STATE OF MINNESOTA

MINNESOTA VETERANS HOMES BOARD

STATEMENT OF NEED FOR AND REASONABLENESS OF PROPOSED MINNESOTA RULE PARTS 9050.0010 TO 9050.0900 RELATING TO ADMISSION AND DISCHARGE FROM THE MINNESOTA VETERANS HOMES; CALCULATION OF COST OF CARE AND MAINTENANCE CHARGES AND BILLING FOR SERVICES PROVIDED IN THE MINNESOTA VETERANS HOMES.

I. INTRODUCTION

The nature of the proposed rules contained in Minnesota Rules, Parts 9050.0010 to 9050.0900 is to provide an authoritative basis for internal functioning and operation of the Minnesota Veterans Homes. The proposed rules commit to written form the practices currently used at the Minnesota Veterans Homes, which have developed in response to state law, licensure requirements of the Minnesota Department of Health, funding requirements of the United States Department of Veterans Affairs, program recommendations of the Minnesota Department of Human Services and program and personal needs and concerns of the Minnesota Veterans Homes' residents.

The rules were developed through analysis of current and past policy and procedures, consultation with staff, residents (both current and former), family members, attorneys, physicians, Board members, representatives of state agencies (including Human Services and Department of Health, Department of Veterans Affairs) and advocacy and public interest groups.

Ten different drafts of these proposed rules were developed, beginning in November, 1988. The various drafts of the proposed rules were forwarded to, and reviewed by,staff, Board members, residents and their family members, representatives of Legal Aid Society of

Minneapolis and representatives of various state agencies. The text of the proposed rules was revised on the basis of comment received from or through the above mentioned persons.

The proposed rules contained in Minnesota Rules Parts 9050.0010 to 9050.0900 represents the tenth re-draft of the rule text. The text was also utilized, on a temporary basis, as emergency rules (Emergency Rules parts 9050.0010 to 9050.0900) under authority granted the Board under Laws of Minnesota, Chapter 84, (1989).

A. Background:

The function of this rule is to determine eligibility and suitability for admission to a Minnesota Veterans Home boarding care facility or nursing home; to identify and define the grounds on which a resident of a Minnesota Veterans Home facility shall be discharged and to establish a method by which such discharges shall be effected; to clarify the method by which cost of providing care at each licensure level is calculated; to establish an objective, equitable method to determine the amount paid by a resident for services in a Minnesota Veterans Home facility; to provide notice of admission requirements, eligibility standards, financial obligations, service obligations and information which must be disclosed to or by a Minnesota Veterans Home facility and the requirements for disclosure.

The Minnesota Veterans Home in Minneapolis was established in 1897. Throughout its 102 year history, the Minnesota Veterans Homes have had to adapt to numerous changes in the states political climate with its resultant effect on funding/financial support, changes in the character and needs of the veterans population it was established to serve (with related changes in the health care field in general) and

numerous leadership changes. Its history has been a tumultuous one.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt these rules is set out in Minnesota Statutes, section 198.003, (a) (1) (1988) which provides that the Board may "according to Chapter 14 adopt rules for the governance of the homes". Under this statute, the Board has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minnesota Statutes, chapter 14 (1988) requires the Board to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Board must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reaosnableness means that the solution proposed by the Board is appropriate. The need for the rules is discussed below.

The Minnesota Veterans Home has never operated under formal rules as defined by and made in accordance with the requirements of Minnesota Statutes, Chapter 14, the Administrative Procedures Act. The proposed rules contained in parts 9050.0010 to 9050.0900 represent the Minnesota Veterans Homes Board's attempt to address and to resolve longstanding problems in the operation of the Minnesota Veterans Homes. The proposed rules also represent the Minnesota Veterans Homes Board's intent to administer facilities and programs to serve Minnesota's veterans at a level of quality commensurate with their service on Minnesota's behalf. With these proposed rules, the Minnesota Veterans Homes Board intends

to go forward in its administration of the homes rather than becoming enmeshed in a history of inconsistency and confusion.

IV. STATEMENT OF REASONABLENESS

The Board is required by Minnesota Statutes, chapter 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Board's proposed action. The reasonableness of the proposed rules is discussed below.

The Minnesota Veterans Homes presently operated at Minneapolis and Hastings are unique facilities/programs within the health care field. As they serve a population whose needs are diverse, the faciliities - through the services offered- attempt to meet the needs of all qualified veterans, rather than providing only one or two specific services or programs. Thus the facilities have evolved in a very broad fashion. To maintain some consistency and order with regard to the broad range of people served and services offered, these rules, wherever possible, coordinate with and use definitions and standards common to other state health care programs or facilities, licensure requirements of state agencies and definitions and standards of the United States Department of Veterans Affairs. This coordination should assist the Minnesota Veterans Homes in future development as, to the extent practicable or desirable, the Board can coordinate development of its facilities and programs with other state agencies possessed of special/particular experience or expertise in individual health care

areas such as mental health, vocational rehabilitation and chemical dependency.

A. REASONABLENESS OF THE RULES AS A WHOLE

Where possible the proposed rules require decisions based on identified, objective criteria with decisions/assessments/recommendations made by health care professionals specifically licensed for such assessments. Adherence to identifiable criteria is required to eliminate arbitrary decision-making and abuse of discretion; as is the requirement that decisions be made by a committee process.

Also whenever possible, these proposed rules follow definitions contained in statute or regularly used by other state agencies (particularly the Health Department and the Department of Human Services) in their rule text and utilize, either wholly or as a basis from which modifications necessary to fit the Minnesota Veterans Homes were made, rule provisions previously implemented by other agencies.

B. REASONABLENESS OF INDIVIDUAL RULES

DETAIL BY SECTION

9050.0010 Scope.

This provision is necessary to establish and clarify the physical and personal (and subject matter) jurisdiction of the proposed rules in parts 9050.0010 to 9050.0900. It also clarifies the equal applicability of rules regardless of a person's status as resident, employee, visitor, etc.

9050.0020 Applicability.

This section generally outlines the purposes of the rule

provisions. It provides notice that the proposed rules are to clarify Minnesota Statutes, Chapters 196, 197 and 198 and that rule provisions must be read in conjunction with these statutes.

9050.0030 Compliance with statutes, rules and codes.

As the Minnesota Veterans Homes do not comprise an entirely self-contained system, its facilities and programs must comply with state statutes, rules and codes by which it is granted authority to operate. This provision provides notice to affected parties that the Board must comply with other state authorizing, governing and regulatory agencies and standards. Such compliance is either required by statute or by condition of licensure. Such "separation of powers" is a means through/by which the State ensures certain standards of care on behalf of its citizens (particularly those identified as Vulnerable Adults) and ensures objectivity with regard to review and assessment of facilities and programs relating to health care.

Identification of external standards with which the Board and facility and staff must comply is reasonable in that it provides notice to those affected by the proposed rules as to/of the source for and enforcement authority for various standards. This also identifies for affected parties the possible appropriate sources for investigation and complaint. Further, adherence to such standards ensures provision of care consistent with other similarly situated facilities or programs in Minnesota.

9050.0040 Definitions

The definitions contained in this part are necessary to clarify the rules as they relate to Minnesota Statutes, Chapters 196, 197 and 198; to coordinate these rules with other statutes, programs and standards of assessment and treatment; and to distinguish between common useage of terms and their "term of art" or technical meaning, where such confusion is possible.

These definitions are taken from statute, from rules governing other, similar programs or subject areas, or specifically detail the meaning as the word is used in these rules. Such clarification as to how terms are used in the rules is necessary to avoid confusion and misunderstanding and to ensure consistency in application.

9050.0050 Persons eligible for admission.

This section clarifies the statutory provisions contained in Minnesota Statutes, sections 198.002 and 198.03 regarding eligibility for admission into a Minnesota Veterans Home. It clarifies those individuals entitled to receive benefits or services by virtue of their veteran status or relationship to a veteran.

The veterans homes were created and are administered to provide both financial and service-provision advantages to veterans and their families in recognition for the veterans' service to their country and state. The service or relationship requirements imposed by these rules are to ensure that such benefits inure only to those who have truly earned them.

Several provisions of this rule section provide clarification of requirements which were not adequately defined in statute. These include what is meant by

the phrase "adequate means of support". These rule provisions represent policy decisions by the Board as to the most appropriate means to accomplish the original purpose/intent of the homes - to care for Minnesota Veterans who could not care for themselves. Thus, resident of Minnesota, for eligibility purposes, is defined as someone who has lived in Minnesota.This requirement eliminates admission of persons who are in Minnesota, on a transient basis, for treatment at a United States Department of Veterans Affairs facility and who attempt to "slide in" to the Minnesota Veterans Home on the basis of their physical presence in the state; as frequently occurs with transient veterans who turn up through either the Wisconsin or Minneapolis federal facilities. Such a requirement is intended to prevent Minnesota from becoming a "dumping ground" for people who did not contribute to Minnesota either as veterans or taxpayers.

The final provisions of this rule section apply only to those admitted under Minnesota Statutes, section 198.03. Minnesota Statutes, section 198.03 carves out an exception to the statutory admission criteria/requirement that applicants be "without adequate means of support". It allows admission of applicants who have financial resources if they contribute a "reasonable amount" towards their cost of care. This rule provision also requires that former residents, with the ability to do so, clear up previous debts to the State before they will be admitted again

to the Minnesota Veterans Homes. The requirement is necessary to prevent avoidance of debts by leaving the facility and then reapplying. It also assists in reducing the costs to the State of operating the home.

9050.0055 Admission process; waiting list; priority.

This rule explains the process by which application is made and admissions decided, establishes a waiting list and priority system to determine, when space is inadequate, the order in which applicants are admitted.

Subpart 1. Process.

The admission process portion of this rule identifies for applicants the tasks they must complete to be considered for admission and defines what constitutes a complete application file. Such information is necessary to enable the facility/admissions committee to make intelligent, informed and professional decisions regarding admission of each applicant. The requirement that applicants provide medical records enables facility staff to determine whether the person can be cared for at a Minnesota Veterans Home facility and assists the staff in determining the specific level and type of care the person needs. Providing medical information is reasonable as the primary focus of the Minnesota Veterans Homes is providing health care. Medical information is critical in providing quality health care services as it assists in the determination of the person's needs. Further, only specific, limited medical information - that most likely to provide current, comprehensive information about a person's health status - is required. This limited requirement reduces the burden on the person in obtaining information and reduces the possible sense of intrusion into

a person's medical history and therefore privacy.

Subpart 2. Timing of review by admissions committee.

This subpart establishes time frames within which review of an application for admission must take place. It establishes different "triggering mechanisms" on which the time limitations will begin to run.

A time limit for review is necessary to ensure that applicants are given prompt consideration. Establishing differing circumstances with which the time limit for review begins to run is needed to ensure that review is timely with respect to the opportunity for placement and current with respect to admission. The primary standard is that review of a completed application must occur within ten days of an opening in the facility. Ten days within which to conduct a review is a reasonable time frame in that it allows adequate time for the admissions committee to meet, thoroughly discuss and intelligently assess an applicant while not interferring unnecessarily with their normal duties. Ten days is also a reasonable time frame for the applicant as it ensures a reasonably prompt review of his or her application and allows the person to plan accordingly.

The timing of the review when there is a waiting list is necessary to ensure that information and resultant assessments are current and valid. The Minneapolis Minnesota Veterans Home nursing care unit presently has a waiting list of 128 applicants (June, 1989 data). Applicants have, in the past, spent over a year on the waiting list.

If review of such applicants was conducted within ten days of completion of the application alone, the medical information and the assessment of the person's needs could be old and outdated when

an actual opening in the nursing home occurs. During such time the applicants needs or condition could change significantly. To adequately serve such applicants, a reassessment would be necessary to ensure current information at the time of admission. To tie the ten day review period limit to availability of beds is reasonable as it ensures a valid/current assessment and reduces duplication of effort and cost.

Subpart 3. Waiting lists.

Waiting lists are necessary because there are more applicants than spaces available, at least in the nursing care unit. Use of a waiting list allows a person to make one application, with that application assessed when space is actually available. To require separate applications or re-application when a bed opens would unfairly penalize an applicant for the lack of space - a situation which is not his or her fault. Use of a waiting list to determine admission priority establishes an equitable method - first come, first served - of deciding who is admitted. Admissions then are dependent only on the availability of a bed appropriate to the person's care needs.

Use of a recorded waiting list eliminates the possibility of political influence or favoritism, a problem in the past. The "first come, first served" approach also eliminates the arbitrariness or vagueness of having to determine which applicant is most in need of care. This also serves to balance the Minnesota Veterans Homes population between critically ill or heavy care and less ill so that the nursing care unit is not overburdened by primarily high- care high need residents.

A waiting list assists applicants in that it "lets them know where they stand" and facilitates monitoring of the length of the wait.

Applicants and their families can thus act and plan accordingly.

The Minnesota Veterans Home at Minneapolis presently maintains a waiting list for its nursing care unit. Currently this is the only waiting list. It is not restricted in terms of the number of times a person on the list can refuse an opportunity for admission or in terms of the length of time a person can spend on the waiting list. This lack of control has created a waiting list which inaccurately represents to potential applicants the degree of interest in the facility and the size of the waiting list and therefore the length of delay before admission, as there are applicants who have had multiple opportunities for admission and rejected/refused such opportunities. One individual has thus far rejected admission on four or five occasions. This applicant is over 100 years old. Such applicant remains on the waiting list, requiring re-evaluation each time his or her application reaches the top of the list. This multiple evaluation situation occurs at significant cost to the State. Clearly such individuals do not wish to enter the facility until they absolutely must. Retaining a spot on the waiting list allows such person to be prepared for the eventual need for nursing care. Unfortunately such preparation comes at a cost to the State in terms of staff time and money and at a cost to other applicants in terms of increasing their wait for a chance at admission.

To eliminate such wait and falsely inflated waiting lists yet permit people to prepare for their future needs, this rule proposes the use of active and inactive waiting lists, to distinguish between applicants with an immediate need and desire for admission and applicants who want to prepare for a future need. The use of active and inactive waiting lists is a common approach in private industry.

Facilities such as the Presbyterian Homes routinely maintain separate waiting lists. This helps in pre-planning so the person and his or her family can deal with the applications process and paperwork before the situation is one of crisis.

Allowing freedom of movement from one list to another, with limited exceptions, allows a person to act on the basis of current need and information.

Subpart 4. Priority.

This provision provides notice to potential applicants and residents that current residents are treated differently than persons on the waiting list, and provides notice that an available bed will go to a current resident before an applicant.

Establishing priority for current residents and thus in effect exempting them from the waiting list permits the Minnesota Veterans Home to provide for all possible needs, particularly for increased care, of veterans without interrupting their security and stability of a reliable place to live. The requirement that such priority is contingent on the person otherwise meeting the admissions criteria for a particular level of care is intended to prevent people from bypassing the nursing care unit waiting list by "sneaking" into boarding care and thus having to immediately be transferred to a higher level of care. Granting of preference to current residents is to provide continuity of care for those whose needs have truly changed during the course of their stay at the Minnesota Veterans Home.

This subpart also places a seven day time limit on the validity of an offer of admission. Imposing a time limit is necessary to prevent an indefinite option for admission and unoccupied, unused beds. Seven days

provides adequate time for a person to consider his or her options and to review them with physicians, family members, etc. When read in conjunction with the reserved bed provisions of holding the bed for two weeks from acceptance of admission, the seven day time limit provides a person with three weeks overall, within which to evaluate his or her options and coordinate the move. These time limits, when read together, also cap the potential financial loss to the state of twenty-one days the bed is unoccupied and possibly unbilled.

The final section imposes different consequences on the person based on whether an offer for admission is refused or ignored, A person who refuses a chance at admission either remains on the active waiting list or is changed to inactive based on his or her choice. A person who fails to respond is removed from all waiting lists. This provision is necessary to further "weed out" applicants with no real need or desire for admission. Such distinction is reasonable in that the consequences of either action are known to the person in advance and the action is commensurate with the nature of the person's response.

Subpart 5. Limitations on refusals.

This provision proposes to limit refusals of admission to two per person, when they are on the active waiting list. A limitation on refusals is needed to eliminate multiple reviews and multiple refusals, and to make the active waiting list a more accurate indicator of demand.

The one year prohibition against movement from inactive to active waiting lists serves as a significant consequence which, it is hoped, will encourage applicants to weigh their decisions carefully. It is necessary to prevent people from immediately returning to the active list ahead of others from the inactive list who have never refused a

chance at admission.

Advance warning of this consequence in rules makes it a reasonable limitation. Its "reasonableness" is further enhanced by the provision that a significant change in health status will exempt such person from the one year exclusion. This distinction is intended to separate applicants who are merely taking up space on the waiting list from those who, based on information current at the time, made valid choices to reject chances for admission but whose circumstances have changed significantly due to an unexpected health condition such as a sudden stroke, heart attack or condition not previously diagnosed.

Provision B. is designed to "ease in" the refusal limitation provisions so people who have refused admission two or more times before adoption of the rules are not unnecessarily penalized for conditions or requirements they could not anticipate when prior decisions were made.

Subpart 6. Initial financial status review.

Subpart 6 advises applicants that a preliminary assessment of their financial condition will be made as part of the admissions process. This subpart, when read in conjunction with cost of care, billing, maintenance charges and transfer of property provisions, acts as a "check" as to the status of the property on admission to the facility and provides a basis for calculation after the person is admitted and any financial benefits are recalculated.

9050.0060 Admissions committee; creation, composition and duties.

Subpart 1. Admissions committee appointed.

This rule provision in general identifies the admissions committee

as the decision-making mechanism for applications, provides that there will be a separate admissions committee for each Minnesota Veterans Homes facility and specifies that committee members will be appointed by the facility administrator.

As the Minnesota Veterans Homes facilities are neither equipped nor licensed to meet all conceivable needs of eligible veterans, and facility services are limited, it is necessary to admit only those applicants whose care needs can be met at the facility. Thus a mechanism is needed for determining the appropriateness of admissions. The Board cannot accomplish such tasks in a timely fashion as it meets only once per month. Further, the Board members, as they act in an advisory capacity and are not in any of the facilities on a daily basis, are not sufficiently familiar with the facilities to judge who can be cared for there. Therefore the admissions committee is needed to carry out the duty/task of determining who to admit and how, through such decisions, to best carry out the function of the homes and how to best serve their population.

The committee decision-making method is reasonable as it eliminates the abuse of discretion possible in individual decision-making. Use of multiple input and authority in decision-making provides checks and balances in the selection process that helps to eliminate bias or favoritism and provides a more thorough, comprehensive review and ultimately a fairer decision. It is a more thorough, equitable process than individual decision-making.

Subpart 2. Composition of admission committee.

Subpart two identifies the professionals the administrator of a facility can or must select for committee service. This rule limits the

discretion of an administrator and ensures basic qualifications for a properly composed committee.

Restriction or identification of the types of people/professionals selected ensures expert opinion and input from all relevant areas as to the question of whether a person can be cared for by the facility. Selection of "optional" committee members, as tied to the reported medical needs of applicants, ensures "personalization" of the committee with regard to the applicant. Therefore a social worker is not providing the only input on a chemical dependency situation or issue. Such composition requirements are reasonable as they ensure participation by qualified, licensed professionals who can assess health care issues. The use of staff professionals ensure familiarity with actual situations at the facility and actual service capabilities of facility and staff.

Subpart 3. Duties.

Subpart three identifies the duties of the committee and limits its authority solely to admissions decisions.

The specification of duties and limitation of committee authority is necessary to ensure that each application is handled in the same manner, the same tasks are performed and established decision-making criteria are used. Limiting committee authority to admissions decisions is necessary to prevent views of committee members from improperly influencing on-going care or utilization review issues.

This subpart also establishes procedural requirements for the functioning of the committee and for the completion of its duties. The documentation requirements are necessary to ensure preservation of an official record of committee action. It assures accountability and

facilitates any review and appeal of decision-making. The record-making requirements also serve to encourage/force the committee to adhere to set criteria in decision-making.

Subpart 4. Screening.

Minnesota Statutes, section 198.007 (1988) requires that the Board "shall adopt a preadmission screening program, such as the one established under section 256B.091, for all applicants for admission to the homes...".

The purpose of the nursing home preadmission screening program, according to Minnesota Statutes, section 256B.091, subdivision 1, is to "prevent inappropriate nursing home or boarding care home placement". The preadmission screening program established under Minnesota Statutes, section 256B.091 applies specifically to applicants to nursing home or boarding care homes participating in the medical assistance program. As none of the Minnesota Veterans Homes facilities is/are certified for participation in the medical assistance program, it is not necessary, under either Minnesota Statutes, section 198.007 or Minnesota Statutes, section 256B.091, for the Board to actually participate in the preadmission screening program. To achieve the goal established under Minnesta Statutes, section 256B.091 of preventing inappropriate placement, these rules establish a screening procedure as part of the admissions process designed to use similar methods and obtain similar information as required by Minnesota Statutes, section 256B.091.

Minnesota Statutes, section 256B.091, subdivision 2 requires that each local screening team include a public health nurse, and a social worker. It requires availability of a consulting physician and use of

the attending physician's physical assessment forms. It further provides that "other personnel as deemed appropriate by the county agency may be included on the team".

The admissions committee proposed by this rule is similarly composed of a nurse and social worker, as well as a mental health practitioner or mental health professional. The rule also provides for additional members, based on the individual's needs. Finally, the screening described in subpart 4 requires review of medical information, including records of the attending physician.

Minnesota Statutes, section 256B.091 does not specify the tasks to be completed by or information to be obtained by the preadmission screening team in assessing whether placement is appropriate. Minnesota Rules, part 9505.2425 (Screening and assessment procedures required during preadmission screening) imposes the following requirements/duties on the screening team: 1) face-to-face interview with a person and the person's representative; 2) provide information to the person or representative regarding the purpose of the screening, the right to accept or reject recommendations of the team, the right to confidentiality under Minnesota Statutes, Chapter 13; the right to appeal the team's recommendation and the right to retain assets under Minnesota Statutes, section 256B.14, subdivision 2; 256B.17; and 256B.48 and 3) request the person to sign authorizations for medical records.

The information to be obtained by and used by the admissions committee under subpart 4 is specified in greater detail than for the preadmissions screening. Thus, the applicant not only knows who will be conducting the screening, but who they will contact, the information

they will obtain and the basis for their decision.

9050.0070 Types of admissions.

Subpart 1. General criteria.

The general criteria specified in this subpart consist of Department of Health rules. Compliance with these rules is necessary to maintain licensure.

Subpart 2. Selection of residents.

This subpart explains the distinction between eligibility and suitability for admission, and indicates that suitability for admission, and the decision regarding admission is determined on the basis of criteria identified in subparts 3 and 4.

It is necessary to establish and explain such distinction (eligibility versus suitability) as the Minnesota Veterans Homes facilities do not provide the entire spectrum of health care and related services. A person could be eligible for admission based on statutory criteria of Minn. Start. 198.01-03, but may not be suitable for admission because the facility's limited capabilities may be inadequate to meet a residents needs, as required by criteria in Minn. Stat. section 198.007. (As an example the facility is not licensed for chemical dependency treatment or treatment of mental illness.) Such distinction is reasonable as it is based on whether the facility can provide for the applicant not whether the applicant can "fit in" to rigid requirements fof the facility. It is also a reasonable distinction as the facility should not admit a person who cannot be cared for since to do so would mislead and possibly endanger the person.

Subpart 3. Criteria for admission to and continued stay in a

boarding care facility.

The criteria specified in this subpart are requirements for admission or stay in a boarding care home. The primary concern in any admission is whether the person can be cared for. The determination of whether a person can be cared for is made on the basis of the criteria identified here. If a person meets these criteria he or she can be cared for. The need for and reasonableness of the criteria will be explored individually. In general the criteria are objective, universally used standards or are determined by professionals trained and licensed to make such decisions.

A. Case mix A or B required.

Minnesota Statutes, section 198.007 provided that "the Board shall use the case-mix system established under section 144.072 to assess the appropriateness and quality of care and services provided residents of the homes." Minnesota Rules parts 9549.0058, subpart 2 and 9549.0059 provide an explanation of the case mix system and its classifications.

Use of the case mix system also facilitates movement to and from other health care facilities which must follow these classifications.

The case mix classification of A or B is reasonable as it coordinates well with the nature and extent of services provided in a boarding care home.

B. Medical or psychiatric diagnosis supporting placement in a boarding care home.

State law/ health department rule requires that a physician sign a diagnosis supporting a person's admission into a boarding care home.

C. Attending physician must document person's need for boarding

care facility services.

The primary focus of the Minnesota Veterans Home and its boarding care facilities in particular is the provision of health care. As the facilities and funds of the Minnesota Veterans Homes are limited, a person should not be admitted to the boarding care home unless he or she has a legitimate use for services provided there. Admission of a person who does not need the services provided in boarding care results in underutilization of services and the facilities. Such admission also deprives persons with greater need of a place at the facility.

Admission of a person whose needs exceed the facility capabilities creates possible liability problems for the facility and deprives that person of appropriate care.

D. Person must be assessed by a staff registered nurse or staff psychiatrist or psychologist as alert and oriented to person, place and time and able to function within daily monitoring.

Assessment of a person's "reality orientation" and his or her ability to provide for his or her own daily needs is necessary to make sure the person is properly placed and basic needs are met.

Requirement that assessment be done by a staff registered nurse or staff psychiatrist or staff psychologist ensures that assessment is done by a professional familiar with the facility to which admission was requested and by a professional skilled in the medical or mental health areas of specialization, as indicated by the diagnosis of the person in question. This provides an assessment which is both situation and condition specific.

E. Assessment that person is able to recognize and react to environmental hazards.

A person residing in boarding care must be able to evacuate the building in the event of a situational emergency. Staffing levels and design of boarding care facilities are such that person must be able to recognize the need to leave his or her room, navigate the building unassisted and leave. The design of building six at Minneapolis for example is such that wheelchair access is only possible via elevators, which are not to be used in the event of an emergency such as a fire. A person confined to a wheelchair or dependent on a wheelchair to navigate greater distances quickly would not be appropriate for boarding care placement as they could not reach safety in timely fashion in the event of a fire.

The person must have the mental capabilities needed to recognize the existence of an emergency situation and understand the need to remove him or herself from the area or otherwise respond appropriately to ensure safety.

F. Participation in and compliance with care and treatment plans.

As placement in boarding care, because of less staff and less supervision and assistance, requires more independence, the person must have the willingness to actively participate in his or her care regime and accomplish many activities with minimal or no assistance.

A person who resists treatment or necessary care will require greater assistance of and intervention by staff. For example, a person who refuses medication or refuses to complete daily cares such as bathing or oral hygiene requires one or more nursing staff members to persuade him or her to do the task or to do it for him or her.

G. Physical and mental capabilities regarding daily care.

Boarding care facilities do not have sufficient staff to assist residents in basic daily needs on a one-to-one basis. Therefore, each resident must be able to handle activities of daily living with little or no assistance.

H. Independence in transferring and mobility.

The physical structure and layout of both current Minnesota Veterans Homes campuses that provide boarding care is/are such that a person must have the ability to meet his or her own needs, both in emergency and daily need situations.

Staffing levels in boarding care do not provide /allow for one-on-one assistance with basic activities. Since the assistance level is lower the person must be able to get in and out of bed without help and get to and from necessary activities without help. The ability to accomplish necessary tasks must be measured/assessed in the context of the specific situation within which the person will reside. Thus an assessment by a Minnesota Veterans Homes nursing staff member as to ability is likely more accurate than an assessment by an "outside" professional unfamiliar with the layout of particular Minnesota Veterans Homes facilities. A person may be capable of getting in and out of a hospital bed and walking the length of a short hospital corridor, but may have difficulty with stairs at the Minnesota Veterans Homes or with the distance from boarding care buildings to the main facility dining room.

Criteria I. through M. all relate to the staffing situations in a boarding care context. Each resident must be able to provide for

basic needs without hands-on assistance of staff as boarding care homes are simply not staffed at the level of nursing care. Residents must be essentially independent with the exception of specific, limited medical needs.

N. Freedom from communicable diseases.

This requirement is imposed by the Health Department and must be followed.

Subpart 4. Criteria for admission to and continued stay in a nursing home facility.

The criteria listed as admission criteria for a nursing care unit (licensed nursing home) relate primarily to the requirements imposed through licensure requirements of the Health department. Again, a resident must be free of communicable disease; the need for admission to this level of care must be documented by the attending physician (to avoid unnecessary institutionalizations); and the person must have a case-mix classification considered appropriate, according to Health Department standards, for nursing home placement.

9050.0080 Admission decision; notice and review

Subpart 1. Notice.

This rule section requires that an applicant be told of the decision on his or her application for admission. The rule permits verbal notification, but requires written notice within three days of the decision.

The notice requirement is necessary for due process/fairness reasons. It facilitates review and appeal of the decision-making process.The requirement that notice be written provides for official documentation of the decision-making process and aids in determining

whether notice is timely.

Allowing verbal notification is a reasonable counterpart to the written notice requirement in that it speeds up the admission process, helps in coordinating admission, and helps in assuring timely review. It also serves to reduce the stress associated with waiting for a response.

Subpart 2. Review

The applicant is entitled to a review of the admission committee's decision. This section provides a process by which the applicant may obtain review, sets the method and time frame for review.

Review is necessary to ensure a thorough examination of information related to admission criteria and provide a forum to reconsider a decision possibly based on new or additional information. Setting a time limit on review is necessary to ensure timely decision-making and to facilitate appeal of a decision. Thirty days is deemed a reasonable time limit for review as it allows sufficient time to obtain new information if necessary, reconvene the admissions committee, and provides the administrator with time to review this information thoroughly. The rule confines reconsideration to the same criteria by which the original decisions are made.

9050.0100 Transfer

Subpart 1. Generally

This rule defines what type of movement constitutes a transfer, sets out the conditions under which transfer may be done, defines transfer as primarily voluntary and if not voluntary gives notice that lack of consent can result in discharge where inability to provide care results.

Transfer is structured as voluntary only, except in emergencies, to allow full consideration of the person's freedom to refuse treatment. Therefore, if a person refuses treatment, he or she may only be discharged if such refusal jeopardizes his or her situation to the extent that the facility is, in accordance with established criteria, unable to provide adequate care for the person.

A rule relating to transfer from the facility, which is intended in most cases to be temporary, is necessary to ensure due process rights. As transfer affects only persons who are currently Minnesota Veterans Homes residents, it affects the right of continued residency The reasonableness of the criteria for transfer is that it can be based only on request of the person, or treatment need, long-term or emergency; or ability to provide appropriate care. This places the primary focus on the needs of an individual and the standard of whether the needs can be met at the facility. This also serves to provide notice that lack of consent may result in discharge if refusal prevents the facility from caring for the resident. This provides advance notice to a resident of the possible consequence of his or her decision.

Subpart 2. Notice.

Notice for transfer must be provided in accordance with the standards set by the Patients Bill of Rights, Minnesota Statutes, section 144.651.

Compliance with state law is mandatory. This notice provision complies strictly with the statutory notice requirements and exceptions contained therein. The exceptions enable the facility staff to act appropriately in an emergency.

Subpart 3. Mechanisms of effecting transfer.

This rule provision sets out the method for accomplishing a transfer. It specifies that transfer will be handled in the same manner as a voluntary discharge.

Setting a method for handling transfers is necessary to assure orderly, equitable handling of such change and ensure consistency in handling of decisions. It also serves to potentially reduce the stress associated with a change of environment by providing an orderly transition from one place to another and ensuring the security of a home to which the person can return. Handling a transfer in the same manner as a voluntary discharge is a reasonable approach to situations both basically voluntary.

Subpart 4. Transfer to the United States Department of Veterans Affairs Medical Center.

The Minnesota Veterans Homes system is the state's counterpart to the federal veteran's benefits system. As state benefit qualifications requirements are often broader than federal, people may be eligible for residence at the Minnesota Veterans Homes facilities yet not be eligible for federal benefits or services. This provision is intended to clarify the relationship between the state and federal programs. This relationship is symbiotic in the sense that veterans and health care are the focus of both facilities as well as in the sense that many regular higher level medical needs are served at the United States Department of Veterans Affairs Medical Center, so a "coordination of care" is provided and in the sense that Veterans Affairs per diem subsidizes care of veterans in state homes.

Eligibility for services at or through the VAMC is controlled by

the federal government. Access to services depends frequently on changes in eligibility requirements/standards, resources and funding, the nature or origin of the medical problem as well as supply and demand.

Since the availability of services at or through the United States Department of Veterans Affairs Medical Center fluctuates, residents of the Minnesota Veterans Homes need to know that their medical care will be provided by the VAMC and they will be transferred there as a first choice but that if they are not eligible or services are not available the resident's medical needs will take precedence over his or her personal or financial preferences or concerns.

This subpart is necessary to clarify that the State of Minnesota has no control over VAMC decisions and to clarify that the costs of treatment at the VAMC and other health care facilities are not the state's responsibility. It is a reasonable provision in that it establishes a priority for the VAMC and preference of the person where possible yet ultimately places the person's care needs first.

Subpart 5. Appeals,

Appeals are handled in the same manner as appeals from discharge, as is required by due process rights guaranteed the individual by the courts.

9050.0150 Bed Hold.

Subpart 1. Generally.

Bed hold is the reserving of a particular bed or similar bed so a resident has the stability of a place to return to following treatment or other appropriate absence. This rule establishes the circumstances under which a bed will be held open pending a resident's return.

Such rule is necessary to ensure equitable treatment of residents and to establish differing standards for treatment of people who are absent for legitimate reasons and those who choose to be absent for reasons inconsistent with their individual treatment plan.

Bed hold is a necessary compliment to the overall goals of a resident's treatment. There are occassions when a person's treatment or other needs cannot be met by the Minnesota Veterans homes. To facilitate treatment for the person and encourage his or her cooperation with treatment, it is necessary to assure the person that he or she will have a home to which he or she can return. For residents who will continue to need long term care and for those who may later make the transition back into the community, the security of a place to which they can return is a necessary aspect of treatment. Also, the supply and demand trends, particularly in the nursing care unit indicate there will always be a waiting list. Thus there is a need to establish a standard to achieve some balance between the residents' needs and the needs of waiting applicants.

Subparts 2 through 4. Hospital absence, treatment absence, personal absence.

These subparts identify the types of absences considered legitimate with respect to the person's care needs and which constitute absences for which bed holds are appropriate.

Since holding a bed involves expense to the State in maintaining a bed unused and inconvenience to those on the waiting list by further delaying their possibility for admission it is reasonable to compromise between the resident's needs and the cost to the State and inconvenience to other applicants by restricting the circumstances and

the time under which the bed will be held.

In addition, as the Minnesota Veterans Homes is a non-commitment facility, neither the staff nor administration of the Minnesota Veterans Home facilities can grant or restrict absences from the facility. The imposition of restrictions on the circumstances under which a person's bed will be held, by attaching negative consequences to absences considered inappropriate, is a reasonable means by which to attempt to control residents' absences/restrict residents' absences. Such limitation also places a limitation on the facility's liability for the resident, the resident's safety and actions.

Subpart 5. Effect on maintenance charges.

This subpart maintains the status quo with respect to finances when a bed is held. The rule specifies that a person's payment status will not be affected by an appropriate bed hold. That is, those who pay a maintenance charge must continue to pay that same charge (or possibly lesser charge) during their absence, and those who did not pay a maintenance charge prior to their absence will not be asked to pay because of their absence.

A provision identifying the financial consequences of holding a bed open is necesary for planning purposes for both the facility and the person. The financial consequences are/can be an important consideration in a person's decision as to additional or alternate treatment. Financial consequences of holding a bed unoccupied are also important for the facility in determining costs, budgetary needs, etc.

Maintaining the person's status quo with respect to charges is a reasonable compromise between charging and not charging to hold a bed. As does the maintenance charge calculation initially, this provision is

based on a person's ability to pay. Although the person who paid a maintenance charge prior to his or her absence must continue to pay that same charge, and therefore may end up paying for both his or her spot at the Minnesota Veterans Home and his or her place in another treatment context, the rule "softens" the blow by keeping the maintenance charge the same or possibly less. Thus such resident would not be expected to pay the VA per diem the State loses when that person's absence exceeds 96 hours - the facility absorbs that loss. It is also possible that the person's maintenance charge could be reduced due to the increase in their financial needs caused by the outside treatment. (i.e. if the person is in treatment for thirty days or more at another care level, the maintenance charge would be recalculated and in all likelihood be reduced.)

Additionally, the provision is reasonable in that it is consistent with private industry and treatment of situations outside the facility. For example, a resident leaving his or her private home to be hospitalized is not "excused" from mortgage or rent payments during medical treatment nor is a person entitled to "hold on" to a hospital or other nursing home bed when they are not occupying it.

Subpart 6. Exceptions.

This part outlines the only exception to the status quo rule.It allows a bed to be held open or "reserved" for a person, prior to admission, to allow them to deal with the logistics of moving. It is consistent with the subpart regarding the effect of bed hold on maintenance charges in that it too maintains the status quo - the person pays nothing before admission and that status quo is maintained until they are actually admitted.

Such a provision is necssary to avoid confusion with subpart 5 and to allow facility staff to make necessary adjustments before the person is admitted and charged for services.

Subpart 7. Monitoring of bed hold status.

This rule subpart provides for regular review of the status of a person whose bed is being held open. There is no specific time limit for bed holds. The length of time a bed will be held is flexible, to allow differing treatment of each person, depending on his or her circumstances. The main standard used to determine whether a bed will continue to be held open is whether, following the treatment, the person will be able to return to the Minnesota Veterans Homes and whether he or she can be cared for upon return.

Use of some objective standards to judge appropriateness of bed hold (length and circumstances) is necessary so the cost can be controlled and the use of beds maximized. Use of the standard that the person must be likely to return to the Minnesota Veterans Home and be progressing in care (as measured by admissions or program criteria) is reasonable as it relates back to the overall objective of the facility - quality care and the ability to provide it. Other factors considered made it too difficult to "draw the line". One option considered was to make the length of bed hold allowed commensurate with length of time the person had been a resident of the Minnesota Veterans Homes. Although this sounds equitable it was felt most likely that residents who have been here the longest will tend to be the oldest residents and therefore the most likely to become seriously ill and probably less likely to return to the Minnesota Veterans Home; thus such beds should be "freed up" sooner. An alternate option of refusing to hold beds at

all was deemed unacceptable as it reduces the likelihood the resident will consent to or cooperate with transfer and treatment.

The 96 hour "limitation" /guideline with respect to personal absences was selected because of its relationship to federal funding. Per United States Department of Veterans Affairs standards, a resident absent from a Minnesota Veterans Homes facility will lose his or her USDVA per diem reimbursement, retroactive to the time of departure, when that absence exceeds 96 hours. Again, the determining standard for on-going bed hold is whether the person needs care and whether the facility will be able to provide such care.

9050.0200 Discharge.

Subpart 1. General Criteria

This rule defines discharge and specifies that it completely terminates the relationship between the Board, facility and staff with respect to the resident.

Providing a consistent method for and specific grounds on which to discharge a resident is necessary to ensure fair treatment of residents. It helps in terminating residence of people who have been rehabilitated and can now return to the community, but are reluctant to do so. The rule also helps the Board protect the individual resident and others by substantiating discharge of someone who needs a greater level of care or a different type of care that the Minnesota Veterans Homes can provide or who constitutes a risk of harm to others.

Subpart 2. Types of discharge.

Discharge is confined to two "types" - voluntary and involuntary - based on the resident's position with regard to leaving the facility.

Discharge is voluntary if the person and his or her caregivers agree it is appropriate. Discharge is involuntary if the person does not wish to leave the Minnesota Veterans homes and does not agree with his or her caregivers.

It is necessary to distinguish between types of discharges to ensure that the discharged person's rights and wishes are respected as much as possible. The distinction is also necessary to facilitate and protect the resident's preferences and rights.

Subpart 3. Grounds for discharge.

This section establishes and gives notice of five circumstances for which discharge is mandatory. These provide objective reasons for discharge and aid in the prevention of retaliation and arbitrariness in decision-making.

Criteria A, non-payment/non-compliance with maintenance charge/agreement , is needed as an enforcement mechanism for Minnesota Statutes, section 198.03. Currently a number of people are refusing to comply with the admission agreement/maintenance agreement by not paying, resulting in a monetary loss to the state. Enforcing the maintenance charge and other admissions agreement provisions is reasonable as it is consistent with the Board's statutory duty to maximize revenues and resources and remedies the "inequity" which would result from acquiescing to non-payment by some (unfair to those who do pay).

B. Demand.

Requiring discharge upon demand of the person or of his or her legal representative is an absolute necessity as no one at the Minnesota Veterans Home is under commitment. Therefore a person has to

be discharged or allowed to leave if they so choose.

C. Inability to provide care.

The Minnesota Veterans Homes are health care facilities; central to their mission is the duty to provide appropriate high quality care. If the facility cannot provide appropriate high quality care to the person due to the limitations of the facility (licensure or resources) or due to limitations of the resident (medical condition, inability or unwillingness to cooperate) or cannot manage the resident, the facility must be able to discharge the person for the protection of the person, others and the State.

Use of inability to provide care as a standard, as measured by the admissions criteria, is a reasonable standard for supporting discharge as it relates back to objective, professionally quantifiable criteria; it eliminates or reduces the possibility of arbitrariness, excess discretion, retaliation or personality conflicts. The standards also represent a reasonable balance between the individual's right to refuse treatment and the facility's obligation to care for them and the possible liability resulting from that conflict. Such standard also works towards a reasonable balance between the refusal to cooperate and the inability to cooperate --- it allows for individualization of treatment and application of standards.

D. Absence without notice.

This criteria is necessary to permit the facility to discharge an individual, and end its responsibility for them, who chooses to leave the facility without letting the staff know.

It presents a reasonable compromise between the person's freedom to come and go or leave as he or she chooses and the facility's duty to

care for and monitor that person. The facility cannot and will not limit the person's choices in any way. There is no basis on which facility or staff has the authority to grant or deny permission but it does need a mechanism through which to limit its responsibility and liability for the person and his or her decisions.

The 96 hour time frame is based on the USDVA per diem cut-off. The time limit relates only to automatic institution of discharge proceedings; the person can be gone a longer or shorter period of time depending upon his or her needs as identified in the individual treatment plan and with notice. The individual will be checked more frequently than 96 hours depending on their needs as identified in the individual treatment plan.

E. Fraud or failure to cooperate.

Such provision is needed to encourage cooperation and full disclosure to enable the Board to determine whether a person is financially unable to provide for him or herself or whether they are able to contribute to the cost of their care. Sanctions for failure to disclose or otherwise cooperate are a "necessary evil" to ensure compliance. Such sanctions have not existed in the past; as a result, several applicants/residents each year have refused to cooperate with the facility by disclosing their assets or other relevant financial information.

The Minnesota Veterans Homes Board has a duty to the taxpayers of Minnesota to manage the cost of care and to maximize recovery of money to reduce the overall tax burden. Disclosure requirements permit access to financial information so the Board is not "trapped" into maintaining

a resident who, without payment as specified in Minnesota Statutes, section 198.03, has no right to be admitted to or stay in the facility. Discharge is a reasonable penalty to impose, particularly in view of the "equities" for the person who does cooperate by fully disclosing information. Such consequence is also consistent with the general legal/equitable concept that someone should not profit from his or her own wrongdoing.

Finally, the substantive fraud provision is necessary to eliminate applicants who falsify information regarding their condition, background, etc. such that it could impair the facility's ability to provide care or endanger the resident or others (such as failure to disclose a criminal record).

Subpart 5. Contents of notice.

Notice provisions are required by Court decisions and due process requirements. The notice provides the person with information regarding the basis for discharge. It aids in review or challenge of the decision. Also it provides the information required under the Patient's Bill of Rights; unless the person leaves without notice.

Subpart 6. Exceptions.

This provision specifies an exception to the thirty-day notice provision of subpart four. The exception is necessary to permit the facility and staff to act promptly to discharge a person, and therefore end their responsiblity, if the person choose to walk away. This provision is a necessary compromise between the individual's freedom to do as he or she chooses in a non-committment situation and the facility's responsibility to care for that person.

The reinstatement hearing is provided to deal with situations in

which a person left due to a particular incident or personal problem and later wishes to return to the facility.

9050.0210 Voluntary discharge procedures.

An established procedure for accomplishing discharge of a person who asks or agrees to go is necessary. Such procedure ensures an orderly transition to a new placement and helps make sure a person's needs are met. Use of an established procedure helps the individual and the facility plan for the discharge and deal with the transition. Due to the status of the Minnesota Veterans Homes without rules and the court's ruling that a person could not be involuntarily discharged without a contested case hearing, the majority of the discharges which occurred during the past few years can be characterized as voluntary.

Subpart 2. Responsibilities of facility staff.

Outlining responsibilities of the staff establishes the general duties or obligations the facility has towards the person. The responsibilities identified in this subpart ensure the resident's safe and orderly transition to the new placement, provide for completion and protection of the person's records and ensure that the person's needs will be met in the new facility/placement.

The provisions of this section are considered reasonable in that they incorporate statutory or rule requirements already in place, such as the provisions regarding data privacy and medication disposal. The provisions also create an opportunity in which the person participates in the planning and completion of the discharge, so that that person's needs and concerns are met.

9050.0220 Involuntary discharge procedures.

Subpart 1. Generally, recommendations.

Involuntary discharge must be based on specific, limited reasons or conditions. The source of the discharge recommendation is also limited by this section to those staff members best equipped to know if discharge is warranted and those best able to document the need.

It is necessary to clarify the reasons which will support a discharge so both staff and residents are aware, in advance, of actions or conditions which require discharge. Discharge is characterized as mandatory upon occurrence of certain conditions. Requiring discharge under specific circumstances eliminates excess discretion, reduces arbitrariness of decisions and reduces chances of retaliatory discharges, which are prohibited by law.

Subpart 2 through 6. Procedures.

Procedures established in these subparts ensure protection of interests critical to the resident's due process rights, such as notice (which must be based on identified criteria, documented and come from specific sources via established procedures).

Reconsideration provides the resident with the option of facility level review of decisions so the resident can attempt to change the facility's decision or opinion. The alternative of by-passing facility review and going directly to the Office of Administrative Hearings is also an option for the resident wishing to contest a recommendation.

The review or reconsideration procedures are necessary because of the importance of the issues. Discharge and transfer raise issues of continued residency, a protectible property interest, which requires constitutional due process and contested case review (L.K. v. Gregg, supra).

Appeals from a reconsideration or from a discharge recommendation

are to be conducted under Chapter 14 until rules implementing Minn. Stat. Sec. 144A.135 are promulgated

Finally, the provision referencing Minnesota Statutes, section 144A.135 is designed to give notice to all potentially affected of a possible change in the future due to recent legislation arising as a result of the federal nursing home reform act.

The steps of the review process are felt reasonable as they provide multiple opportunities for the resident, or someone acting on his or her behalf, to challenge the decision or recommendation, present information in support of his or her position and ultimately have that position reviewed by an independent judicial body, the Office of Administrative Hearings.

9050.0230 Enforcement of final discharge order.

This rule portion defines what constitutes a final discharge order and at what point in the involuntary discharge process such order is issued. It also establishes a procedure for carrying out a final discharge order.

An enforcement procedure is necessary to deal with non-voluntary discharges in an orderly, consistent fashion. Requiring an administrator to obtain an enforcement order from district court prevents the staff from taking matters into their own hands and also protects the staff from having to assume the awkward position of both decision-maker and enforcer.

The method of enforcement is felt reasonable as it tracks the statute, Minnesota Statutes, section 198.045, which allows a court to order the sheriff to remove the person and requires the facility to retain the person's belongings. Use of law enforcement personnel was

felt reasonable as it eliminates the need for use of staff as enforcement mechanisms. Also, law enforcement personnel are more likely adequately trained and equipped to deal with a situation involving some resistance.

9050.0300 Compliance review.

Subpart 1. Generally.

This rule requires each facility to have a review process through which to deal with adjustment, "disciplinary" or safety problems. The purpose of this rule is to decide how to deal with problems and to determine when the problems are too significant to be dealt with within the scope of facility services and capabilities such that the person in question cannot be cared for.

The nature of the facility is such that conflict and disagreement are frequent. There are a variety of people in a communal setting, with varying conditions and capabilities, ages, outlooks, beliefs, values, etc. as well as differing personalities. There is also the conflict between the individual and the "institutional atmosphere".

There is a need for a method to equalize or reduce such tensions, deal with conflict or resolve disputes that is individualized yet objective. The standard used for assessment or measurement is the ability to competently and safely care for the person in question and for the facility population as a whole.

A provision dealing with compliance is necessary as approximately 50% of the current Minnesota Veterans Homes residents have "behavior" problems which, if not properly managed, could result in harm to the person or others or which have the potential to

negatively impact the quality of care the facility is able to give a person.

"Behavior problems" can range in severity from minor, infrequent infractions to life-threatening problems.

A review program which incorporates varying levels of review and adjustment provides the flexibility necessary to deal with individuals in a personalized fashion appropriate to their needs, capabilities and problems. The compliance review process is a means of dealing with individual non-cooperation with the individual treatment plan, the facility, etc. It is flexible so it can be used to greatest effectiveness in each situation.

The review program also may differ from one campus to another depending on the nature of the people at that facility and their needs. It is not reasonable to expect that the same review process, standards and methods will function equally well at different campuses, some including nursing care units and some not.

Subpart 2. Requirements for procedures.

This subpart establishes the necessary features which each facility's compliance review process must include. The required features are those deemed critical to accomplishing the goals of the process; comprehensive, varied levels of review and response.

Subpart 3. Conduct of review; responsibilities.

Review is done by the same committee which does review of the use of the facility resources, reviews need for continued care, etc.

It is necessary to establish a mechanism by which the compliance review will be accomplished. The committee method was selected to provide complete, thorough input and to prevent decision-making on

the basis of the opinion of just one or two individuals. Use of health care professionals on such committee provides opinions of those who are familiar with objective measures of whether or not the facility is able to care for the person, in view of the compliance problem.

9050.0400 Utilization review.

Subpart 1. Appointment and duties.

The Board delegates to the facility administrator the authority to appoint a utilization review committee. This subpart specifies that utilization review committee members must be employees or under contract to the facility or Board. General duties of the committee with respect to each resident are specified here. The primary concerns of the committee, which are addressed annually, relate to the facility's ability to care for a person.

It is necessary to establish the means by which the committee is created and its members appointed. Established means of appointment increases the chance that competent people will be used and that any bias or favoritism will be reduced or eliminated.

Use of facility personnel is a reasonable means by which to achieve appropriate decisions. The facility employees are in the best position to assess a resident's situation as they are most familiar with the specific circumstances regarding the person and his or her setting.

Subpart 2. Composition.

This subpart limits the administrator's "discretion" as to who he or she can appoint to the utilization review committee. Restricting the composition of the committee to "designated professionals" ensures balance and input from the health care professionals best equipped to

provide information about the resident and or his or her situation. Requiring two physicians on the committee is hoped to provide a balance between the knowledge and support of the treating physician and the objectivity of a physician not involved in regular treatment of the individual.

The composition rule also permits flexibility in the composition of the committee to more specifically and professionally deal with the individual's situation. Thus it reasonable to include on the utilization review committee "specialists" in particular subject areas such as chemical dependency and metal illness.

As decisions in this area are necessary on a frequent basis, the authority to make decisions should not be lodged in one person. Also, the resident is entitled to a comprehensive review of issues dealing with important rights. The committee method is a reasonable approach to decision-making because it assures comprehensive input which is personalized to the resident's own situation. The qualifications required of committee members assures expert input and assessment. The requirement that a certain number of people be present to conduct a meeting and make a decision prevents the system from being circumvented by one or two people (e.g. via compliance review).

Subpart 3. Duties.

Duties are specified by rules to limit committee authority and to provide appropriate tracking of task completion. Identification of responsibilities of a particular committee helps to avoid overlap or usurping of functions.

The duties outlined in this subpart are those delegated to the committee by the Board. Most duties are advisory in nature so that the

utilization review committee does not bypass the Board in its decision-making process.

Subpart 4. Decisions.

For clarity, the decision-making process of the utilization review committee and procedural standards are identified here. This provision is necessary both to regulate the committee and to advise residents of decision-making methods.

Requiring a majority vote lessens the chance of decisions based solely on personal factors. The requirement that the decision be based on the admissions criteria makes the issue objective, documented and consistent with the goal that the facility be able to care for the person.

9050.0500 Cost of care; basis for maintenance charge; billing.

Subaprt 1. Annual calculation; effective date; notice of change.

This provision outlines the method by which cost of providing care at the Minnesota Veterans Homes facilities is calculated and explains how this calculation relates to the maintenance charge authorized by Minnesota Statutes, section 198.03. The section also limits changes in cost of care and therefore maintenance charge BASE to once per year.

As a public facility, the Minnesota Veterans Homes have an obligation to account for and explain the use of funding and revenues and the basis on which a recipient of services is charged for those services. This rule satisfies the requirements of public disclosure and public accountability.

For both budgetary/legislative appropriations and individual planning purposes, there is a need to set limits on costs and establish time frames for calculation. This is necessary so accurate information

can be provided to government representatives and so applicants and residents can plan accordingly. Making calculations retroactively is a reasonable approach to cost determination as it is based on actual documented expenses and actual occupancy rather than speculative projections as to future costs. Providing for a once a year base calculation is a reasonable compromise between the need to "keep up with costs" and the need to stabilize the financial situations for residents and their families and assist in planning.

The provision of thirty days notice prior to any rate change is felt reasonable as it approximates typical notice provisions in the business world as a whole and is comparable to the notice provisions, imposed by statute, for discharge or transfer.

Subpart 2. Costs to be included in calculating cost of care.

This section identifies the costs which are included in cost of care calculations. Costs are primarily divided into direct and indirect, a classification also used in determining nursing home rates under medical assistance reimbursement rules.

Identification of items included in cost of care calculations is necessary to inform the public of what they are paying for - whether they are residents paying a maintenance charge or taxpayers whose monies support appropriations. Use of direct and indirect cost classifications is necessary to satisfy the federal government, to obtain the United States Department of Veterans Affairs per diem payments for eligible veterans.

Division of costs along direct and indirect service lines is a reasonable cost distribution as it reflects most accurately the amount of time or resources invested in a particular level of care. For

example, nursing services, which are considered a direct services cost, are likely to be utilized to a greater extent at a higher care level such as nursing care unit than are indirect services such as dietary.Therefore, the "allocation" of nursing costs should reflect the greater useage and staffing at higher care levels. Conversely, services which do not involve greater time at one level of care or another or which do not vary according to the number of residents, such as housekeeping, are allocated on an equal, general basis.

Subpart 3. Method of calculating average daily per resident cost of care.

Subpart 3 explains the formula which is used to calculate the average daily cost, per person. The method of calculation is the same for each care level; the date used to make the calculation differs according to care level.

The Minnesota Veterans Home is required, both by statute and federal regulation to calculate separate costs of care for each licensure level; currently nursing care and boarding care. It is reasonable to comply with state law and to comply with federal requirements which avail the home of additional financial resources, thus reducing the cost to residents and taxpayers.

Separate calculations are reasonable as they facilitate residents paying only for those services available to them, thus the lower level of care does not subsidize the higher level of care. Conversely, services used to a greater extent by the lower level of care/licensure - such as chemical dependency support services or mental health services - are not supported by or factored disproportionately onto nursing care.

Subpart 4. Cost of care related to maintenance charge.

This rule portion explains the relationship between the cost of care calculation and the maintenance charge.

The rule provision is necessary to give meaning to Minnesota Statutes, section 198.03 which authorizes a "reasonable charge to be paid to the State for care and maintenance in the home" by those who are financially able to provide for themselves.

Despite its authorization of a "reasonable charge", Minnesta Statutes, section 198.03 does not define what constitutes a reasonable charge nor does it provide a method by which to determine such a charge.

Traditionally, veterans residing in the homes have been required to pay "excess income" or to sign over all assets to the home, as payment for maintenance. It is not felt reasonable, nor is it desired, to require the person to divest him or herself of all "wordly goods" in order to gain entrance to the home. Rather, the Board has chosen to calculate each person's maintenance charge separately, depending on individual needs and circumstances.

Finally, the maintenance charge is limited to the actual cost of care at a particular level. This limit is a reasonable one as the State is not "profitting" from an individual by charging more than the average cost of care for that person's level of care and because the person pays only for services which benefit their level of care.

Subpart 5. Effect of bed hold on maintenance charges.

This rule confirms the standard and information provided under the bed hold provisions.

Subpart 6. Billing.

This subpart establishes the general requirements for billing of a

person's maintenance charge. The requirements are intended to provide an organized, equitable methd of billing - to identify for residents their obligations, etc.

Such a rule is necessary to ensure that billing is done in an organized, reliable fashion. Regular billing methods and contents enable affected individuals to better understand their rights and obligations.

The individual billing requirements expressed in this subpart are considered reasonable because they comply with applicable state and federal requirements and/or are consistent with common practice in the business community.

For example, basing the billing on an average thirty day month is reasonable because it "fixes" the rate or billing amount, making it easier for a person to budget. It also means less interference with federal benefits because of the fluctuation in costs and resources caused by changes in the length of a particular month. A fixed monthly billing is also typical of "outside" industry - e.g. monthly rents or mortgage payments do not fluctuate on the basis of the number of days in a month.

9050.0510 Maintenance charge; additional services; veteran exclusive services.

This rule provision clarifies for an applicant or resident what is and is not incorporated in a maintenance charge and also clarifies that a resident retains his or her right to use private services or resources to meet his or her medical needs, basic needs or additional needs, should he or she so desire.

The relationship between the United States Department of Veterans Affairs and the state veterans homes is such that some services

provided by or through the United States Department of Veterans Affairs are not available to residents of the state veterans homes. This "gap" results from the fact that federal benefit eligibility requirements or standards are more restrictive than the eligibility standards for state veterans benefits (particularly entrance into the state veterans homes).

Subpart 1. Additional services at resident's own expense.

Subpart one confirms the resident's right to use private services and identifies the conditions under which such services can be provided. It also provides notice to the resident that the use of such services is not a substitute for or excuse from payment of the maintenance charge for services provided by or available at the Minnesota Veterans Homes facility.

This provision is deemed necessary to give "notice" to affected parties of the conditions under which services of the facility are provided - the primary condition being that services are "collectively supported". That is, just as in the private health insurance industry, "coverage" or the provision of services is contingent on the use of designated or approved providers. As under private health insurance, residents can use facility services or services of designated providers and such cost is factored into their maintenance charge (just as it is "included" in the premium paid to an HMO). However, if a resident chooses a non-facility provider, he or she must bear the cost directly; just as use of a non-approved physician in a health insurance context results in reduced or eliminated coverage. The only services a non-veteran resident could not use are those provided and funded by the United States Department of Veterans Affairs - in a sense a "separate" health care provider with differing eligibility requirements.

Subpart 2. Veteran exclusive services.

Subaprt two defines those services which are available only to federally eligible veterans and clarifies that residence in the Minnesota Veterans Homes facilities and/or payment of a maintenance charge does not serve to qualify the person for such benefits. Notice is also provided to residents that they must obtain or arrange for services comparable to veteran exclusive services, which are needed but not provided as part of the basic services provided in the facility, such as physician services.

The need for this entire rule provision arises from the "conflict" between state and federal eligibility standards. As long as the state chooses to care for a larger eligible population (including spouses of veterans) than does the federal government, there will be a group of residents at the Minnesota Veterans Homes facilities who are not "covered" by federal services. Rather than restrict its eligibility requirements to match those of the federal government, and exclude such persons as spouses of veterans, the State has chosen to incur the additional expense of providing benefits or services which for some people the federal government does not reimburse. This rule provides that "broader population" with notice of the circumstances or conditions applicable to residency; thus allowng that person to decide whether his or her needs will be met more effectively at the Minnesota Veterans homes or elsewhere.

9050.0520 Maintenance charge; delinquent accounts; interest; discharge.

Subpart 1. Interest on delinquent accounts.

Subpart one defines what constitutes a "delinquent account" and

provides that notice will be given to a person whose payment is not received in a timely manner.

This rule follows Minnesta Statutes, sections 198.03, subdivision 3 and 334.01 regarding overdue maintenance charges and imposition of or assessment of interest. The statute authorizes an interest penalty on unpaid maintenance charges.

Assessment of interest is intended as a penalty for those who have not complied with the terms of their admissions agreements. It is imposed not only to comply with state law but also to "equalize" the situation with those who have and continue to pay their maintenance charge in good faith. This penalty is a necessary one to encourage timely payment and penalize non-payment.

The assessment of interest is based on a definition of "delinquent" which distinguishes non-payment on the basis of intent. The definition is that a delinquent account is one which is willfully unpaid; that is the person has the mental and financial ability to pay and chooses not to. Conditioning delinquency on "intent" to avoid payment is a reasonable compromise between the need to keep accounts current and the need to recognize circumstances which are beyond a person's control which can result in delinquency. The definition of "willfull refusal" is to distinguish between lack of cooperation by the resident and inability to pay due to failure of another party (e.g. check from a government agency is lost or delayed). Such compromise is reasonable in that the penalty should not extend to the person who has no control or is not "at fault" with regard to non-payment.

Subpart 2. Discharge for non-payment.

Discharge is intended as the "ultimate penalty" for non-payment.

This subpart, when read in conjunction with the rule on discharge, provides notice to residents that discharge will result from failure to abide by their admissions contract.

Discharge, although a severe penalty, is a reasonable one for the person who refuses to comply with payment requirements or contract provisions.

9050.0530 Rates and charges; agreement at the time of admission.

This rules clarifies the status of admissions under the statutory exception, Minnesota Statutes, section 198.03, by specifying that an admissions agreement is necessary and must be made prior to/in conjunction with a person's admission.

9050.0540 No unpaid absences.

This rule specifies, when read in conjunction with the provisions on bed hold, that a bed will not be held for a person nor will that person be excused from payment during a period of absence.

A provision specifying that any maintenance charge paid must continue during absence is necessary to provide notice of such requirement to applicants or residents.

9050.0550 Maintenance charges; resources considered.

Subpart 1. General.

This rule identifies the general nature of property or resources considered in determining payment. The standard is necessary to provide notice to applicants and residents of what is considered available for payment; it allows them to plan accordingly.

It also establishes a priority of resources to be used for payment.

This rule is reasonable primarily because it gives a person advance notice of what is considered available to the state. It permits

each person to plan for his or her needs.

Subpart 2. Insurance benefits.

Insurance benefits are treated separately from other resources as they are not completely within the control of the applicant or resident. This provision specifies that where the person is eligible for insurance benefits, the whole of those benefits will be considered available for payment.

Such provision is necessary to inform the recipient that such funds will be "appropriated" to defray costs. It is a reasonable provision because it places third-party resources above personal ones in priority thus potentially reducing the direct financial impact on the applicant or resident. It also is consistent with the purpose for which the person bought or availed him or herself of the insurance coverage.

Subpart 3. Property.

This rule limits unexcluded property to $3,000 and further provides that excess "property" must be spent down to the $3,000 limit by full payment of the cost of care.

Such a restriction is necessary to maintain the primary purpose of the Minnesota Veterans Homes, which is to care for disabled veterans who are physically and/or financially unable to provide such care for themselves. The "burden" of recouping the cost of care, of maintaining the facility, is placed on those who can afford it. The provision is also necessary to reduce the burden to the taxpayers.

The $3,000 property limitation is the same as is applied for medical assistance recipients under Minnesota Statutes, section 256B.056, subdivision 3. The limit is considered reasonable, when

combined with the excluded assets allowed, because it is a sufficient resource to re-establish oneself in the community in the event of discharge from the facility or program; and is adequate for burial expenses in the event the person dies while a resident or receipient.

Subpart 4. Chargeable income.

This subpart creates and defines a category of income called "chargeable income" - which is income actually considered available to a person to contribute to cost of care. It also distinguishes between benefits or income paid directly to the recipient and those paid directly to the facility on the person's behalf. Where such resources are paid directly to the person they are considered income for calculation purposes. Where such resources are paid directly to the facility, on behalf of the person, they are considered a deduction or offset against the cost of care and are not included in a person's income.

The primary need for this rule is again the provision of advance notice to the person of what is considered in the calculation of ability to pay.

The category of "chargeable income" is a reasonable compromise between the individual's needs and the State's need to recover money and reduce costs. This provision allows for the "deduction" of mandatory expenses such as taxes and FICA, as well as the necessary expenses to meet the personal needs of the individual and/or his or her family. In a sense, the State only gets what is "left over" after each person's obligations are met.

Subpart 5. Property and income of the spouse.

This final subpart specifies that property and income belonging to

the spouse (of the applicant or resident) are NOT factored in to the calculation of resources available to pay the cost of care.

This provision reflects a policy decision on the part of the Board to consider the individual applicant or resident rather than his or her family. To apply the "spend down" requirements and other financial standards to the spouse who is not institutionalized extracts too high a price to achieve cost reductions for the State. To apply such restrictions equally to the person receiving care as well as his or her spouse only serves to impoverish the spouse.

There are no limitations placed on the spouse with respect to income or resources. This is consistent with medical assistance provisions contained in Minnesota Statutes, section 256B.059, subdivision 5, which provides that no assets of the community spouse are considered available to the institutionalized spouse during the continuous period of institutionalization.

9050.0530 Maintenance charge determination; time and calculation method.

This rule explains when and how a person's billing is determined.

Subpart 1. Time of determination.

Timing of the calculation is triggered by the events specified in this subpart. The events which trigger a determination are those, in the experience of the facility financial staff, are most likely to create a significant change in financial circumstances - either a change in costs or a change in resources.

Specifying the conditions or occurrences which will result in a redetermination of the maintenance charge is necessary to inform the applicant or resident of the reasons for possible fluctuation in the maintenance charge.

The factors selected as requiring recalculation of the maintenance charge are reasonable as they are the events most likely to create a change in the person's ability to pay. Providing for a change in billing, either positive or negative (increase or decrease), balances the facility's needs against the person's.

Subpart 2. Method of calculation.

The method of calculation described in this subpart is the method traditionally used at the Minnesota Veterans Homes, prior to the imposition of these rules and throughout the facility's recent history.

Again it is necessary, for reasons of fairness, to advise affected parties of the methods used to calculate their billings.

The calculation method used is straight-forward and simple. It's reasonableness stems from the clarity of the determination. As in medical assistance, those with resources over the "assets" limit of $3,000 must reduce that amount to the appropriate level to achieve or maintain eligibility for benefits. The resources must be reduced to $2500, according to rule. The primary reason for the $500 "gap" is to appropriately utilize the financial staff. Not requiring recalculation until assets are at $3,000, eliminates the need for (and significant cost of) reporting and recalculating based on insignificant changes. The $500 gap therefore allows a person to reach up to $3,000 before triggering a recalculation.

Subpart 2, item B deals with maintenance charge calculations on the basis of income. Again, the calculation is simple; all chargeable income, up to the full cost of care for the appropriate level of care, shall be paid as maintenance charge. Use of all available income, after

deduction for the individual's needs, avoids the use of a complicated fee schedule and more readily accomodates each person's needs, as these are determined on a case by case basis.

9050.0570 Maintenance charge; notice after financial status review.

This section requires notice of any change in the maintenance charge following review.

Notice is necessary, to advise a person of a change and to provide the person with an opportunity to object to such change. This notice is particularly important when dealing with the often critical area of finances.

Providing notice of any changes is a reasonable means of providing "fair warning" to the person prior to implementation. Notice of the results of a review is certainly preferable to an unheralded, unexplained change in a billing.

9050.0580 Review of maintenance charge determination.

This section provides a right of review of any maintenance charge change. It is a necessary safeguard against incorrect calculations based on inappropriate, inaccurate or incomplete information. It provides some "checks and balances" to the financial system.

Review by the administrator is a reasonable method of obtaining "second opinion" as he or she is familiar with the facility and how calculations are done, but was not directly involved in the original determination or review. As such, the administrator can potentially bring an unbiased view to the re-evaluation.

9050.0590 Maintenance charges; refund.

Refunds on amounts paid are to be made where such person

discharges from the facility before using "all services" for which they have made payment.

As billing is typically done in advance of time covered by the charge (that is, payment for September is made in early September or late August for the month forthcoming) and people cannot anticipate what might occur during the month for which they have already made payment, it is necessary to clarify for them that payment will be refunded for any days a bed is unused or not held.

Providing a refund for "unused days" is certainly reasonable as people are then not paying for something they did not or could not use. It also prevents "double billing" if the bed is subsequently filled by another paying or contributing resident before the end of that billing month.

9050.0600 Property limitations.

Subpart 1. General provisions of property ownership.

The general treatment of property is clarified in this subpart. Only property in which the person has an actual interest and which is actually available or can be made available is considered according to this provision.

For purposes of clarity, it is necessary to define the nature and extent of property interests which will be considered and to do so in a manner consistent with actual practice as opposed to theory. An example of the potentially conflicting situation of theory versus reality is demonstrated by the legal ownership status of "joint tenancy". The theoretical definition of joint tenancy is that each of the interest

holders has a right to the entire property. As a preactical matter however, each "owner" cannot have or use the entire property. Thus, this provision indicates that, for calculation purposes, only the person's actual share (assumed to be an equal share) will be considered.

All items identified in subpart 1 are considered available assets/property, for medical assistance purposes under the currently operational rule .

Subpart 2. Real property limitations.

This section is necssary to identify those interests in real property, likely to exceed the $3,000 limit, which for public policy reasons should be excluded from any resource calculations (and the conditions on which that exclusion is based).

The provisions in this subpart are consistent with or the same as those presently operational in medical assistance rules.

Exclusions of real property are generally based on whether that property benefits the person or his or her family. Therefore, property which is homesteaded; occupied by family, is excluded, as is property which produces an income. Also excluded is property which cannot be liquidated. Non-saleable property is not included as a resource since in actuality it cannot be converted to a useable resource. Exclusion of such property prevents the need and cost for the State to attempt to "broker" the property to recover cash. Also, homesteads are similarly excluded under medical assistance.

The final exclusion is a catch-all which exempts any property specifically excluded by federal law or regulation or state law which supersedes these rules. An example at the state level would be proceeds

of an agent orange settlement (per Minnesota Statutes, section 197.447).

Subpart 3. Other property limitations.

Subpart three separately discusses the exclusion of personal property. It is necessary to separately exclude such items or funds as the basis of the exclusion differs from the basis for real property exclusions. The personal property exclusions are similar in that some are based on need for the person and some on necessity for income production. Another reason underlying several of the exclusions is the likelihood, or lack thereof, of getting funds from the sale of such items.

The exclusions for medical assistance under Minnesota Statutes, section 256B.056, subdivision 3 include a motor vehicle, burial plot,household goods and personal effects, income producing personal property and items excluded by federal law. The only differences are the medical assistance dollar limit on the value of a motor vehicle; the medical assistance exclusion of a burial plot versus the exclusion of a burial plan or account and the veterans home exclusion of 50% of items jointly owned with a spouse.

Subpart 4. Separate account for excluded funds.

Liquidated assets/funds/property must be in a separate account to retain the exclusion. Such a rule is necessary for accounting and tracking purposes. Permitting commingling of excluded with non-excluded funds makes monitoring of permissible transactions costly and complicated.

The requirement is reasonable because it is not unduly burdensome to the person claiming the exclusions and allows ready achievement of

goals.

9050.0650 Transfers of property

Subpart 1. Generally.

This section imposes a reporting requirement on applicants and residents with respect to transfers of property. The provision is necessary to "track" disposition of property to eliminate transfers which are done solely to avoid payment for care. A reporting requirement is a reasonable condition of admission or continued residence as it requires minimal action on the part of the affected person and has the potential to prevent significant abuse of tax funds by discouraging transfers without appropriate consideration.

The "prohibition" against transfers to heirs is currently an operational rule with respect to medical assistance. It represents a compromise between restricting transfers without adequate consideration altogether and permitting the person to dispose of the property in any way he or she chooses. It is a "need-based" standard such that transfer to a dependent is permissible while transfer simply to preserve funds is not permitted.

Subpart 2. Permitted transfers.

The types of transfers acceptable to the Board are outlined here. Three types of transactions are considered "valid" for purposes of these rules: 1) transfer more than twelve months prior to admission, 2) transfer to a dependent family member any time before admission, and 3) fair market value transfers with proceeds available for cost of care.

It was felt necessary to define for applicants and residents what is and is not an acceptable transfer so people have notice of the

likely consequences when exercising their freedom to dispose of their property as they choose. The categories of transfers are based on the likelihood that the transfer was for a purpose other than to avoid payment for one's cost of care. The "twelve months prior" limitation was chosen as most decisions to apply to and enter the home are made only when the actual need arises and generally well within a year before admission. Thus it is more likely than not that a transfer twelve months or more before admission is motivated by concerns other than evading payment. The transfer to "dependent immediate family" is need based and reflects the Board's commitment to serve the needs of the veteran and those dependent on him or her before serving the strictly financial needs of the State. The transfer "for fair market value" restriction was selected as a means by which to eliminate evasive transfers - the intent of which is generally to avoid payment. Therefore, unless the transfer serves a legitimate need as identified in items A and B, it must be a legitimate "arms-length" transaction resulting in a fair exchange.

The Board considered these criteria reasonable measures of the legitimacy of a person's intent in effecting the transfers. These criteria represent a hierarchy in which the basic needs of the resident and his or her family are placed first and the needs of the State, in reducing costs to taxpayers, are placed second.

Subpart 3. Fraudulent transfers.

Subpart 3 defines a transfer for less than fair market value as fraudulent. This provision is necessary to provide (advance) notice to affected parties of conduct which is prohibited. To "penalize" someone

for conduct which they did not know was prohibited or wrong has long been considered offensive to concepts of due process.

The "reasonableness" of this provision is in the fact that it creates a presumption of fraudulence, which the person can refute by providing evidence to show the transfer was for an appropriate purpose. It therefore allows for individual consideration on a situation-by-situation basis.

Subpart 4. Loans of property.

According to this subpart, a loan of property is considered a transfer. This definition is necssary to prevent complete evasion of financial restrictions by a person who makes a transfer and simply labels it a loan. In order for a loan to be "recognized" as a valid transfer, it must be a legitimate business transaction evidenced by receipt of appropriate or adequate consideration.

Loaned property is considered available to the owner under this subpart. Again, only a presumption of availability is created. The person may refute that presumption, and the property or value thereof will not be considered available, if evidence is provided that a loan will not be repaid. In this manner, a person is not "penalized" twice - once by a defaulting buyer and again by the Board which expects payment of monies or funds the person did not receive and is not likely to receive. Here again the "reasonableness" of the provision arises from the case-by-case, individualized approach.

Subpart 5. Unacceptable compensation for transfer of property.

Subpart 5 defines for applicants and residents what is not considered acceptable compensation for transfer of property. Again the

primary need for this section is to provide notice of prohibited conduct.

The legitimacy of the compensation is judged on two grounds - whether the compensation received is readily available to the owner/resident and whether the "adequacy" of the compensation can be readily assessed, to determine whether a fair market value exchange has occurred.

Services were excluded as acceptable compensation due to the time, expense and arbitrariness of determining whether the exchange is or was adequate. Exclusion also eliminates the need to monitor whether services were actually performed. Goods are acceptable compensation only where supported by receipt or other documentation. Such requirements eliminate the valuation problems which occur in assessing the appropriateness of services.

These provisions too, with minor changes regarding acceptability of services, are currently operational medical assistance rules.

9050.0700 Income.

Subpart 1. Evaluation of income.

Only income which truly "belongs" to the person receiving services at a Minnesota Veterans Home will be considered for evaluation purposes. The section provides an expansive definition of income as all payments received, unless specifically excluded. A general guideline based on time of receipt, is provided to determine when to "include" income.

A rule regarding evaluation of income is necessary to inform the applicant or resident and guide or limit discretion of the staff. It

provides an objective standard with which to calculate income of the person.

The definition of income and the guidelines established under this subpart are reasonable as they are based, as are the provisions on property, on actual availability of the resource. For calculation purposes, income is counted when actually received. In a sense, this determination is consistent with the "cash-basis" accounting method and is realistic as a person cannot pay what they don't have.

Subpart 2. Availability of income.

Subpart two covers availability of income from specific sources such as trusts and income from joint property.

This separate provision is necessary to recognize and provide guidelines in dealing with income from sources or investments whose handling is regulated or governed by other legal standards. Both specified types or sources of income are based again on the nature and extent and timing of availability of the funds, as determined by law.

This provision too is operational under medical assistance rules.

Subpart 3. Excluded income.

The only exceptions to the general rule on income are discussed here. The exclusions are work therapy monies and half of jointly earned income (if earned by or paid to both the resident and spouse).

The exclusion of work therapy earnings is required by statute, Minnesota Statutes, section . The exclusion of half of jointly earned income is the most equitable division which can be achieved in a situation in which legally each is entitled to the entirety of the income.

9050.0710 Calculation of gross income.

This section describes in general the calculation of gross overall income on the basis of the general nature of the sources of income. These provisions are operational, with some portions omitted here, as medical assistance rules.

Subpart 1. Earned income.

This section is needed to clarify that income received in exchange for services is considered an available resource regardless of when received or whether in exchange for actual services or as a benefit adjunct to those services.

These provisions are currently operational medical assistance rules and are reasonable as they treat earned income on the basis of actual availability balanced against timing of receipt. This treatment is consistent with the uses most likely to be made of such income by the person in question.

Subpart 2. Self-employment earnings.

Although earned income, it is necessary to discuss income from self-employment separately as the funds received by such person do not necessarily equate with income in the availability sense and must be examined differently to ensure that the treatment of such funds is, in the end, roughly equivalent to earnings from employment by another party.

The treatment methods outlined here are currently operational generally, in medical assistance rules. These methods involve averaging or allocating of costs and earnings. This is felt more reasonable as it is likely to more accurately reflect the long-term earnings status of the person and it reduces the effect of large receipts or expenditures on the overall earnings picture.

Subpart 3. Farm income.

Farm income is dealt with separately although a form of self-employment income.

Subpart 4. Rental income.

Rental income is dealt with separately because it involves property rather than services, potentially has aspects of earned and unearned income and frequently involves "dual use" e.g. personal use and income production. This provision permits an "allocation" if the rental situation in question involves actual use by the owner as well as generating income. Costs are allocated on a per room basis. Deduction only of costs attributable to actual portions rented is all that is allowed. This provision is necessary to prevent a duplication of deductions (deduction of expenses here and under expenses of outside spouse) and to provide a more accurate picture of income (offsetting income from portions rented out by expenses for total use would unnaturally reduce the income picture).

Subpart 5. Unearned income.

It is necessary to treat unearned income differently than earned to obtain an income picture which is accurate as to actual availability. Differing treatment of income on the basis of its source is consistent with state and federal revenue rules or codes and therefore easier for a person to understand and follow.

Subpart 6. Lump sums.

Lump sums must, according to this provision, be treated in a manner consistent with the nature of the source of the payment. Such sums are either earned or unearned. It is necessary to provide, via rule, a method for dealing with such items or sums as receipt of lump

sums is a frequent occurrence amongst Minnesota Veterans Homes residents. Whether a lump sum is treated as completely available upon receipt or is allocated over a period of time depends upon what is represented by the payment. Payments for services or for losses or of benefits occurring or accruing over a period of time are prorated so they most accurately reflect the purpose of the payments. Lump sum payments which do not constitute payment for services or for benefits allocated over a period of time are treated as "windfalls" and therefore immediately available in their entirety. Such a distinction was felt to be a reasonable approximation of treatment of such monies in a person's private life.

9050.0720 Calculation of net income; deduction for (employment) expenses.

Subpart 1. Calculation method.

Establishing a specific method by which to do financial calculations is necessary to ensure consistency in determination and fairness in the calculation as well as providing notice to affected persons of how their income and financial status will be assessed.

Using a calculation which starts with everything included in the definition of "income" was felt most clearcut, and in that way reasonable, method of calculation. This calculation uses the concept of gross income - the total income from all sources - familiar to people because of its use with regard to taxes.

Subpart 2. Deduction for necessary expenses.

Subpart two outlines the offsets or deductions from income which the Board felt appropriate in achieving its goal of providing first for

the resident and his or her family.

The deduction must be identified by rule to avoid abuse of discretion on the part of facility staff in allowing deductions and making calculations, avoid abuse on the part of applicants or residents in claiming deductions and to provide notice to all affected parties of the type of expenses the Board will allow.

The specific categories of expenses permitted under this rule represent an attempt at balance between the Board's duty to minimize costs to the State and maximize recovery of resources and the Board's obligation to act in the best interests of the veterans served by the homes. The categories of allowable expenses are characterized by three qualities: 1) they are mandatory deductions or payments the person must make by law, 2) they are expenses which are necessary to accomplish the person's treatment or rehabilitative goals e.g. medical care, education and employment expenses; and 3) expenses are necessary to support and care for the person's dependent family (such costs would be borne by the State if not by the person him or herself).

A listing of (specifically) allowable costs or expenses is common to eligibility requirements/calculations for benefit programs. The listing contained in this provision closely approximates those contained in Rules 9500.1205, subpart 3, items A. to MM.; 9505.0065, subparts 2 and 5; and 9515.2300, subpart 4.

9050.0730 Deductions from rental income.

This rule outlines costs which may be deducted from rental income, in calculating actual earnings from such property. Such rule is

necessary to encourage people to maintain properties in good condition, etc. yet to place a "cap" on the amount of expenditures appropriate to accomplish that goal. This "limit" strikes a balance which hopefully prevents the State's benefit programs from being used to subsidize rental investments.

This rule provision, in its entirety, is presently operational as Rule 9505.0065, subpart 7.

9050.0740 Deductions from self-employment income.

This rule is a necssary guideline or limitation to prevent "accounting away" all earnings from a self-employment situation. It is felt to be reasonable as it follows the United States tax code. Also, this provision is, in general, operational as Rule 9505.0065, subpart 8.

9050.0750 Deduction for voluntary support of dependent spouse or household.

Subpart 1. Generally.

Allowing such an "expense" by rule was felt a necessary provision for two reasons: 1) it prevents the State from having to assume financial responsibility for both the resident and his or her family; and 2) it aids in the resident's overall treatment plan/rehabilitation and care as it eliminates concern over whether his or her family is taken care of.

The only requirement imposed by this rule provision is that of validation. Any person claiming the need for support for the family of a resident must document that the needs of those dependents are not already met. This documentation requirement is a reasonable requirement on behalf of "claimants" in that it places no dollar limitation on the

expenditures, but requires only verification of accuracy - not appropriateness. To impose a specific dollar limit on the recognized categories of expenses in this rule was felt, by the Board, to be too judgmental.

Subpart 2. Determination of monthly expenses.

Identification of the type of expenses "recognized" by the Board was a rule provision necessary to balance out the lack of any dollar limitation on such costs. The categories of expenses identified and legitimized here are felt to be reasonable ones as they fairly approximate the nature of a family's budgetary needs. These costs are "typical" of the costs necessary to support a person and/or family in a private home/living situation.

Subpart 3. Calculation of amount of deduction.

Subpart three defines the calculation method used to determine the amount to be allowed as a deduction from the resident's income.

Committing the calculation formula to writing assures consistency in application and also enables an applicant or resident to perform the calculation independently, for planning and verification purposes.

This rule portion indicates that the deduction is limited to the amount by which the spouse or household's expenses exceed income or resources independently available to them. Therefore, complete documentation of expenses and resources is necssary before such deduction is allowed.

9050.0755 Calculation of chargeable income of applicant or resident.

The formula or method to be used to figure out the amount of income a person has left (after meeting needs) to contribute to his or

her cost of care is established here. Such "method" is necessary to ensure consistency in calculations and accountability on the part of the facility. It is also necessary to ensure compliance with federal reporting standards.

9050.0760 Anticipating income.

As calculation of a person's maintenance charge is based on the assumption that the person's income situation or status will continue, relatively unchanged, into the future, a rule is necessary to guide that estimate, which is based on "prior performance".

The text of this rule is currently operational as Rule 9505.0065, subpart 10.

9050.0770 Benefits application required.

Residents of the Minnesota Veterans Homes, because of their care status, are frequently eligible for increased or additional benefits, either governmental or private. As an increase in the person's income in most cases results in an increase in the person's maintenance charge, there is often a reluctance on the individual's part to apply for benefits - because the resulting increase in benefits goes towards cost of care rather than into the individual's pocket.

This rule is needed to require the applicant or resident to make application for benefits even when such application does not benefit them directly. The application for benefits requirement was felt to be reasonable because it could potentially increase recovery on behalf of the State and reduce taxpayer costs, yet does not result in any detriment to the resident.

A similar provision or requirement is provided in Rule 9505.0065,

subpart 1, item A.

9050.0800 Financial interview.

Subpart 1. General conduct.

This rule.requires that the applicant or resident whose financial situation is being reviewed be present during such review, unless there is a medical reason the person cannot or should not be present.

The primary reason for this rule provision is to ensure direct involvement on the part of the person most affected by the financial review - the applicant or resident. This participation requirement also helps ensure privacy of financial data as it limits participation to the person in question unless information cannot be obtained otherwise.

Subpart 2. Rights, duties and consequences of interview.

The provisions of subpart two are necessary to comply with data privacy requirements of Chapter 13 and to provide the requisite "Tennyson" warning to those affected. Such warning provides notice to affected parties as to the nature of the information requested, proposed used of information, whether provision of information is voluntary or mandatory and the consequences which will result from failure or refusal to provide requested information. Providing this information to people enables them to make a fully informed decision.

This entire rule mirrors that currently in use as Rule 9515.1500.

9050.0810 Source of financial information.

Subpart 1. Applicant or resident primary source.

This rule specifies that the affected person be the main source of information. It is necssary to limit and properly focus inquiries made by the facility into the financial status of an applicant or resident.

Requiring information to be obtained from the person directly increases the likelihood of accuracy of information.

Subpart 2. Secondary or alternate sources of information.

This section is necessary to limit sources for information used by facility staff. It also establishes the "priority" of alternate information sources. This is to ensure that staff turns to people/those who have the authority to speak on behalf of the applicant or resident and who are most likely to have accurate information.

This rule contains language similar to that in effect as Rule 9515.1400.

9050.0820 Verification of financial inforamtion.

Subpart 1. Verification required.

This rule section is needed to provide notice to applicant, resident and legal representative or spouse, that financial information provided will be verified as to accuracy.

Verification of information submitted in support of any claim or request for benefits or services must, unfortunately, be done to prevent abuse of the system or program by those who are not truly entitled to participate or not truly entitled to receive benefits.

Eligible veterans are defined by statute as those with appropriate military service status, medical conditions and financial need. Persons who meet all criteria except that of financial need are admitted as exceptions under Minnesota Statute, section 198.03. To be admitted

under this statutory exception, people must make payment of a reasonable maintenance charge for their care. To determine what charge is "reasonable" for each person the Board must examine and verify the accuracy of financial information. This verification is necessary to ensure accurate calculation of the maintenance charge and prevent people from unfairly avoiding payment.

Subpart 2. Items to be verified.

Subpart two identifies the types of information which must be verified by the facility financial staff. The provision is needed to give notice to those affected of the type of information which will be checked for veracity. It is a reasonable listing of items since each relates specifically to the financial status and ability to pay.

Subpart 3. Time of verification.

Subpart three provides a clear-cut time frame for verification of information. It sets a time limit within which information must be obtained. A time limit is necessary to ensure that information is accurate and current. The sixty day time limit was felt reasonable as it allows sufficient time for response within the typical thirty day business cycle.

Verification or documentation requirements are frequently included in rules relating to benefits programs. Examples include rules 9505.0080; 9505.0095 and 9500.2420. This rule is patterned after those rules mentioned above.

9050.0900 Authorization forms.

Subpart 1. Required.

Authorization forms are required by the provisions of Chapter 13,

the Minnesota Data Practices Act, and other information disclosure laws. This rule provision makes separate authorizations mandatory. It provides notice to the person signing them, of the agencies or individuals who will be contacted for verification. The signed authority also protects those releasing information from claims of inappropriate or unlawful disclosure.

Subaprt 2. Content.

This section identifies information which must be included on the form prior to the signature and limits use of authoriaztions to a single inquiry per signed authorization and limits duration of authority to one year.

Such limitations are necessary to ensure that the person knows, at the time of his or her authorizing signature, what he or she is permitting by use of the release; it is necessary to ensure that an authorization is not used for a purpose for which it was not directly intended and are necessary to ensure that the consent or authority is current and therefore valid.

This rule is modelled after currently operational rule 9515.1700.

Subpart 3. Refusal to sign authorization forms; consequences.

The final provision of this rule identifies for people their obligations with respect to disclosure and provides advance notice of the consequences of non-cooperation. It is necessary to impose "negative" consequences on refusal to cooperate so that cooperation and full disclosure is encouraged.

It is reasonable to treat those who cooperate more favorably that those who do not cooperate - it is a "positive reinforcement" type of approach designed to encourage desired behavior. Imposition of

"negative consequences" is a common approach seen in other rules, such as 9515.1800 and 9500.1214, subpart 1.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

It has been determined that there will be no impact on small businesses.

VI. LIST OF WITNESSES AND EXHIBITS.

A. WITNESSES

In support of the need and reasonableness of the proposed rules, the following witnesses will testify if a rule making hearing is required:

1. Ms. Karen Jennings, Assistant Administrator for Direct Care, Minneapolis campus, Minnesota Veterans Home; will testify on the issues of admissions requirements, compliance review, coordination of rules with Department of Health licensure requirements.

2. Ms. Kathleen Davis, Director of Nursing, Minneapolis, Minnesota Veterans Home; will testify on issues of admissions requirements, admissions process, care planning, case mix criteria and relationship to admission standards.

3. Ila Beste, Registered Nurse, Utilization Review Coordinator, Minneapolis, Minnesota Veterans Home; will testify on the case mix system, assessment and utilization review process.

4. Mr. Robert Walker, Social Worker Senior, Minneapolis, Minnesota Veterans Home; will testify on issues of admissions process, compliance review, discharge planning and procedures.

5. Ms. Carlene Hoeschen, Quality Assurance Coorindator, Minneapolis, Minnesota Veterans Home; will testify regarding relationship between admissions and discharge requirements, quality of care; compliance

review and its relationship to quality of care.

6. Mr. Jeff Smith and Ms. Susan Kiley, Administrator, Minneapolis and Hastings Veterans Homes, respectively; will testify regarding administrative aspects of discharge procedures and internal appeal, appeals process regarding admissions decisions, discharge recommendations and maintenance charge calculations.

7. Mr. Dan Bolhouse, Board Member, affiliated with Presbyterian Homes (CEO); will testify regarding use of case mix system in private industry, use of dual waiting lists.

8. Ms. Bonnie Hagstrom, Medical Records Technician, Minneapolis, Minnesota Veterans Home; will testify regarding maintenance of and access to records, both internally and externally.

9. Ms. Inez Bonk or Ms. Bernice Stuart, both of Minneapolis Family Council for Minneasota Veterans Homes; will testfiy about financial concerns of family vis a vis resident and impact of rules on family financial situations.

B. EXHIBITS

In support of the need and reasonableness of the proposed rules, the followign exhibits will be entered into the hearing record by the Board:

Exhibit Number	Document
1	Department of Human Services rules
2	Department of Health rules
3	Minnesota Statutes re: Veterans Homes
4	Financial statistics re: MVH Minneapolis
5	Sample admissions packet for Minnesota Veterans Home

VII CONCLUSION

Based on the foregoing, the proposed Minnesota Rules, Parts 050.0010 to 9050.0900 are both needed and reasonable.

Robert E. Hansen, Secretary — October 6, 1989 (Date)

James G. Sieben, Chairman — October 6, 1989 (Date)