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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTIONS OF 12 MCAR §2.027 CON-
CERNING THE ADMINISTRATION OF
REIMBURSEMENT FOR COST OF CARE
OF PATIENTS OF A STATE HOSPITAL

STATEMENT OF NEED AND REASONABLENESS

12 MCAR §2.027 is proposed to establish procedures and standards by which the Commissioner of Public Welfare shall carry out his responsibility under Minn. Stat. §§246.50 through 246.55 (1980). The Commissioner's responsibilities under the cited statutes and this proposed rule are to determine an individual's ability to pay for his/her care and treatment as an inpatient or outpatient at a Minnesota state hospital. If the patient is unable to pay the cost of care, then the Commissioner must determine the ability of certain responsible relatives to pay for the patient's care. Because the statute defines the Commissioner's responsibilities in broad terms, it is necessary to establish the specific procedures and standards by which these determinations will be made.

There are nine state hospitals in Minnesota which admit people for care and treatment of mental illness, mental retardation or chemical dependency. Any person may receive care and treatment regardless of ability to pay. Persons receive care and treatment in the state hospitals pursuant to the Minnesota Hospitalization and Commitment Act, Minn. Stat. Ch.253A (1980). Under that Act, the patient may enter the hospital on precommitment court hold order, commitment, or voluntary admission. Minn. Stat. §§253A.03 and 253A.07 (1980). Persons may also receive services on an outpatient basis. Minn. Stat. §253A.15, Subd. 16 (1980).

The authority for the promulgation of this rule is found in Minn. Stat. §253A.21, Subd. 6 (1980). That section provides:

The Commissioner shall establish such rules and regulations not inconsistent with the provisions of sections 253A.01 to 253.21 as he may find to be necessary for the proper and efficient administration thereof

While Minn. Stat. §246.51 requires the Commissioner to determine the ability of state hospital patients and their relatives to pay the cost of the care provided, the law provides no standards or procedures for the Commissioner to apply in making such determinations. Consequently, the Commissioner finds it necessary to promulgate this rule in order to assure that ability-to-pay determinations are made fairly, uniformly and in accordance with reasonable standards and procedures.

The procedural portions of the proposed rule are also authorized by Minn. Stat. §15.0412, Subd. 3 (1980).

In many instances, an effort was made to make the provisions of the proposed rule similar or identical to provisions of other Department rules. Particular attention was paid to 12 MCAR §2.047 (Medical Assistance), 12 MCAR

§2.044 (Aid to Families with Dependent Children and 12 MCAR §2.030 (Reimbursement for Cost of Care of Mentally Retarded or Epileptic or Emotionally Handicapped Children). (These rules will be referred to throughout this Statement of Need as Rule 47, Rule 44 and Rule 30, respectively.) The procedures and standards in those programs have been found to be reasonable and, where the circumstances are similar or the same, the provisions of those rules were carried over to this proposed rule.

A particular effort was made to make the standards in this proposed rule similar to the standards of the Medical Assistance program. Medical Assistance is a joint federal-state-county program for providing necessary medical and hospital care to needy persons. Approximately 55 percent of the cost of Medical Assistance is provided by the federal government. About one-half of state hospital patients receive or are eligible for Medical Assistance. By making the financial standards of the rule similar or identical to the medical assistance standards, the Department aims to maximize the use of federal Medical Assistance money to assist the state and counties to provide state hospital care. This is accomplished by assuring that a patient who devotes his or her income and resources to the payment of cost of care as provided in the proposed rule will thereby meet the financial eligibility requirements for Medical Assistance.

By making the provisions of this rule similar to Rule 47, the Department also assures that persons receiving services in state hospitals, at least partially at public expense, will be treated the same as persons receiving services in private hospitals, nursing homes and other facilities under the Medical Assistance program. Consequently, the proposed rule avoids the creation of an incentive to receive services at a state hospital rather than from a community resource.

Provisions from Rule §§2.044 and 2.047 which have been adapted for use in this proposal include those covering: completing and signing a financial information form, verification of income, property, health and life insurance benefits, number of dependents and housing costs.

Comments on the specific provisions of the proposed rule follow section by section.

- A. This statement on Reimbursement for Cost of Care is needed to define the scope of the rule. It is reasonable in that it recognizes the relation between the rule, the underlying statutes, and the Department rules referred to above. Where questions arise concerning the interpretation of this rule, resort to the cited rules and interpretations of those rules may be helpful.

This statement on provision of hospital services without regard to income is needed to affirm the requirement that the State provide hospital services to any person in need and unable to pay the cost of care. It is reasonable to require that state hospital patients be charged only according to ability to pay, and this is provided by the underlying statute.

- B. Definitions are necessary to establish the meaning of terms used in this rule. The definitions are reasonable in that they reflect the common usage of the terms in the statute and elsewhere. Some of the definitions have substantive impact, and they are justified further below.

B.1. Business Expense. The exclusion of capital expenditures and depreciation from allowable business expense is necessary to prevent the patient from claiming as expenses (to reduce his or her liability for state hospital care) expenditures which increase the patient's equity in property. It is reasonable to expect a patient to use his/her excess assets to pay cost of care rather than to increase the patient's net worth.

The definition is the same as Rule 44, D.12.b.(8)(d).

B.2. Capital Expenditure. It is reasonable and necessary to define capital expenditures so as to differentiate between ordinary maintenance and capital improvements. A useful life of more than one year is a reasonable criterion of an expense for a capital improvement because it confirms to generally accepted accounting principles and also federal and state tax guidelines.

B.5. Dependent. It is necessary to distinguish those persons who have the right to rely on the financial resources of another person for support, and who, therefore, have a priority in use of the resources. It is reasonable to use the standard set by the State in defining "dependent" for tax purposes. It is reasonable and necessary to ensure that a person is not counted as a dependent more than once. It is also reasonable and necessary to provide a method for allocating the costs incurred when a dependent is supported by more than one person.

B.11 Inkind Income. It is necessary to establish a minimum value for the consideration of inkind income to avoid the necessity to report and evaluate gifts and other non-money receipts of minimal or moderate value. The \$100 figure is reasonable in that it assures that nonmoney receipts of substantial value will be considered in determining ability to pay.

C. Determination Procedure.

Minn. Stat. §246.51 requires the Commissioner of Public Welfare (Commissioner) to determine what part of the cost of care, if any, the patient and responsible relatives are able to pay. It is necessary that the Commissioner carry out the required determination. The Commissioner has delegated to Reimbursement Officers in the Department's Reimbursement Division the authority to make the determination of the ability to pay. It is reasonable that the determination adhere to a procedure adopted to ensure uniformity of classification, compliance with law and fairness to all persons with a liability to pay.

C.1.a. It is necessary to specify times for determination in order to insure that the billing rate is based upon the person's current ability to pay. It is necessary to make a determination at the time of the patient's admission to the hospital and whenever the patient's financial status changes.

Changes may occur after the patient has been in the hospital for several months. Possible changes include expiration of sick leave benefits, hospital insurance coverage, reduced or depleted savings and liquid assets, and unforeseen expenses and financial circumstances. These changes may decrease the patient's ability to pay. On the other hand,

the person may inherit money or property or receive a windfall. These events increase the person's ability to pay. Therefore, a systematic schedule for redetermination of ability to pay is reasonable and necessary. One hundred and twenty days is a reasonable time as the majority of the mentally ill and chemically dependent patients have completed their treatment and returned to the community within this period. It is necessary and reasonable to provide systematically for a redetermination every year the patient continues to receive care and treatment. A yearly redetermination will encompass not only changes noted above but also changes in federal and state benefits and entitlements.

The financial circumstances of a patient may change markedly at discharge: hospitalization benefits may cease; earned income will resume if employment is found; living costs will increase. It is reasonable to determine ability to pay at discharge.

C.1.b. Minn. Stat. §541.05 (1978) permits a creditor to claim money on an obligation within six years. It is necessary for the Department to re-evaluate periodically the patient's ability to pay any unpaid balance of the cost of care. It is necessary and reasonable to allow the patient to request a reevaluation if changed circumstances might reduce the ability to pay.

C.2.a. Minn. Stat. §246.51 requires the Commissioner to make an investigation to determine the patient's ability to pay. The determination of ability to pay requires the gathering of financial information about persons who have a liability to pay cost of care.

It is reasonable to conclude that the patient is the preferred source of the financial information concerning the patient's ability to pay. Personal contact by means of an interview is the most efficient way to obtain the information. It is reasonable to interview the patient.

It is reasonable and necessary to specify the circumstances which justify a decision not to interview certain patients. This section provides for a situation where the legal control of the patient's financial affairs lies with another person. It provides for patients who are unable to participate in an interview. For example, a patient may be severely retarded or emotionally disturbed.

C.2.b. Where the patient is unable to provide financial information, the Department must obtain the information from another source. It is necessary, therefore, to define who may give financial information on behalf of the patient. The individuals listed in the provision, with the exception of the county social worker, have a legal responsibility to the patient. Under Minn. Stat. §§253A.17, Subd. 9 and 293.07, Subd. 2, the county social worker may work with state hospital patients. The persons enumerated are reasonable choices.

C.2.c. Minn. Stat. §246.51 requires the Commissioner to determine the ability of relatives of the patient to pay the cost of care when the patient is unable to pay the full cost. The determination of ability to pay requires the gathering of financial information about the persons who have a liability to pay. It is reasonable to conclude that

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the responsible relative is the preferred source of the financial information. Personal contact by means of an interview is the most efficient way to obtain the information. It is reasonable and necessary to interview the responsible relatives.

C.3.a.-d. It is necessary and reasonable to give each person liable to pay according to ability information about the cost of care program, the Minnesota Government Data Practices Act, Minn. Stat. §§15.1611-15.1699, the right to assistance from a person of the interviewee's choice, and programs of financial assistance.

C.3.e. Financial data are necessary to determine ability to pay as required by the statute. It is also necessary to collect data in a uniform manner so that all persons are equitably treated in the determination procedure. Consequently, the requirement that the person complete the financial information form and provide verification information is reasonable.

C.4. Since uniformity and equity in the determination of the rate which a person is ordered to pay are contingent upon receiving complete and accurate information, it is necessary and reasonable to require verification of financial data. The provision is consistent with Department Rule 47, B.8. and Rule 44, B.6.

Only the most essential data related to either ability to pay or number of dependents are required to be verified. Other data must be verified only if doubtful. The provision is consistent with Department Rule 47, B.8. and Rule 44, B.7.

C.5. The requirement that a consent form for verification of data by a third party must identify the item of information requested provides the person authorizing disclosure clear knowledge of the kind of information being requested. It ensures an informed consent and protection of the person's right to privacy. The provision is necessary to comply with the Minnesota Government Data Practices Act. It is reasonable as it safeguards the person's rights. This provision is consistent with Rule 44, B.6. and Rule 47, B.8.

C.6. The underlying statute provides that any person requiring state hospital services is eligible to receive the services irrespective of ability to pay. Unlike private facilities, the state hospitals will only require payment according to ability to pay. To determine the ability to pay requires the cooperation and participation of the person on whom the statutes fix the liability.

Without knowledge of the person's specific financial circumstances, it is reasonable to use the statutory limitation on cost of care (Minn. Stat. §246.51) as the amount the person is able to pay. By failing to cooperate, the person chooses not to take advantage of the statutory benefit of charging only according to ability to pay.

Medical and hospitalization insurance is specifically intended to pay expenses incurred for care and treatment. If a patient is entitled to benefits from medical and hospitalization insurance, it is reasonable and necessary that the benefits be used to pay the cost of care. It is reasonable to require the written assignment of such benefits to the State to ensure their direct payment to the State.

- C.7. It is necessary and reasonable to meet the statutory requirement of Minn. Stat. §246.52 that a determination order be issued.
- C.8. It is necessary and reasonable to have a Department review process which a person can use, without cost and immediately upon receipt of a Determination Order, to disagree with the Department's determination of ability to pay. The time for requesting review is limited to 15 days so as not to prejudice the person's opportunity to appeal under Minn. Stat. §246.55.
- C.9. Minn. Stat. §246.55 provides that a person may appeal the Determination Order to District Court. This provision simply gives affected persons notice of that right.
- D.1. Minn. Stat. §246.51 states that the Commissioner of Public Welfare shall investigate and determine the ability of the patient to pay the cost of care. Insurance benefits, income and property are the financial resources that determine a patient's ability to pay. It is necessary and reasonable to determine ability to pay from these resources.
- D.2.a. Medical and hospital insurance is purchased specifically to pay expenses incurred for care and treatment. If a patient is entitled to benefits from medical and hospital insurance, it is reasonable to expect the person to use the benefit toward payment of the cost of care. Further, it is reasonable to determine the person able to pay at least to the full extent of the insurance benefits available.
- D.2.b. Insurance benefits are only one financial resource; the others are income and property. Thus, if insurance benefits do not meet the full cost of care, other resources may be available. It is necessary, therefore, to determine ability to pay from income and property.
- D.3. Gross income may not provide a fair measurement of a patient's ability to pay because of the wide variation in family responsibilities, previous financial obligations and necessary deductions from gross income of the patient.

Both the federal and state income tax regulations base the individual's tax rate on net income. Use of net income safeguards the patient against undue hardship. This rule uses net income in recognition of this accepted practice that net income is the best measure of ability to pay.

It is reasonable, therefore, that net income be a resource available to pay the cost of care. It is consistent with Rule 44, D.12.b.(2) and (8).

- D.4. Real and personal property are also financial resources of the patient and, therefore, measure the patient's ability to pay. It is reasonable to consider the patient's property as a resource when determining ability to pay. The provision is consistent with Rule 44, D.12.a. and Rule 47, C.4.b.(1) and (2).
- E.1. In-kind income may considerably augment a person's resources by furnishing necessities or other items the person would ordinarily pay for. Each item, whether housing, car costs, food or clothing, has a market value which can be established through a receipt, published reference

document, or appraisal. A uniform system of considering inkind income is necessary to ensure fairness and uniformity in the determination process. It is reasonable to determine the value of the inkind item by a receipt or appraisal. This provision is consistent with Rule 47, C.4.a.(4)(a).

- E.2. A lump sum contributes to the financial support of the patient. It is a source of income and properly used in determination of ability to pay. It is reasonable and necessary to require the patient to report this income to the Department.

A time limit is necessary to assure that the Department has the proper information to determine cost of care. A period of ten work days was chosen as a reasonable time limit as it allows for possible delay in mail delivery and any other impediments beyond the person's control and yet keeps the Department's records current. This provision is consistent with Rule 47, C.4.a.(7) and Rule 44, D.12.b.(9)(b).

- E.3. Farmers and other persons may experience fluctuations in income and costs of operation from month to month. It is necessary to establish a method which will fairly reflect the person's ability to pay cost of care. It is reasonable to remove the seasonal variation by figuring an average monthly income and cost of operations.
- E.4. Minn. Stat. §246.51 requires determination of ability to pay so that the patient is not caused undue hardship and the patient's resources are available to the patient and the dependents for necessary expenses. It is necessary to have a uniform method to ensure that these needs have first priority in use of the patient's resources. Determining ability to pay from gross income does not allow the patient to make deductions necessary for required expenses. Therefore, it is reasonable to set standards for calculating the net income available to pay the person's cost of care. The provision is consistent with Rule 44, D.12.b.(2) and D.12.b.(8)(b).
- E.4.a. Payment of federal and state taxes is mandatory. The amount to be paid is regulated by federal and state laws. It is necessary to allow federal and state taxes to be deducted from the gross income of the patient. It is reasonable to permit deductions of the total amount from consideration as a resource. The provision is consistent with Rules 44, D.12.b.(8)(b)(i) and 47, C.4.a.(5)(e) and with allowable deductions on Federal and State Income Tax Returns.
- E.4.b. Payments made by the individual under requirements of the Federal Insurance Contributions Act and Supplemental Medical Insurance are mandatory and, therefore, not available to the individual. It is, therefore, necessary and reasonable to allow these payments to be deducted from the gross income of the patient. The provision is consistent with Rules 44, D.12.b.(8)(b)(ii) and 47, C.4.a.(5)(d).
- E.4.c. Unreimbursed child care costs are allowable deductions under federal and state tax regulations. It is necessary to provide for the care of children especially during the absence of a hospitalized or working parent. The provision is consistent with Rule 44, D.12.b.(8)(b)(iii).

E.4.d. If support payments ordered by the court are not paid, the authorities will take legal action to enforce the court order. The amount of payment is, therefore, not available to the patient. It is necessary and reasonable to allow deductions of these payments from gross income in determining ability to pay the cost of care.

Because the person is permitted to deduct support payments in the amount determined by the court to be necessary for the dependent, it is reasonable to prohibit the person from taking a further deduction for this particular dependent by including the dependent in determining the monthly Household Living Allowance under E.4.n.

E.4.e. A person appointed by the court to act on behalf of an individual during the incapacity of the individual is entitled by law to charge a fee for the services. The fee is paid from the assets of the individual. A patient in a State hospital may have an appointed guardian, conservator or trustee. It is necessary to pay the fee for the service. It is reasonable to permit the fee to be deducted from gross income in determining ability to pay.

D.4.f. A patient may have a continuing obligation to pay debts incurred for necessities purchased prior to hospitalization. If the patient fails to meet the obligation, the creditor may take legal action to recover the amount due. This action could work an undue hardship on the patient and family. It is reasonable and necessary to permit a patient to use monthly income to pay prior debts incurred for necessities.

A limit is established to prevent the patient who has large sums of outstanding obligations from using all resources to pay previously incurred bills. The amount of one hundred dollars allows the patient to budget systematic monthly payments which will maintain the patient's credit rating and insure continued provision of the items for the family and the discharged patient in the community. A limitation of \$100 prevents the absorption of all the net assets of the patient by past debts. The resources of the patient must be used first for necessities for the patient and the patient's family, and then for payment for hospital care. Therefore, it is reasonable to limit the deductible payments to those made for specified necessities to maintain health and to provide transportation in the community. The limitation of allowable debts to those incurred for medical, dental, car, and utility costs recognizes the essential nature of these needs by the patient and the family. The limitations on amounts and kind are necessary and reasonable.

E.4.g. Many employers establish pension plans which mandate employee participation and contributions. Money paid as a mandatory contribution is usually not available for the employee's daily needs. Since it is not available, it is necessary and reasonable to allow it as a deduction from gross income in determining the net income and ability to pay the cost of care. The provision is consistent with Rules 47, C.4.a.(5)(a) and 44, D.12.b.(8)(c)(i).

An employed patient may necessarily incur transportation expenses in order to hold a job and produce income. It is reasonable to allow these expenses as deductions.

The method of determining the transportation allowance is the same as that used by the State for employees traveling on authorized State business. It is reasonable to be consistent with State policy. The allowance is larger than the one established in Rule 47, C.4.a.(5)(b).

The items included work uniforms, union dues, professional dues, tools, and equipment and are all standard deductions for persons itemizing deductions on state and federal tax returns.

It is reasonable to permit such deductions from the gross income of the patient in determining the net income and ability to pay. The provision is consistent with Rule 47, C.4.a.(5)(c),(f),(g) and (h) and Rule 44, D.12.b.(8)(~~b~~)(c)

- E.4.h. Hospital and medical insurance premiums purchase insurance coverage of the medical and hospital expenses of the patient and his/her dependents. It is necessary and reasonable to allow the deductions of the premiums from the patient's income as they protect the patient from hardship and in this instance benefit the State by paying at least a portion of the per diem. The provision is consistent with Rule 47, C.4.a.(5)(h) and Rule 44, D.12.b.(8)(c)(vi).
- E.4.i. Certain expenses are necessary in order to operate a business or a farm and to produce income from them. The business or farm may produce income which can support the patient and the patient's dependents. Federal and state tax laws permit an individual to deduct business expenses from gross income in calculating the net taxable income. It is reasonable to be consistent with such laws. The provision is also consistent with the Rule 44, D.12.b.(8)(e).
- E.4.j. It is necessary and reasonable to allow business expenses incurred in providing room and board to be deducted from gross income. The provision is consistent with Rule 44, D.12.b.(8)(g), and modification shown in the Department's Instructional Bulletin #81-44.
- E.4.k. It is necessary that a patient in a State hospital be allowed money for clothing and personal needs. The allowance of a standard amount is consistent with other programs of the Department. Minn. Stat. §256B.35 (1980) sets forth allowances for clothing and personal needs.
- E.4.l. Operation of a child care center or home is a business. It is necessary to allow the deduction of expenses for operating a child care center or home. The patient may deduct actual expenses or use a standard deduction of 60% of the income earned from the center or home. The standard is based on a study AFDC Policy and Income From Child Care done by the Department in 1978. This provision is also consistent with the Rule 44, D.12.b.(8)(f).

- E.4.m. The housing allowance recognizes the limited resources of the majority of patients who have to set budget priorities. It may encourage earlier return of the patient to the community, where, if necessary, outpatient treatment could be obtained in a familiar setting at a community facility.

It is reasonable to allow the actual cost of housing in the community. A Demographic Study of Non Income Maintenance Patients in Minnesota State Hospitals, March, 1980, showed that the majority of patients were discharged within 120 days of admission which is the time limit proposed in this rule. It is reasonable to use this limit to protect the patient's residence in the community and also to protect the interests of the State.

This provision is necessary to recognize that an inpatient with dependents is entitled to a housing allowance based on criteria similar to those for inpatients without dependents. A different method is needed to calculate the inpatient's share of the cost of housing in the community because the inpatients share the same residence as the dependents. The dependent's housing needs are met by the household living allowance in D.2.d.(14). The housing costs allowed for the inpatient are, therefore, a prorated share of the family's actual housing costs.

The Department's goal is to encourage outpatient treatment within the patient's own community wherever such treatment is medically indicated. The limitation of the number of times a housing allowance is permitted is additional encouragement to the discharged patient to remain in the community and to use community resources for treatment. The limitation is necessary and reasonable to support the Department's goal.

- E.4.n. It is reasonable and necessary to permit a deduction for a monthly household living allowance. United States Department of Labor, Bureau of Labor Statistics (BLS) publication number 81-195, released April 22, 1981, Autumn 1980 Urban Family Budgets and Comparative Indexes for Selected Urban Areas was chosen as the most accurate and commonly used source from which to obtain a family budget. It is an annual publication and the one used was the most recent. Annually by July 1, the Bureau of Labor Statistics April publication which reports family budgets and comparative indexes as of the preceding autumn will be used by the Department to update the monthly household living allowance.

The annual family budget given in the publication is divided by 12 in order to compute a monthly figure. Because the publication's budgets are based on a four-person household, the monthly amount calculated from the annual figure is prorated by households with none or less than four persons. It is necessary and reasonable to choose a norm from the most widely used and most recently published data.

The urban standard for the Minneapolis-St. Paul area was the only available data for the state of Minnesota. The low budget was chosen as being most comparable to the standards for budgets in the AFDC program. The budget includes the costs of food, clothing, shelter, transportation, personal care, other family consumption (examples: recreation, education, reading, etc.) and other items such as occupational expenses, life insurance and contributions. Because this rule

provides in E.4.a., b. and h. for the deduction of all federal and state income taxes, payments for Social Security and all hospital and medical insurance premiums, these costs were excluded from the monthly household living allowance. It is necessary and reasonable to set a standard for income to be allotted as a monthly household living allowance for the dependents of the patient and for the outpatient living with his/her dependents.

Because BLS uses a four-person household, it was necessary to extrapolate the allowance for households of other sizes. In recognition of the fact that a one-person household is more expensive to maintain on a per capita basis than a large household, the ratio between the one-person and the four-person household was set at 40 percent, the two-person and four-person household at 60 percent and the three-person and four-person household at 80%. For each person beyond a four-person household, \$178 would be added to the monthly household living allowance. These weightings are similar to the AFDC program standards. It is reasonable to use this weighting method to recognize the proportional effect of increasing family size.

The provisions clarify the number of persons in the household for the purpose of determining the household living allowance.

Factors affecting the cost of living may cause increases or decreases in the cost over a period of time. It is reasonable and necessary to take into account changes in the cost of living and provide a reasonable method to adjust these standards.

- F. Real and personal property are financial assets of the patient and, therefore, contribute to the patient's ability to pay. It is reasonable and necessary to consider property when determining ability to pay.

Consideration of a patient's property is consistent with Rule 44, D.12.a., and 47, C.4.b., and Minn. Stat. §256B.06, Subd. 1(7) and (8).

- F.1.a. It is reasonable to exempt the value of the patient's homestead from consideration as a resource in order to safeguard the patient's residence in the community. A patient who expects to return to the community needs the security of having a familiar place to return to. It is also reasonable to protect the homestead of his/her dependents and any income producing property which will pay cost of care and support. Therefore, it is necessary to exempt the patient's homestead for a reasonable time. However, when the diagnosis of a patient without a spouse or dependents indicates a hospitalization longer than eighteen months, consideration should be given to either making the property income producing or selling it to pay cost of care and personal needs. Eighteen months is a reasonable time in which to obtain a complete picture of the patient's prognosis. According to the Demographic Study, March, 1980, 41% of the mentally ill patients, 90% of the chemically dependent patients, and 17% of the mentally retarded patients are hospitalized less than 120 days. The provision is consistent with the principle regarding homestead exemption found in the Department's Medical Assistance Manual IV G-4.

F.1.b. It is reasonable to exempt income producing property from consideration as a resource so that the patient will have an ongoing means of support to maintain him/herself and dependents in the community. The income from property is considered in determining ability to pay cost of care.

A contract for deed yielding income to the patient meets the criteria established for income producing property. Therefore, it is reasonable and necessary to exclude from consideration real property being sold on a contract for deed and for which the patient receives income. This provision is consistent with Minn. Stat. §256B.06 Subd. 1(7).

F.2.a. It is reasonable to exempt personal property which yields an income from consideration as a resource so that this income can be available to maintain the patient's dependents during hospitalization, pay his/her cost of care and yet be available upon the patient's return to the community.

It is reasonable to limit the exclusion to personal property which produces a net income as the purpose of the exclusion is to provide for the patient's dependents and pay cost of care. Its purpose is not to build up assets.

It is important to avoid causing the patient to completely deplete his/her resources and endure undue hardship. Wherever feasible, standards used for eligibility for Medical Assistance should be used in this program. Therefore, it is reasonable to include the standards of the Medical Assistance program in exempting personal property from consideration as a resource. The provision is consistent with Rule 47, ~~D.3.b.(2)(a) and (b).~~ 12 a. (4) (d)

F.2.b. and c. The amounts of cash and liquid assets excluded from consideration are \$2,000 for a single person and \$10,000 for a married couple. The provision is consistent with Minn. Stat. §256B.06, Subd. 1.(8).

F.2.d. Minn. Stat. 256D.08, Subd. 1 (3) excludes from consideration as income Indian claim payments made by Congress to compensate for tribal land. It is reasonable to allow the same deductions here.

F.2.e. Minn. Stat. §462A.05, Subd. 15 (1980) provides for loans for low income families who need assistance in improving or purchasing homes. The statute states that the money is to be used for the purpose for which it is given. Consequently, the money is not available to pay for cost of care and its exclusion is necessary and reasonable.

F.2.f.-1. The items contained in these provisions are personal items or basic necessities. They are exempted from consideration in Rule 47, ~~D.4.b.(2)~~, Minn. Stat. §256B.06, Subd.1(8) and Minn. Stat. §256B.07 and it is reasonable to exempt them in this rule.

C.4.b.(2)

F.2.m. Rule 47, C.4.b.(2)(a)(iii) and Rule 44, D.12.a.(5)(a) exempt a limited amount of life insurance values from consideration as property. It is necessary and reasonable to be consistent with other rules of the Department. It is furthermore reasonable to escalate the dollar amount

exempted in order to recognize inflation which has occurred since Rules 47 and 44 were adopted. Present policy of the Department permits recipients of either Aid to Families of Dependent Children or Medical Assistance benefits to exclude \$1500 cash value of life insurance.

F.2.n. This rule treats trust funds as available to pay for cost of care whenever the trustee has discretion to use the funds for that purpose or whenever the funds are designated for maintenance or similar purposes. It is reasonable and necessary to make trust funds available to pay for care to the maximum extent possible.

F.2.o. Rule 44, D.12.a.(6) and Rule 47, C.4.b.(2)(a)(v) exempt prepaid burial accounts up to \$750 in value plus accrued interest up to \$200 from consideration as a property resource. This rule contains the same provision as Rules 44 and 47. It is necessary and reasonable to allow a patient sufficient funds to cover basic funeral expenses. It is reasonable to be consistent with other Rules of the Department.

F.3.a. It is reasonable to permit the Department to waive consideration of property in excess of the exemption when the waiver will prevent undue hardship, or will allow procurement of employment or medical care. This provision is consistent with Rule 44, D.12.a.(3)(a) and (b) and 47, C.4.b.(1)(a) and (2)(b).

Many people live in areas without readily available public transportation services. Many of these people must rely on their personal vehicles to get to work, obtain medical care and attend educational course to obtain or keep employment. It is reasonable and necessary to permit a second vehicle to a patient when his/her spouse and/or dependents need a second vehicle for these purposes.

Minn. Stat. §15.0412, Subd. 1a. provides that agencies may grant variances to rules if the procedures and standards for granting the variances are set out in the rule.

F.3.b. Patients who are dissatisfied with decisions about ability to pay have the right to request a Departmental review and/or appeal to District Court. It is necessary that each waiver request and the decision regarding it are documented in the patient's financial information file.

F.3.c. Because the decision to waive consideration of property as a resource is based on a unique set of circumstances, it is prudent to recognize that the circumstances may change. Property may become more salable as a result of change in the marketplace; title to property may have been cleared; the value may have increased or decreased. It is necessary, therefore, to provide for a systematic review of the waiver.

To require annual review of the waiver dovetails with the requirement for an annual redetermination of ability to pay. It is reasonable that all of the patient's resources be examined at this time. This provision is consistent with Rule 47, C.4.b.(1)(a)(i)(bb).

F.4. Where transfers of non-exempt property are made without adequate consideration and the transferor intends or believes he/she will incur debts beyond his ability to pay or intends to avoid payment of debts, the transfer may be set aside in a legal action by present or future

creditors. Minn. Stat. §§513.20-513.32. This provision protects the state from such transfers by providing that the transfer will not be effective to remove the property from consideration in determining ability to pay. The limitation of \$1,000 sets a reasonable value to protect the patient from harassment and to make the State's effort to recover cost efficient.

The provision is necessary to assure that property owned by the patient is used to pay for the patient's care. The provision is reasonable in that it is consistent with the Fraudulent Conveyance Act. The right to sue to set aside the conveyance would be ineffectual if the property could not be considered in determining the amount of the debt. Such transfers will have no affect on the provision of services to a patient. The review and appeal procedures are available to any patient aggrieved by the Department's determination.

It is reasonable, in assessing the value of transferred property to be considered as an available resource, to deduct the value or amount of any consideration received, since the consideration will be either available for consideration or excluded under other provisions of the rule.

- F.5. It is necessary to ensure that the patient's property is used for the patient's care and to protect the interests of the State as provided in the Fraudulent Conveyance Act. It is reasonable, therefore, to require documentation of the circumstances surrounding the transfer.
- F.6. Where the patient has no further obligation to the State, it is reasonable to exempt him/her from the provisions regarding transfer of property.
- G.1. Minn. Stat. §246.51 requires the Commissioner to determine the ability of each responsible relative of the patient to pay cost of care, if the patient cannot pay the full cost. It is reasonable that the standards and procedures for making this determination be set out in this rule.
- G.2. The determination of ability to pay requires the gathering of financial information about the responsible relatives who have a liability to pay cost of care. Personal contact by means of an interview is the most efficient way to obtain this information, and is therefore reasonable.
- G.3. When the responsible relative has purchased medical and hospital insurance coverage for the patient, any benefits paid by the company are intended to meet medical and hospital costs of the patient. It is necessary that the benefits be used for the purpose for which they are paid. It is necessary and reasonable to require the responsible relative to inform the Department of the benefits available on behalf of the patient.
- G.3.a. Insurance is carried to provide a financial resource to meet a specific need, in this case, the care and treatment of the patient-dependent of the responsible relative. The benefit is paid specifically to meet the cost of care charges of the patient-dependent. It is reasonable to consider these benefits as financial resources of the patient which will contribute to the patient's ability to pay.

- G.3.b. Generally, a responsible relative's hospitalization and medical insurance will cover all of his/her dependents equally. However, the Department recognizes that in some circumstances insurance coverages may not be available for the patient who has a long history of hospitalization and medical care. Therefore, it is necessary and reasonable to investigate and verify the insurance coverage of the patient.
- G.3.c. It is reasonable and necessary to request the responsible relative to provide verification of the insurance coverage he/she has on the patient so that the benefits can contribute to paying the patient's cost of care. It is also reasonable and necessary to request the responsible relative to assign the benefits to the Department. This provision is consistent with Minn. Stat. §256B.06 Subd. 1(11).
- G.3.d. It is reasonable to recognize the contribution the responsible relative in paying the insurance premiums. Therefore, it is necessary and reasonable to permit the responsible relative who pays an insurance premium which provides hospital or medical benefits to the patient to deduct the cost of the premium from his/her obligation to pay.
- G.4. Minn. Stat. §246.50, Subd. 6 defines the degree of responsible relationship between the patient and relative who is liable to pay cost of care.

Minn. Stat. §246.50 states that the parents of the minor child shall be liable for cost of care of the minor child patient up to age 18. The law adds no qualifier as to the extent of the liability of each parent in relation to each other. Since the payment schedule is based on household size, it is reasonable to require both parents to be individually liable for the cost of care of the child where they are divorced or separated.

Minn. Stat. §246.50, Subd. 6 gives the order of statutory liability of responsible relatives to pay cost of care. It is necessary to clarify the liability of two or more responsible relatives who have the same order of statutory liability. It is reasonable that a determination is made for each responsible relative who has an equal liability to pay the cost of care.

- G.5. Minn. Stat. §246.51 states that a responsible relative who has less than \$11,000 in annual gross earnings has no obligation to pay the cost of care. Since the limitation is based upon gross earnings, it is reasonable and necessary for consistency and fairness that the ability of other relatives to pay should be based upon gross earnings also.
- G.5.a. Since an income of less than \$11,000 removes the statutory obligation of the responsible relative, it is necessary and reasonable to verify the annual gross earnings of the responsible relatives.
- G.5.b. This provision states the limitation set out in Minn. Stat. §246.51, and Laws of 1981, Chapter 360, Article I, Section 2, Subd. 5, as amended. It is necessary and reasonable to comply with the law.

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G.5.c. Minn. Stat. §246.50, Subd. 6 states that the spouse of a patient is liable for cost of care of the patient. It is necessary to clarify the obligation of the spouse in paying cost of care. It is reasonable to limit the determination for the spouse to the spouse's own income.

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G.5.d. Minn. Stat. §246.50, Subd. 6 defines the term responsible relative. The definition does not include the spouse of the responsible relative. This provision is necessary to clarify the statutory definition of responsible relative.

G.6.a. It is reasonable and necessary to have a standard procedure to determine the ability for responsible relative to pay the cost of care. Verifying income is part of the standard procedure. An income tax return is an accepted method of verifying income. It also defines how the number of persons in a household shall be counted.

G.6.b. Any responsible relative will be offered the opportunity to simply agree to pay the statutory maximum. This will obviate the necessity for any inquiry except into insurance coverage.

G.7. The schedule of this provision sets a uniform standard for determining a responsible relative's ability to pay based on annual gross income and the responsible relative's household size which consists of the responsible relative and dependents. It treats all responsible relatives fairly and equitably. This provision is necessary to establish a standard; it is reasonable as it is based on amount of annual gross income and household size. The schedule is similar to that in Rule 30, C.1. which sets the payments required from parents of mentally retarded or epileptic or emotionally handicapped children who are in foster care or residential facilities. It is reasonable to use a similar standard for responsible relatives of patients who receive care in a state hospital. This avoids creation of an incentive to use state hospital placements rather than community resources. The maximum of 10% of the cost of care complies with the limitation in Minn. Stat. §246.51.

G.8. This provision is similar to other provisions of the proposed rule which set out a method for annual adjustments of income and payment levels based on changes in living costs. It is reasonable to use the same source for making the adjustment as used in E.4.n.

G.9.a. The Minnesota State Income Tax Return and the United States Income Tax Return, which most persons must file, show the annual gross income and number of dependents the responsible relative has. The person filing the return attests to its accuracy by signing the return. It is the most accurate source of verification of income. Therefore, it is reasonable and necessary to use either tax return to verify the responsible relative's income and number of dependents.

G.9.b. It is necessary to verify the insurance premium the responsible relative pays on behalf of the patient as this sum may be deducted from the responsible relative's liability to pay the patient's cost of care. It is reasonable to verify a fact which will provide monetary reduction of the responsible relative's obligation.

G.10. It is reasonable and necessary for the parents of a child-patient to pay for his/her clothing and personal needs as the child is a dependent of the parents and unable to support him/herself due to age. This provision is similar to Rule 30, C.3.

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