

9/3/91



**STATE OF MINNESOTA
VETERANS HOMES BOARD**

VETERANS SERVICE BUILDING
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September 5, 1991

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Maryanne Hruby
Executive Director
Legislative Commission to Review Administrative Rules
Room 155
State Office Building
100 Constitution Avenue
St. Paul, Minnesota, 55155

Dear Ms. Hruby:

Enclosed please find a copy of the statement of needs and reasonableness for the rules proposed for adoption by the Veterans Homes Board of Directors. These rules were published on September 3, 1991 in the State Register.

If you have any questions about this matter, or if I can be of further assistance to you please do not hesitate to call me

Yours truly,

A handwritten signature in cursive script that reads "Robert Klukas".

Robert Klukas
Rules Writer

The Legislative Commission to
Review Administrative Rules

SEP - 5 1991



STATE OF MINNESOTA
MINNESOTA VETERANS HOMES BOARD

STATEMENT OF NEED FOR AND REASONABLENESS OF AMENDMENTS TO MINNESOTA RULES 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.

PART I. INTRODUCTION

The Minnesota Veterans Homes Board (Board) has been operating under Minnesota Rules, Chapter 9050 since April of 1990. During this period residents, interested members of the public, facility staff, and members of the Board have made suggestions for rule amendments to make the rules more clear, more consistent with current practices and more fair.

The amendments proposed for adoption are the result of an extensive process which involved seeking input from the general public, facility residents, their elected representatives at each facility, interested family and friends of the residents, veterans service groups, county veterans service officers, facility administrators and staff, and the Board. In addition to the notice and mailing required under Minnesota Statutes, section 14.10 meetings were held with the following groups regarding amendments to agency rules: county veterans service officers, state commander's task force, the American Legion Department of Minnesota, Minneapolis Veterans Home Family Council, Minneapolis Veterans Home Resident Council, Minneapolis Veterans Home Resident Rules Committee, Minneapolis Veterans Home Utilization Management Committee, Hastings Veterans Home Family Council, Hastings Veterans Home Resident Council, Minneapolis Legal Aid Society, Southern Minnesota Legal Services, and various facility staff committees. The result of the extensive public contact during the development of the rule amendments is a strengthening of the agency's rules from the standpoints of fairness, workability, and clarity.

The rules as enacted along with the proposed rule amendments will provide the agency with a strong framework to long term health care services the public within its fiscal and statutory limits.

PART II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt and to amend Minnesota Rules, Chapter 9050 and is set out in Minnesota Statutes, section 198.003, (a) (1) which provides that the Board may "subject to Chapter 14, adopt, amend, and repeal rules for the governance of the homes". Under this statute the Board has the necessary authority to amend Minnesota Rules, Ch. 9050.

PART III. STATEMENT OF NEED

Minnesota Statutes, Chapter 14 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 means that the solution proposed by the Board is appropriate. The need for the rule amendments is discussed below.

The Board has operated in accordance with Chapter 9050 for over one year. During the period since the April 1990 enactment of the rules suggestions for improvement of the agency's rules have been made. After duly considering the proposed rule amendments the Board has proposed several rule amendments for adoption because they are needed to improve the fairness, clarity, and workability of the rule. Overall the rules as amended are needed to provide Minnesota veterans with the maximum quality of life in a structured long term health care facility, so the resident can function at the highest social, mental and physical level.

PART IV. STATEMENT OF REASONABLENESS

A. Reasonableness of the rule as a whole.

Where possible the proposed rules require decisions based on identified, objective criteria with decisions, assessments, and 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 where appropriate.

Also whenever possible, these rule amendments follow definitions contained in statutes or regularly used by other state agencies, such as 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 the rule by section.

9050.0020, Applicability.

The amendment of this rule part is necessary to accommodate an anticipated expansion of the agency's rules beyond part 9050.0900. All agency rules are expected to be within Chapter 9050. This is a technical amendment and does not change the substance of the present rule.

9050.0040, subp. 1. Scope.

The amendment of this rule part is necessary to accommodate an anticipated expansion of the agency's rules beyond part 9050.0900.

All agency rules are expected to be within Chapter 9050. This is a technical amendment and does not change the substance of the present rule.

9050.0040, subp. 20. Campus.

The amendment of the definition of "campus" as it is used in this rule is needed to clearly define the physical area referred to by the word "campus" in various parts of the rule. Parts of each facility campus are leased by the state of Minnesota to local governments and used for park and recreation purposes or leased to other private corporate entities not under control of the Board. Persons had questioned whether the Board's rules governed members of the general public using Veterans Homes Board land leased by the state for park purposes. The Board did not intend to attempt to govern the activities of other units of government or corporations leasing the land originally deeded to Home. The proposed rule amendment would limit the applicability of the agency's rules to the geographic areas which are maintained by the Board for its use as veterans homes.

9050.0040, subp. 21. Care plan review.

The amendment of the definition of "care plan review" clearly assigns responsibility for care plan reviews to the care plan team. The amendment is necessary to clarify the role of the care plan team in the care planning process in part .0300. The amendment complies with Minnesota Statutes, sec. 144.651, subd. 6, and Minnesota Rules, part 4655.6000.

9050.0040, subp. 40. A. Equivalent chemical dependency program.

This amendment to the agency rules is needed to define the term "equivalent chemical dependency program" as it is used in parts .0070, subp. 3. L. and 4. G. Chemical dependency programs whether licensed or unlicensed which meet the program design requirements of licensure are adequate to provide the needed treatment for an actively chemically dependent person.

9050.0070, subp. 3. Criteria for admission to and continued stay in a boarding care facility.

Item F.

This rule amendment is related to an amendment to part 9050.0300 which substitutes the care planning process for the compliance review process. The admission and continued stay criteria is proposed for amendment to more clearly state that there are behavioral goals which residents must cooperate with to ensure that the facility can meet their care needs. The amendment's emphasis on "cooperation" recognizes that certain boarding care residents may have a psychological condition which diminishes their capacity for attaining the behavioral goals contained in their care plan. Boarding care facilities do not have sufficient staff or the needed physical plant to care for persons who do not cooperate with their care plans and facility rules. The amendment to the

rule requiring staff to advise residents who refuse care that their medical condition if unaddressed, may exceed the ability of the Home to care for them is in keeping with Minnesota Statutes. sec. 144.651, subd. 12.

Item G.

This is a technical amendment and does not change the substance of the present rule. Staff and residents have expressed consternation about the syntax of the present rule and commented on the need for clarification. The rule amendment makes it clear that "other than" refers only to "bathing".

Item J.

This amendment is needed to clarify the purpose of this admissions and continued stay criteria. The domiciliary facility does not have the staff and physical plant to safely and properly care for patients with current significant behavioral risk factors which pose a threat of harm to self or others.

Item L.

The amendments to this subpart make the rule less restrictive yet maintain an admission and continued stay criteria which will allow Board-operated domiciliary facilities to properly function at current staffing levels. The Board does not have the resources to operate a primary chemical dependency treatment facility, thus it is necessary to admit patients who are not actively chemically dependent. Board-operated facilities can properly care for patients who have been through a chemical dependency program at a facility which meets the program design requirements of Parts 9530.4100 to 9530.4450 and 9530.6620 to 9530.6650. Patients who have not been through a treatment program, yet have maintained three months of sobriety have demonstrated their ability to live a chemically free lifestyle and have reached a hallmark in their recovery from chemical dependency which is recognized by Alcoholics Anonymous.

Item M.

The amendments to this subpart are in keeping with the amendments re-naming part 0300, and support a technical amendment to the rule changing all references to the entire rule to "Chapter 9050". The amendments do not change the requirements for a patient's conduct.

9050.0070, subp. 4. Criteria for admission to and continued stay in a nursing home facility.

Item D.

The amendments to this subpart are in keeping with the amendments to part 0300 which change the focus of the care planning process from "compliance" to "cooperation". Residents of the homes had commented that "compliance" was a needlessly negative term used to describe the process of an individual resident following the

health care plan they had helped devise. The word "cooperation" is a much better term to describe the residents participation in their own health care. The amendment also clearly requires cooperation in this admission and continued stay criteria to be measured according to part 0300.

Item F.

The amendments to this subpart are needed to clarify the purpose of this admissions and continued stay criteria. The facility does not have the staff and physical plant resources to safely and properly care for patients with current significant behavioral risk factors which pose a threat of harm to self or others.

Item G.

This subpart is needed to establish a chemical dependency criteria for admission and continued stay in a board operated nursing care facility. In the eighteen months since the enactment of the agency rules it has become increasingly apparent that some nursing facility residents have continued their chemical dependency patterns after admission to the home, with deleterious medical effects to the resident and caused disruptions at the home. The rule is similar to the chemical dependency criteria contained in part 9050.0070, subpart 3. L., except that it allows an incapacitated nursing home resident whose long term medical condition precludes further chemical abuse to be admitted to the home without chemical dependency treatment or demonstrating that they are chemically free.

9050.0080, subp. 2.

This rule amendment sets a time limit of thirty days for persons wishing to file an appeal of a decision of the admissions committee. Persons denied admission to the home had filed stale appeals as much as five months after being denied admission. Laws of Minnesota 1991, chapter 24, section 198.003 (a) (1) provides that the Board may, "create by rule reasonable time periods within which a resident must appeal an administrative determination to the next administrative level." A thirty day period provides applicants for admission a reasonable amount of time in which to file an appeal of a decision to deny the applicant admission to a Board-operated home. A person who wanted to be admitted to a Board-operated home after the 30 day appeal period had expired could re-apply for admission to the home at any time.

9050.0100, subp. 1.

This is a technical amendment and is not intended to change the substance of the present rule. The adopted rule should have referred to part .0070. The reference in the adopted rule to part .0700 is a typographical error. This subpart of the transfer rule is setting forth the requirement for the home to evaluate the patient's medical condition to determine the appropriateness of the patient's continued stay in part .0070 if the patient were to

refuse a recommended transfer, rather than to evaluate the patient's income if they refuse to transfer according to part .0700.

9050.0100, subp. 2.

This amendment is needed to remove "nonpayment of stay" as a grounds for altering the notice requirements of the transfer part of the rule. Nonpayment of stay is not a reason for transferring a patient nor for altering the notice requirements of a patient's transfer. Nonpayment of stay is a grounds for discharge from the home according to part .0200, subpart 3. A. If a patient being discharged from the home for nonpayment of stay, developed a medical condition necessitating a transfer, the patient would retain the right to timely notification of the transfer as stated in this rule part. This subpart complies with Minnesota Statutes, sec. 144.651, subd. 29.

9050.0150, subp. 7.

This rule amendment limits the role of the utilization management committee in reviewing residents' personal absences and makes the standards for review of personal absences less restrictive. This amendment was needed to relieve the burden upon the utilization management committee created by the existing rule requirement of reviewing all resident's personal absences of more than 96 hours and more than five personal absences per year. The rule is proposed for amendment to more closely parallel the reasonable standards contained in Minnesota Rules, part 9505.0415, subpart 6, that outline the medical assistance personal leave standards. Thirty six days of personal leave is adequate for the vast majority of residents in a Board-operated facility. Personal leaves which exceed thirty six days or which are contraindicated in the resident's care plan, should trigger a review of the resident's need for continued stay in a Board-operated facility.

The Minneapolis Veterans Home currently has a waiting list exceeding one hundred applicants for admission. It would be unreasonable to retain a resident on "bed hold" status who takes extensive personal leaves and does not need long term care, thus depriving persons needing care who are on the waiting list of the opportunity to be admitted.

9050.0200, subp. 6.

This amendment has been added to the discharge rules to provide a clearly stated notice procedure for persons who are absent without notice for more than 96 hours. This rule part is needed because facility staff requested a clearly stated standard for notification of residents being discharged for unexcused absences of more than 96 hours. Many of the residents who leave the facility without notice have no intention of returning and do not bother to go through the voluntary discharge procedure. In addition these residents often do not leave a forwarding address and thus are difficult to effectively advise of their impending discharge. The rule amendment provides a thorough and fair notice

discharge. The rule amendment provides a thorough and fair notice requirement for facility staff to follow.

9050.0220, subp. 1.

This amendment transfers the obligation of making a discharge recommendation to the facility administrator for the grounds provided in part 0200, subpart 3. D. from the utilization management committee to the social services staff. This amendment is needed because it does not require the utilization management committee to meet to determine that a resident has been gone for more than 96 hours or has not returned after a deadline contained in personal leave pass. The resident's social worker would be the staff person assigned to determine the reason for the absence and would try to locate the resident or alert the local adult protection unit. It is reasonable to assign the duty of recommending discharge to the staff member most familiar with the resident's medical and social condition.

9050.0220, subp. 6.

This amendment is needed to correct an erroneous statutory reference in the existing rule regarding Minnesota Statutes, Chapter 14 appeals. This amendment is a technical amendment and does not change the substance of the rule.

9050.0300, CARE PLANNING.

In the period since Chapter 9050 was enacted in April 1990, many residents have commented that several words, such as "compliance", "infraction", and "disciplinary option" were used in the rule part which were perceived to have negative connotations. It was also noted that the process was supposed to be a comprehensive health care planning rather than just a behavior review process. The amendment of this rule part removes the words with negative connotations and makes the rule part clearly applicable to both mental and physical health care planning and reviews.

Subpart 1. This rule amendment requires each facility to have a care planning procedure. An individual resident must have a care plan developed in cooperation with the resident or persons acting on the resident's behalf and the facility's professional staff who are involved in the resident's care. This rule part also includes procedures to be followed when the resident has difficulty following their individual care plan.

Subpart 2. This rule part sets forth the procedures used to conform to Minnesota Statutes, section 144.651, subd. 10 regarding patient or resident participation in care planning. This part focuses on behavior management problems and the method used to assist the resident in resolving conflicts, disagreements and other behavior issues. The care plan process described in the rule provides a needed structure for dealing with a variety of related behavior and health care issues.

Subpart 3. This rule part describes the responsibilities of the care plan team and the process for the involvement of the utilization management committee in the care planning process. This rule part is needed to insure that there is a uniform fair process followed at each Board-operated facility for bringing an individual resident's care plan issues forward through a process which could, if the issues are not resolved, end with an involuntary discharge. The process laid out in 0300 is orderly and fair, and is in keeping with the Resident and Patient Bill of Rights

9050.0500, subp. 6. D.

This rule amendment makes it clear that the home may issue a billing for a months maintenance charge later than the tenth of the month following the month in which the service was received, if there is a retroactive maintenance recalculation, based upon a resident's receipt of a retroactive benefit. This rule part refers to part 0550 for a full statement of the Board's policy on retroactive lump sum payments of benefits and their effect on the calculation of a resident's maintenance. Every resident of a Board-operated home has signed an admission agreement which includes a requirement to make retroactive maintenance payments out of retroactive benefit payments.

9050.0550, subp. 4.

This rule amendment is needed to clarify the resident's obligation to pay increased maintenance to the state of Minnesota for the months in which the resident resided in the Home, if the resident receives a subsequent retroactive increase in benefit payments. The rule part is in keeping with one of the conditions of the resident's admission agreement. The United States Department of Veterans Affairs also looks back over a benefit payment period to examine the relationship of the retroactive income increase to determine past and present benefit eligibility, including a determination of whether their agency is entitled to a past repayment or a future reduction in benefit payments.

9050.0700, subp. 1.

This rule amendment makes it clear that income from lump sum retroactive benefit payments may be attributed to the period for which the benefits are paid rather than just for the month in which income from the lump sum payment was received. This rule part refers to part 0550 for a full statement of the Board's policy on retroactive lump sum payments of benefits and their effect on the calculation of a resident's maintenance. This part is in keeping with one of the conditions of the resident's admission agreement.

PART V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

It has been determined that there will be no impact on small business as a result of the adoption of this rule. The rule does not establish any reporting, compliance, deadline requirements or standards as contained in Minn. Stat. sec.14.115 for small businesses.

PART VI. WITNESSES

In support of the need and reasonableness of the proposed rules, the following witnesses will testify at the rulemaking hearing.

Stephen O'Connor
Chairman, Rules Committee
Minnesota Veterans Homes Board of Directors

Susan Kiley
Administrator, Hastings Veterans Home

David Carroll
Director, Psychological Services
Minneapolis Veterans Home

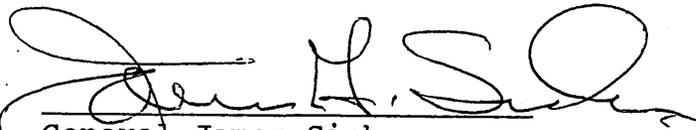
Carlene Hoeschen
Quality Assurance Coordinator
Minneapolis Veterans Home

PART VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minnesota Rules, parts 9050.0010 to 9050.0900 are both needed and reasonable.

Dated: *August 12,* 1991

by



General James Sieben
Chairman, Board of Directors
Minnesota Veterans Homes