which list the penalties for noncompliance with correction orders for rules in Chapter 4655. These rule parts have been replaced with parts in Chapter 4658. Rule parts addressing the penalties for noncompliance with correction orders for Chapter 4658 are located at the end of each section of the rules in that chapter. For example, the penalties for noncompliance with a correction order for Part 4658.0200 are located in Part 4658.0290.

The current Chapter 4660 contains rules for the physical plant of both nursing homes and boarding care homes. With the promulgation of these proposed rules, it is necessary and reasonable to repeal those parts of Chapter 4660 which address physical plant requirements for nursing homes. The current parts 4660.1300; 4660.1400; 4660.1410; 4660.1420; 4660.1430; 4660.1440; 4660.1450; 4660.1460; 4660.1470; 4660.1480; 4660.1500; 4660.1600; 4660.1700; 4660.1800; 4660.1900; 4660.2000; 4660.2100; 4660.2200; 4660.2300; 4660.2400; 4660.2500; 4660.2600; 4660.2610; 4660.2620; 4660.2630; 4660.2640; 4660.2700; 4660.2800; 4660.2900; 4660.3000; 4660.3100; 4660.3200; 4660.3300; 4660.5700; 4660.5800; 4660.5810; 4660.7600; 4660.8010; 4660.8300; 4660.8380; 4660.8410; 4660.8500; 4660.8510; 4660.8520; 4660.8530; 4660.8540; 4660.8550; 4660.8560; 4660.8700; 4660.9910; 4660.9920; and 4660.9930, will be repealed. These rule parts address physical plant requirements for nursing homes only.

EFFECTIVE DATE

The department is proposing that these rules will become effective 90 days after the date of publication in the *State Register* of the notice of adoption of final rules. It is necessary to specify a length of time in the proposed rules so all interested parties will be informed of that time frame. Allowing 90 days after publication until the effective date is reasonable to ensure that providers, consumers, and regulators have ample time to learn about the rules and to prepare to implement them.

STATEMENT OF ANTICIPATED COSTS AND BENEFITS

Minnesota Statutes, section 144A.29, subdivision 4 (1993) states that:

Each rule promulgated by the commissioner of health pursuant to sections 144A.01 to 144A.15 shall contain a short statement of the anticipated costs and benefits to be derived from the provisions of this rule.

This law requires that the Department of Health estimate the cost that a nursing home will incur as a result of the promulgation of the rules. This cost estimate must also be accompanied by an explanation of the benefits that will result from the new rules. This analysis will be helpful in ascertaining the total costs of the rules.

Since a substantial portion of the nursing home costs are covered by the Medicaid program, this statement will also be helpful in determining to what extent the rules will impact on the cost of the Medicaid program.

A number of rules being proposed at this time will not have a cost impact on nursing homes. Many of the proposed rules relating to health services in licensed nursing homes are consistent with existing federal certification language. Many of the proposed rules relating to the physical plant in licensed nursing homes do not significantly differ from existing rules, and are consistent with federal certification language (where that exists). The proposed rules for new construction coordinate with existing rules for licensed nursing homes, as well as the State Building Code, State Plumbing Code, and other applicable state statutes and rules. The approximately 98% of the licensed nursing homes in Minnesota which are also federally certified are already complying with that federal regulatory language, and the reimbursement rates established under the Medicaid program also address the costs of meeting those requirements. The non-certified nursing homes have indicated that they generally provide services of at least the same level as the certified nursing homes because that is the standard by which consumers judge them. The non-certified nursing homes must be in compliance with the existing rules for physical plant, which have not significantly changed in these proposed rules. Therefore, the promulgation of these proposed rules will likely have little or no financial impact on most of the non-certified nursing homes.

SPECIFIC RULE PROVISIONS

- 4658.0200 RESIDENT RIGHTS**
- 4658.0205 PROCEDURE AT DEATH**
- 4658.0210 ROOM ASSIGNMENTS**
- 4658.0215 ADMINISTRATION OF MEDICATIONS**
- 4658.0220 ADMISSION POLICY**
- 4658.0225 AUTHORIZATION**
- 4658.0230 PERSONAL FUND ACCOUNTING AND RECORDS**
- 4658.0235 DEPOSIT OF PERSONAL FUNDS**
- 4658.0240 WITHDRAWAL OF FUNDS FROM THE ACCOUNT**
- 4658.0245 RETURN OF FUNDS AFTER DISCHARGE OR DEATH**
- 4658.0250 ASSURANCE OF FINANCIAL SECURITY OF RESIDENT FUNDS**
- 4658.0290 PENALTIES FOR RESIDENT RIGHTS RULE VIOLATIONS.**

The only proposed rule part in the resident rights area that is contained neither in current state rules nor federal regulations is the proposed part 4658.0210, relating to room assignments. The language in subpart 1, requiring attempts to accommodate roommate and furnishings preferences, should not impose any additional cost on nursing homes because the nursing home is already considering these factors in their placement decisions. Subpart 2, which requires an informal dispute resolution process for resolving room and roommate complaints, may entail some initial expenditures in the form of staff time to develop that process; however, the long term benefits should outweigh any costs, since this issue is a frequent source of resident dissatisfaction.

4658.0300 USE OF RESTRAINTS

The revisions to part 4658.0300 are not expected to have any impact on costs. There are many benefits to be derived from the proposed revisions, because they will allow greater flexibility to nursing homes to conduct the appropriate monitoring of residents placed in physical restraints, and how to best keep any documentation the nursing home determines is necessary and appropriate.

4658.0445 CLINICAL RECORD

4658.0450 CLINICAL RECORD CONTENTS

There are no anticipated costs related to the revisions of these current rule parts. The benefits of the revisions are in the form of clearer rule language and better organized rules.

4658.0615 FOOD TEMPERATURES

4658.0620 FREQUENCY OF MEALS

There are no anticipated costs of implementing these proposed revisions to current rules because they contain language currently in rule which licensed nursing homes are required to comply with. The benefits of the revisions are clarification of expectations, and the consistency of federal and state regulatory language.

4658.0900 ACTIVITY AND RECREATION PROGRAM

4658.0950 PENALTIES FOR ACTIVITY AND RECREATION PROGRAM RULE VIOLATIONS

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. There are basically only editorial differences between the current rules and these proposed rules. The benefits of these rules are the specification that activity and recreation programming are a part of basic nursing home services and how that programming is to be provided.

There is a change from current rule language in the proposed subpart 2, addressing frequency of program activities. Current state rule language states: "The activities program shall be regularly scheduled at least five days each week..." The proposed language would require the program to be regularly scheduled "every day." Many nursing homes already offer programming on a seven day a week basis because the residents have requested or required that frequency. Some nursing homes may find it necessary to shuffle their programming and staffing schedule to some extent to meet the proposed requirement. However, since they are already required to have an organized program to meet the needs of all residents, there should be no significant additional costs to changing the program scheduling. The current practice is that

many nursing homes utilize volunteers to provide some of the regularly scheduled services; this practice is expected to continue. The benefits of changing this requirement to "...every day..." are for the residents - there will be some sort of activity, be it recreation, diversion, entertainment, or some other type of activity, for them to participate in every day of the week. There is a lot of things occurring in nursing homes during the weekdays, and residents often have therapies or other events scheduled on weekdays. Residents often told Department staff that there needs to be more to do during evenings and especially on weekends, when residents frequently get bored and lonely. There is the clause in the rule language that allows nursing homes to develop a policy stating holidays or other days when there will be no regularly scheduled activity programming; the benefit of this clause is that it will allow nursing homes the ability to determine the appropriate scheduling to meet the needs of the residents while operating within the reality of staffing and budgeting for the nursing home.

4658.0960 SPIRITUAL NEEDS

4658.0990 PENALTIES FOR SPIRITUAL NEEDS RULE VIOLATIONS

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. There are basically only editorial differences between the current rule and the proposed rule. The benefit of these rules is the specification that there must be opportunities provided for the residents to have their spiritual needs met.

4658.1000 DEFINITIONS

4658.1005 SOCIAL SERVICES

4658.1090 PENALTIES FOR SOCIAL SERVICES RULE VIOLATIONS

The language being proposed in this part is consistent with current federal certification language and language from the federal interpretive guidelines. Therefore, for the 99% of the licensed nursing homes in Minnesota which are also certified to participate in the federal Medicare and Medicaid programs, there will be no additional costs associated with implementing this proposed language. Six of seven licensed only nursing homes responded to a questionnaire sent by the Division of Facility and Provider Compliance. Four of these nursing homes lack qualified social work consultants and two lacked a social services department. All questionnaires indicated that psychosocial needs of residents were addressed in these nursing homes even though nursing homes lacked a separate social services department or staff. There could be a cost for these nursing homes if they had to hire a qualified consultant, but because they are addressing the residents' psychosocial needs, these nursing homes would be able to obtain a waiver. Only one of these nursing homes has over 120 beds. While this nursing home has a social service department, it is unknown if they have a qualified social worker on staff. This could have a financial impact on this one home, but it also would be able to obtain a waiver if needed. There will be no additional costs associated with implementing language pertaining to a social history and assessment because 99% of the nursing homes are certified to participate in the federal Medicare and Medicaid programs and are already required to obtain the social history and assessment. As previously stated, six of the seven licensed only nursing homes who responded to a questionnaire are already assessing resident psychosocial needs. With the assessment of these needs, nursing home staff should already be providing the services needed to meet the residents' needs. The benefits of the proposed rule is that residents will have their psychosocial needs identified and met to the extent possible by staff in the nursing home.

4658.1100 BARBER AND BEAUTY SHOP SERVICES

4658.1190 PENALTIES FOR BARBER AND BEAUTY SHOP SERVICES RULE VIOLATIONS

There are no anticipated costs associated with the implementation of this proposed rule. Nursing homes in Minnesota are already required to be meeting the intent of this proposed rule because they are required to meet the residents' grooming needs. Many homes already offer barber and beauty shop services. Benefits of this proposed rule would be to provide assurance that grooming needs of each resident are met.

4658.1200 SPECIALIZED REHABILITATIVE SERVICES

4658.1290 PENALTIES FOR SPECIALIZED REHABILITATIVE SERVICES RULE VIOLATIONS

Although this proposed language is new, there are no anticipated costs associated with its implementation because the majority of licensed nursing homes are already required to furnish rehabilitative services. Questionnaires were sent to the licensed-only nursing homes; five of the six licensed-only nursing homes responding already offer specialized rehabilitative services. The remaining nursing home could either provide its own rehabilitative services or contract for these services. If contracted, these services should pose no costs to the nursing home. The benefit of this proposed rule is to help assure that residents are able to attain or maintain their highest practicable physical, mental and psychosocial well-being.

4658.1400 PHYSICAL ENVIRONMENT

4658.1405 RESIDENT UNITS

4658.1410 LINEN

4658.1415 PLANT HOUSEKEEPING, OPERATION, AND MAINTENANCE

4658.1420 SOLID WASTE DISPOSAL

4658.1425 OZONE GENERATORS

4658.1450 PENALTIES FOR ENVIRONMENTAL SERVICES RULE VIOLATIONS

There are no anticipated costs of implementing these rules since the proposed language is a revision of current state rule language. Nursing homes in Minnesota are currently required to meet the intent of these proposed rules. Newly proposed language in this rule pertaining to the direction of environmental services by qualified staff will also pose no anticipated costs because nursing homes currently have staff responsible for maintaining the physical plant. Having a rule part addressing physical plant maintenance includes the assurance to residents that their environment be maintained in a way to promote resident health, comfort, safety and well-being.

4658.1600 DEFINITIONS

4658.1605 NOTICE TO DEPARTMENT OF HEALTH

4658.1610 NURSING HOME RESPONSIBILITIES

4658.1690 PENALTIES FOR RELOCATION RULE VIOLATIONS

There are no anticipated costs of implementing these rules since the proposed language is almost identical to current state rule language. The benefits of these rules are the continued protection of residents in times of relocations from nursing homes.

4658.2000 SECURED UNITS.

- 4658.2010 PHYSICAL PLANT REQUIREMENTS.**
- 4658.2020 STATEMENT OF OPERATIONS.**
- 4658.2030 SPECIALIZED CARE UNIT.**
- 4658.2090 PENALTIES FOR SPECIALIZED UNITS RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule for all licensed nursing homes, which those licensed nursing homes are required to comply with, and they contain language currently in the MDH Instructional Bulletin 91-1/NH-1. There are basically only editorial differences between the current rules and Instructional Bulletin, and these proposed rules. The benefits of these rules are the specification in rule of the additional requirements for a nursing home to establish and operate a specialized care unit, and the provision of information for consumers about what is different about that specialized unit.

PHYSICAL PLANT LICENSURE; EXISTING AND NEW.

- 4658.3000 LICENSURE.**
- 4658.3005 COMPLIANCE WITH RULES.**
- 4658.3090 PENALTIES FOR PHYSICAL PLANT LICENSURE RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. There are basically only editorial differences between the current rules and these proposed rules. The benefits of these rules are the specification of general licensure and compliance requirements.

NEW CONSTRUCTION

- 4658.3500 INCORPORATION BY REFERENCE; NEW CONSTRUCTION.**
- 4658.3590 PENALTIES FOR INCORPORATION BY REFERENCE; NEW CONSTRUCTION RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which new construction in licensed nursing homes must comply with. Other than the revised format of the rule part, there are only relatively minor differences between the current rules and these proposed rules. Generally, if a newer edition of an incorporated standard or rule has been published, that newer standard would be incorporated here. The benefits of these rules are the specification of state or national rules or standards for construction or equipment to assure provision of new construction that directly impacts on the health, safety, comfort, and well-being of residents.

NEW CONSTRUCTION; PLANS.

- 4658.4000 PREPARATION OF PLANS; NEW CONSTRUCTION.**
- 4658.4005 APPROVAL OF PLANS; NEW CONSTRUCTION.**
- 4658.4010 PRELIMINARY PLANS; NEW CONSTRUCTION.**
- 4658.4015 FINAL PLANS; NEW CONSTRUCTION.**
- 4658.4020 FINAL MECHANICAL AND ELECTRICAL PLANS; NEW CONSTRUCTION.**
- 4658.4025 START OF CONSTRUCTION; NEW CONSTRUCTION.**
- 4658.4030 FINAL INSPECTION; NEW CONSTRUCTION.**

- 4658.4035 PLAN SAFEKEEPING; NEW CONSTRUCTION.**
- 4658.4040 SITE; NEW CONSTRUCTION.**
- 4658.4090 PENALTIES FOR PLANS; NEW CONSTRUCTION RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. There are basically only editorial differences between the current rules and these proposed rules. The benefits of these rules are the specification of requirements for the development of plans for new construction, and the special factors which must be given consideration in the planning of new construction for a nursing home. There are generally fewer costs when planning is done appropriately and comprehensively, because it costs more to go back and re-do something than to build it correctly initially.

RESIDENT AREAS; NEW CONSTRUCTION.

- 4658.4100 RESIDENT BEDROOM REQUIREMENTS, CAPACITIES; NEW CONSTRUCTION.**
- 4658.4105 BEDROOM DESIGN; NEW CONSTRUCTION.**
- 4658.4110 BEDROOM DOORS; NEW CONSTRUCTION.**
- 4658.4115 CLOTHES WARDROBE OR CLOSET; NEW CONSTRUCTION.**
- 4658.4120 HANDRAILS AND CORRIDORS; NEW CONSTRUCTION.**
- 4658.4125 NURSING AREA; NEW CONSTRUCTION.**
- 4658.4130 NOURISHMENT AREA; NEW CONSTRUCTION.**
- 4658.4135 TOILET ROOMS AND SANITARY FIXTURES; NEW CONSTRUCTION.**
- 4658.4140 PROVISION OF RESIDENT TOILET ROOMS; NEW CONSTRUCTION.**
- 4658.4145 TOILET ROOM LAYOUT; NEW CONSTRUCTION.**
- 4658.4150 HANDICAPPED ACCESSIBLE TOILET ROOMS; NEW CONSTRUCTION.**
- 4658.4155 CENTRAL BATHING AREA; NEW CONSTRUCTION.**
- 4658.4160 DRINKING FOUNTAINS; NEW CONSTRUCTION.**
- 4658.4165 HANDWASHING FACILITIES; NEW CONSTRUCTION.**
- 4658.4170 STORAGE; NEW CONSTRUCTION.**
- 4658.4175 JANITOR'S CLOSET; NEW CONSTRUCTION.**
- 4658.4180 ROOM LABELING; NEW CONSTRUCTION.**
- 4658.4190 PENALTIES FOR RESIDENT AREAS; NEW CONSTRUCTION RULE VIOLATIONS.**

There are basically only editorial differences between the current rules and these proposed rules, which do not require any anticipated additional costs for implementation. The benefits of these rules are the specification of requirements for new construction of resident bedrooms, toilet rooms, storage areas, and other aspects of areas in the nursing home where residents spend much of their time.

There might be some anticipated costs of implementing these proposed rules because they contain some different language than what is currently in rule for licensed nursing homes. For example, in the current rule part 4660.1430, subpart 3, the minimum space requirements for resident bedrooms are 100 square feet for single-bed rooms and 80 square feet per bed for multiple-bed rooms. The proposed rule (part 4658.4105, subpart 2) states that the minimum space requirements for resident bedrooms are 120 square feet for single bedrooms and 100 square feet for double bedrooms. Because of these increases in minimum bedroom sizes, there could be higher new construction costs, depending on the price per square foot for construction.

However, there are some additional factors that must be considered when attempting to estimate any anticipated costs. Minnesota Statutes, section 144A.071, provides for a moratorium on the construction of additional certified nursing home and boarding care home beds. Because of this moratorium (even with the limited statutory exceptions allowed), there is very little new construction of nursing home space going on in Minnesota. Therefore, these increased minimum bedroom sizes will have little impact on total costs of implementing these rules. Another factor to consider is that no one is being forced to build new nursing home space as a result of these proposed rules. This section of rules applies only to new construction, and any new construction is an option that the public may use, but is not required to do so. Generally, any "new construction" of bedroom space that has happened in the last few years has met these larger space requirements because of market considerations - consumers want bigger bedrooms, so providers are making bigger bedrooms wherever possible.

SUPPORTIVE SERVICES; NEW CONSTRUCTION

- 4658.4200 DINING, DAYROOM, AND ACTIVITY AREAS, REQUIRED FLOOR AREA; NEW CONSTRUCTION.**
- 4658.4205 DAYROOM; NEW CONSTRUCTION**
- 4658.4210 DINING AREA; NEW CONSTRUCTION**
- 4658.4215 ACTIVITIES AREA; NEW CONSTRUCTION**
- 4658.4290 PENALTIES FOR SUPPORTIVE SERVICES; NEW CONSTRUCTION RULE VIOLATIONS.**

For the most part, there are only relatively minor differences between the current rules and these proposed rules. An arguably significant difference is the minimum amount of required floor space for dining, dayroom, and activity areas for new construction, which would be increased from 30 square feet per bed to 40 square feet per bed. This could have an impact on anticipated costs of complying with these rules. However, many of the new construction projects in the last few years have included larger dining rooms or activities areas (with more square footage than would be required in these proposed rules) because the market is demanding more of those common areas. In fact, many nursing homes are choosing to have more than one dining area, to provide for smaller, more homelike dining settings. And, as with the resident bedroom sizes discussed above, there is very little new construction occurring, and what is occurring is not mandated but rather at the option of a nursing home. The benefits of these rules are the specification of requirements for new construction of resident areas in the nursing home where residents spend most of their time when they are not in their bedrooms.

DIETARY, LAUNDRY, AND OTHER FACILITIES; NEW CONSTRUCTION.

- 4658.4300 KITCHEN AREA; NEW CONSTRUCTION**
- 4658.4305 FOOD SERVICE EQUIPMENT; NEW CONSTRUCTION.**
- 4658.4310 DISHWASHING AREA; NEW CONSTRUCTION.**
- 4658.4315 WASHING OF FOOD CARTS; NEW CONSTRUCTION.**
- 4658.4320 WASHING OF GARBAGE CANS; NEW CONSTRUCTION.**
- 4658.4325 LAUNDRY, SIZE AND LOCATION; NEW CONSTRUCTION.**
- 4658.4330 SOILED LINEN COLLECTION ROOM; NEW CONSTRUCTION.**
- 4658.4335 LAUNDRY PROCESSING ROOM; NEW CONSTRUCTION.**
- 4658.4340 LAUNDRY EQUIPMENT; NEW CONSTRUCTION.**
- 4658.4345 CLEAN LINEN STORAGE; NEW CONSTRUCTION.**
- 4658.4350 LAUNDRY FOR PERSONAL CLOTHING; NEW CONSTRUCTION.**
- 4658.4355 REFUSE; NEW CONSTRUCTION.**

- 4658.4360 COVERED ENTRANCE AREA; NEW CONSTRUCTION.
- 4658.4365 FACILITIES FOR PERSONNEL; NEW CONSTRUCTION.
- 4658.4370 REHABILITATIVE SERVICES AREAS; NEW CONSTRUCTION.
- 4658.4375 BARBER AND BEAUTY SHOP SERVICES; NEW CONSTRUCTION.
- 4658.4390 PENALTIES FOR DIETARY, LAUNDRY, AND OTHER SERVICES; NEW CONSTRUCTION RULE VIOLATIONS.

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. For the most part, there are only relatively minor differences between the current rules and these proposed rules. The one main difference between the current licensing rules and these proposed rules is the requirement for a covered entrance area. However, that is now a federal requirement under the Americans With Disabilities Act (ADA), so new construction projects would already be required to include a covered entrance. There would be only the initial cost of constructing the covered entrance area, and no additional ongoing costs associated with it. The benefits of these rules are the specification of requirements for new construction of supportive services areas in the nursing home to assure provision of areas and services that directly impact on the health, comfort, and well-being of residents.

CONSTRUCTION DETAILS, CHUTES, AND ELEVATORS; NEW CONSTRUCTION

- 4658.4400 AREA HEAT PROTECTION; NEW CONSTRUCTION.
- 4658.4405 DOOR HANDLES; NEW CONSTRUCTION.
- 4658.4410 DUMBWAITERS AND CONVEYORS; NEW CONSTRUCTION.
- 4658.4415 ELEVATORS; NEW CONSTRUCTION.
- 4658.4420 EXTERIOR MECHANICAL SHAFTS; NEW CONSTRUCTION.
- 4658.4425 FLOOR JOINTS; NEW CONSTRUCTION.
- 4658.4430 NONSKID SURFACES; NEW CONSTRUCTION.
- 4658.4435 GLASS PROTECTION; NEW CONSTRUCTION.
- 4658.4440 LINEN AND TRASH CHUTES; NEW CONSTRUCTION.
- 4658.4445 OVERHEAD PIPING; NEW CONSTRUCTION.
- 4658.4450 PROTECTION RAILINGS; NEW CONSTRUCTION.
- 4658.4455 CEILING HEIGHTS; NEW CONSTRUCTION.
- 4658.4460 CEILINGS, WALLS, AND FLOORS; NEW CONSTRUCTION.
- 4658.4490 PENALTIES FOR CONSTRUCTION DETAILS, CHUTES, AND ELEVATORS; NEW CONSTRUCTION RULE VIOLATIONS.

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. For the most part, there are only relatively minor differences between the current rules and these proposed rules. The benefits of these rules are the specification of requirements for new construction details, chutes, and elevators in the nursing home to assure provision of areas that directly impact on the health, safety, comfort, and well-being of residents.

MECHANICAL SYSTEMS; NEW CONSTRUCTION.

- 4658.4500 PLUMBING SYSTEMS; NEW CONSTRUCTION.
- 4658.4505 PLUMBING; NEW CONSTRUCTION.
- 4658.4510 HEATING AND COOLING; NEW CONSTRUCTION.
- 4658.4515 VENTILATION REQUIREMENTS; NEW CONSTRUCTION.
- 4658.4520 VENTILATION PRESSURE RELATIONSHIPS AND VENTILATION FOR

CERTAIN AREAS IN NURSING HOMES; EXISTING AND NEW CONSTRUCTION.

- 4658.4525 FRESH AIR INTAKES; NEW CONSTRUCTION.**
- 4658.4530 HEIGHT OF REGISTERS; NEW CONSTRUCTION.**
- 4658.4535 DIETARY AREA; NEW CONSTRUCTION.**
- 4658.4540 LAUNDRY AREA; NEW CONSTRUCTION.**
- 4658.4545 MECHANICAL ROOMS; NEW CONSTRUCTION.**
- 4658.4550 FILTERS; NEW CONSTRUCTION.**
- 4658.4590 PENALTIES FOR MECHANICAL SYSTEMS; NEW CONSTRUCTION
RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. For the most part, there are only minor editorial differences between the current rules and these proposed rules. The benefits of these rules are the specification of requirements for mechanical systems in new construction, and ventilation relationships for both new and existing construction, to assure provision of mechanical systems that directly impact on the health, safety, comfort, and well-being of residents.

ELECTRICAL SYSTEMS; NEW CONSTRUCTION.

- 4658.4600 DISTRIBUTION PANEL BOARDS; NEW CONSTRUCTION.**
- 4658.4605 CORRIDOR RECEPTACLES; NEW CONSTRUCTION.**
- 4658.4610 SWITCHES AND RECEPTACLES; NEW CONSTRUCTION.**
- 4658.4615 INTERIOR LIGHTING; NEW CONSTRUCTION.**
- 4658.4620 FIRE ALARM SYSTEMS; NEW CONSTRUCTION.**
- 4658.4625 BEDROOM RECEPTACLES; NEW CONSTRUCTION.**
- 4658.4630 NIGHT LIGHTS; NEW CONSTRUCTION.**
- 4658.4635 NURSE CALL SYSTEM; NEW CONSTRUCTION.**
- 4658.4640 EMERGENCY ELECTRIC SERVICE; NEW CONSTRUCTION.**
- 4658.4690 PENALTIES FOR ELECTRICAL SYSTEMS; NEW CONSTRUCTION
RULE VIOLATIONS.**

There are no anticipated costs of implementing these proposed rules because they contain language currently in rule which licensed nursing homes are required to comply with. For the most part, there are only relatively minor differences between the current rules and these proposed rules. One difference is in part 4658.4615, which does not contain the footcandle requirements for lighting in various rooms that the current rules require. The proposed language does require lighting to meet the needs of residents and staff. Since adequate and comfortable lighting is essential to safe movement and provision of services, the nursing home can reasonably be expected to provide appropriate lighting to meet those needs, without having to specify minimum footcandles in rule. One other area that is new to the licensing rules is the requirement to have at least one bedroom receptacle placed between 16 and 20 inches above the floor to be accessible for resident use (in the proposed part 4658.4625). During new construction, there is no additional cost to place a receptacle at one height instead of another height. The benefits of these rules are the specification of requirements for electrical systems in new construction to assure provision of electricity, lighting, and a nurse call system, all of which directly impact on the health, safety, comfort, and well-being of residents.

EXISTING CONSTRUCTION

RESIDENT AREAS; EXISTING CONSTRUCTION.

- 4658.5000 BEDROOM DESIGN; EXISTING CONSTRUCTION.
- 4658.5005 BEDROOM DOOR LOCKS; EXISTING CONSTRUCTION.
- 4658.5010 CLOTHES WARDROBE OR CLOSET; EXISTING CONSTRUCTION.
- 4658.5015 CORRIDOR HANDRAILS; EXISTING CONSTRUCTION.
- 4658.5020 NURSING AREA; EXISTING CONSTRUCTION.
- 4658.5025 TOILET ROOMS AND SANITARY FIXTURES; EXISTING CONSTRUCTION.
- 4658.5030 CENTRAL BATHING AREA; EXISTING CONSTRUCTION.
- 4658.5035 HANDWASHING FACILITIES; EXISTING CONSTRUCTION.
- 4658.5040 ROOM LABELING; EXISTING CONSTRUCTION.

- 4658.5090 PENALTIES FOR RESIDENT AREAS; EXISTING CONSTRUCTION RULE VIOLATIONS.

SUPPORTIVE SERVICES; EXISTING CONSTRUCTION

- 4658.5100 DINING, DAYROOM, AND ACTIVITY AREAS; EXISTING CONSTRUCTION.
- 4658.5190 PENALTIES FOR SUPPORTIVE SERVICES; EXISTING CONSTRUCTION RULE VIOLATIONS.

DIETARY, LAUNDRY, AND OTHER FACILITIES; EXISTING CONSTRUCTION.

- 4658.5200 FOOD SERVICE EQUIPMENT; EXISTING CONSTRUCTION.
- 4658.5205 LAUNDRY; EXISTING CONSTRUCTION.
- 4658.5210 SOILED LINEN COLLECTION ROOM; EXISTING CONSTRUCTION.
- 4658.5215 LAUNDRY EQUIPMENT; EXISTING CONSTRUCTION.
- 4658.5220 CLEAN LINEN STORAGE; EXISTING CONSTRUCTION.
- 4658.5225 LAUNDRY FOR PERSONAL CLOTHING; EXISTING CONSTRUCTION.
- 4658.5230 REFUSE; EXISTING CONSTRUCTION.
- 4658.5235 FACILITIES FOR PERSONNEL; EXISTING CONSTRUCTION.
- 4658.5240 REHABILITATIVE SERVICES AREAS; EXISTING CONSTRUCTION.
- 4658.5245 BARBER AND BEAUTY SHOP SERVICES ROOM; EXISTING CONSTRUCTION.
- 4658.5290 PENALTIES FOR DIETARY, LAUNDRY, AND OTHER SERVICES; EXISTING CONSTRUCTION RULE VIOLATIONS.

CONSTRUCTION DETAILS; EXISTING CONSTRUCTION.

- 4658.5300 AREA HEAT PROTECTION; EXISTING CONSTRUCTION.
- 4658.5305 NONSKID SURFACES; EXISTING CONSTRUCTION.
- 4658.5310 GLASS PROTECTION; EXISTING CONSTRUCTION.
- 4658.5315 CEILINGS, WALLS, AND FLOORS; EXISTING CONSTRUCTION.
- 4658.5390 PENALTIES FOR CONSTRUCTION DETAILS; EXISTING CONSTRUCTION RULE VIOLATIONS.

HEATING AND VENTILATION SYSTEMS; EXISTING CONSTRUCTION.

- 4658.5400 HEATING SYSTEM; EXISTING CONSTRUCTION.
- 4658.5405 VENTILATION REQUIREMENTS; EXISTING CONSTRUCTION.
- 4658.5410 MECHANICAL ROOMS; EXISTING CONSTRUCTION.
- 4658.5415 FILTERS; EXISTING CONSTRUCTION.
- 4658.5490 PENALTIES FOR HEATING AND VENTILATION SYSTEMS; EXISTING CONSTRUCTION RULE VIOLATIONS.

ELECTRICAL SYSTEMS; EXISTING CONSTRUCTION

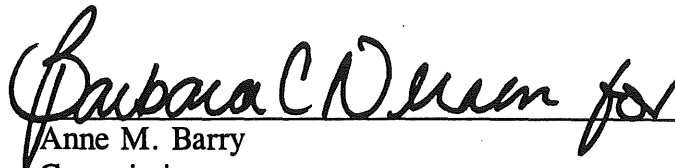
- 4658.5500 DISTRIBUTION PANEL BOARDS; EXISTING CONSTRUCTION.
- 4658.5505 INTERIOR LIGHTING; EXISTING CONSTRUCTION.
- 4658.5510 FIRE ALARM SYSTEMS; EXISTING CONSTRUCTION.
- 4658.5515 NURSE CALL SYSTEM; EXISTING CONSTRUCTION.
- 4658.5520 EMERGENCY ELECTRIC SERVICE; EXISTING CONSTRUCTION.
- 4658.5590 PENALTIES FOR ELECTRICAL SYSTEMS; EXISTING CONSTRUCTION
RULE VIOLATIONS.

There are no anticipated costs of implementing these proposed rules for existing construction because they contain language currently in rule which licensed nursing homes are required to comply with. For the most part, there are only editorial differences between the current rules and these proposed rules. There will be no physical plant or operational changes required for existing construction upon the promulgation of these proposed rules. Nursing homes will continue to be required to maintain compliance with the rules for existing construction. A nursing home will not need to make any changes to their physical plant, but will need to maintain the physical plant in a condition that continues to meet the requirements of the rules. The benefits of these rules are the specification of minimum requirements that nursing homes must maintain compliance with for existing construction, to protect the health, safety, comfort, and well-being of the residents.

CONCLUSION

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

Dated: 12/18/95



Anne M. Barry

Commissioner

Minnesota Department of Health