

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO
PERMANENT RULES GOVERNING THE
DETERMINATION OF PAYMENT RATES
FOR NURSING HOMES PARTICIPATING
IN THE MEDICAL ASSISTANCE PROGRAM
PARTS 9549.0010 TO 9549.0080

STATEMENT OF NEED AND
REASONABLENESS

AUTHORITY

Minnesota Rules, parts 9549.0010 to 9549.0080, govern the rates for nursing homes licensed under Minnesota Statutes, chapter 144A and boarding care homes licensed under Minnesota Statutes, section 144.50. These permanent rules, and the temporary case mix rules (parts 9549.0050 to 9549.0059 [Temporary]) were effective on June 14, 1985, for rate years beginning on or after July 1, 1985. Together they were developed to implement Minnesota Statutes, sections 256B.41 through 256B.502 and were promulgated according to the requirements of federal statutes 42 USC § 1396 a(a)(13)(A) and federal regulations 42 CFR Part 447.

LEGISLATIVE HISTORY

In 1983, the Minnesota Legislature found "that Medical Assistance expenditures are increasing at a much faster rate than the state's ability to pay . . .; that reimbursement for nursing home care and ancillary services comprises over one-half of Medical Assistance costs and, therefore, controlling expenditures for nursing home care is essential to prudent management of the state's budget. . .," Minnesota Statutes, section 144A.071.

The Commissioner of the Department of Human Services was directed to "establish by rule, procedures for determining rates for cost of residents at nursing homes which qualify as vendors of Medical Assistance," Minnesota Statutes, section 256B.41. The Department is responsible for the adoption of rules which comply with the expressed requirements of the Minnesota Legislature.

RULEMAKING HISTORY

The Department adopted a temporary rule, 12 MCAR §§ 2.05001 - 2.05016 [Temporary], and began the development of permanent rules. An advisory committee was formed including members representative of the nursing home industry, consumer groups, and those knowledgeable about nursing home finances. The Department engaged a consultant, the firm of Deloitte, Haskins & Sells, to conduct a study of property reimbursement methodology; and, in cooperation with the Interagency Board for Quality Assurance, contracted with Lewin & Associates for a study of a case mix system to reimburse operating costs.

In 1984, the Legislature directed the Department to adopt temporary rules necessary for the implementation of operating costs payment rates as provided by Laws of Minnesota 1984, chapter 641. In effect, nursing home payment rules were divided into two parts: (1) the provisions governing the determination of allowable costs, setting reporting requirements, establishing appeals procedures, and determining the property-related payment and payment for real estate taxes and special assessments (parts 9549.0010 to 9549.0080); and (2) the provisions dealing with the establishment of a case mix methodology for payment of operating costs (parts 9549.0050 to 9549.0059 [Temporary]).

The Legislature established special requirements for the development of the temporary case mix rules in Laws of Minnesota 1984, chapter 641. The temporary rule process was governed by the Administrative Procedures Act (Minnesota Statutes, section 14.29 to 14.36) which was in effect on March 1, 1984. The temporary rules adopted were to "have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule." Minnesota Statutes, section 256B.431, subdivision 6. The Department's proposed temporary rules, parts 9549.0050 to 9549.0059 [Temporary] were published in the State Register on April 8, 1985, and were effective on June 14, 1985, for rate years beginning on or after July 1, 1985.

In 1986, the Minnesota Legislature extended the effective period for the temporary rules governing the case mix system for one year in order to give the Departments of Health and Human Services additional time to develop permanent rules. Laws of Minnesota 1986, chapter 316. Following the adoption of the legislation extending the temporary rules, the Department of Human Services amended the temporary rules to clarify the operating cost rate determination process to be used to determine rates for fiscal 1987 and to update the resident classification system used in determining operating cost payment rates. The temporary rules as amended were effective on June 14, 1986. The permanent rulemaking process has begun and will be completed in the spring of 1987.

PURPOSE OF AMENDMENTS

The Department and the industry's experience with parts 9549.0010 to 9549.0080 during the year following adoption of the rules lead to the iden-

tification of a number of issues that needed clarification. The purpose of this amendment process is to address those issues. Most of the proposed amendments do not result in substantive changes in the rate determination process, but rather merely clarify existing policies.

AMENDMENT PROCESS

The Department published a "Notice of Intent to Solicit Outside Opinion" in the State Register on July 14, 1986. An advisory committee meeting was held on July 11 with the original advisory committee used in the development of parts 9549.0010 to 9549.0080. A follow-up meeting was held with the advisory committee developed to work on the case mix rules, parts 9549.0050 to 9549.0059 [Temporary] on August 7. Several modifications were made to the proposed amendments based on the input received from the advisory committees. A list of the advisory committee members is contained in Exhibit A.

STATEMENT OF NEED AND REASONABLENESS FOR SPECIFIC RULE PROVISIONS

The specific provisions of parts 9549.0010 to 9549.0080 which are to be amended are affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

A. CORRECTIONS TO CITATIONS IN THE RULE PARTS.

Part 9549.0030, subpart 4, item B

After "subitems (1) to" strike "(4)"; insert "(5)".

Part 9549.0036, Items I, Q, and V.

Item I. After "item" strike "Y", insert "X".

Item Q. After "item" stike "W"; insert "V".

Item V. After "as in part 9549.0040, subpart" strike "7, item Q ";
insert "6, item D".

Statement of Need and Reasonableness

These changes are necessary because when other parts of the rule which were renumbered during the initial rulemaking process the corresponding corrections were not made to these items. It is reasonable to correct these rule cites so that the rules will read properly and to assure that appropriate interpretations of the rules will be made. Without these corrections the rule cites would not make sense.

B. CORRECTION OF WORDING IN RULE PARTS.

Part 9549.0041, subpart 10, item B.

After "disallowance of the cost for which" strike "no".

Statement of Need and Reasonableness

It is necessary to make this correction to clarify that the costs to be disallowed are the costs for which documentation was requested but was not provided. It is reasonable to make this correction because application of the penalty as currently worded would result in the disallowance of all costs except the costs being contested.

After "insurance proceeds, must" strike "be"; insert "exceed".

Statement of Need and Reasonableness

This amendment is necessary to clarify that a special reappraisal may be requested when the total historical cost of the addition or replacement is more than the lesser of \$200,000 or 10 percent of the facility's allowable appraised value. It is reasonable to make this change because if the rule provision as originally adopted is taken literally the historical cost of the project "must be" \$200,000 or 10 percent of the most recent appraised value. It is improbable that any provider would qualify for the reappraisal under those conditions. Since the Department did not intend for the provision to be overly restrictive, it is reasonable to make this change.

Part 9549.0060, subpart 10, item E

Strike "Octobers"; insert "Decembers".

Statement of Need and Reasonableness

The amendment is necessary because the Urban Consumer Price Index for Minneapolis/St. Paul, as published by the Bureau of Labor Statistics, will only be published in June and December beginning in 1986.

Because the October index will no longer be available it is reasonable to use a different annual period. Since the December statistic is the one most closely associated with the rate year that can be reasonably obtained prior to the effective date of the payment rates, it is reasonable to use the

December index rather than the June index. Use of the June index would not be feasible because the Department is required under Minnesota Statutes, section 256B.431 to notify the nursing homes on or before May 1 of the rates effective for the following rate year.

C. NEW RULE LANGUAGE.

Part 9549.0041, subpart 13, item B

Insert after "field auditor."

"If the provider fails to provide the field auditor access to supporting documentation related to the information reported on the cost report within the time period specified by the commissioner, the commissioner may calculate the total payment rate by disallowing the cost of the items for which access to the supporting documentation is not provided or apply the penalty in subpart 12, item A, whichever would result in the least amount of change in the total payment rate."

Statement of Need and Reasonableness

The Department is responsible for the administration of public funds and for the fulfillment of federal and state program requirements. The field audit process is one of the Department's tools for determining whether participating vendors are meeting statutory and regulatory requirements.

This amendment is necessary to clarify that access to supporting documentation is essential to the field audit process and that the failure to provide access to field auditors will result in the disallowance of the costs for which documentation is not provided or a 20 percent reduction in the

nursing home's payment rate whichever is less. It is necessary to have a penalty to provide a deterrent to providers who might otherwise obstruct the field audit process by denying the field auditor access to the supporting documentation or by unduly delaying providing the field auditor access to such documentation.

This requirement is consistent with Minnesota Statutes, section 256B.30 which states that: "The financial reports and supporting data of the facility shall be available for inspection and audit . . ." and with Minnesota Statutes, section 256B.27, subdivision 1, which states that: "the commissioner of human services may require any reports, information, and audits of medical vendors which he deems necessary."

The application of a penalty is consistent with Minnesota Statutes, section 256B.064, subdivision 1a, which gives the Commissioner authority to "seek monetary recovery and impose sanctions" against Medicaid vendors for their refusal to grant state agency access to records. The penalty is also a logical extension of the Commissioner's authority granted in Minnesota Statutes, section 256B.48, subdivision 3. A similar penalty is imposed when requested documentation is denied the Commissioner during the desk audit review process. It is reasonable to apply a similar penalty for documentation requested in a field audit because the information is of equal importance to the commissioner and because using a similar penalty is less confusing for the providers and the Department staff.

Part 9549.0060, subpart 13, item B, subitem (1)

After "capacity days."; insert:

"A nursing home with an average length of stay of 180 days or less as defined in subpart 8, item E, shall use the divisor determined in subpart 8, item E, instead of 96 percent of capacity days."

Statement of Need and Reasonableness

This amendment is necessary to clarify that nursing homes with an average length of stay of 180 days or less will receive the same treatment in the computation of their historical property-related per diem as accorded them in the computation of their building capital allowance in subparts 8 or 9.

The clarification represents the Department's current practice and is the Department's interpretation of the rule as promulgated. The amendment is reasonable since throughout this part (at subpart 8, item E and subpart 9, item D) short length of stay facilities are treated differently with respect to the capacity day divisor. If this clarification were not made the rule could be interpreted in a way which would adversely affect the short length of stay facilities.

EXHIBITS

Exhibit A, the list of Advisory Committee Members is attached.

DEPARTMENT PRESENTATION

If a hearing is required for these rule amendments, Charles Osell, Supervisor, Rule Administration and Policy Development, will present a summary of the Statement of Need and Reasonableness for the Department of Human Services.

OUTSIDE EXPERT WITNESSES

The Department of Human Services will not be using outside expert witnesses to testify in support of the amendments to parts 9549.0010 to 9549.0080.

CONCLUSION

The foregoing statements demonstrate the need for and reasonableness of proposed parts 9549.0010 to 9549.0080. To a great extent, the need for the rules is prescribed expressly by state statute, federal requirements, and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

8/25/86

Date



LEONARD W. LEVINE, COMMISSIONER

LM6/JANE