6/22/92

*State of Minnesota*
***Department of Human Services***
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

June 17, 1992

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness governing Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, Minnesota Rules, parts 9553.0010 to 9553.0080.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 296-7815.

Sincerely,

Jim Schmidt

Jim Schmidt
Rules and Bulletins Division

Encl.

**STATE OF MINNESOTA**

**DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS, MINNESOTA RULES, PARTS 9553.0010 TO 9553.0080.

STATEMENT OF NEED AND REASONABLENESS

## INTRODUCTION

Minnesota Rules, Parts 9553.0010 to 9553.0080 establish procedures for determining payment rates for intermediate care facilities for persons with mental retardation or related conditions (hereinafter referred to as ICFs/MR, facilities, or providers) participating in the Medical Assistance program. These rules apply to ICF/MR providers including state operated community-based residential facilities. They do not apply to the State's seven regional treatment centers.

## BACKGROUND

Minnesota Rules, Parts 9553.0010 to 9553.0080 were adopted in 1986 and were last amended in April 1988. These proposed amendments were developed through meetings with representatives of the provider industry and the Association of Residential Resources in Minnesota (ARRM), a provider organization, as part of a lawsuit settlement.

As part of the settlement agreement, the Department agreed to initiate rulemaking to implement three noncontroversial rule amendments and to submit a notice of intent to adopt a rule without a public hearing within 30 days of the execution of the settlement agreement.

The settlement agreement also provides that the Department will, within 45 days following the effective date of the settlement agreement, form a rule advisory committee consisting of Department of Human Services staff, providers and representative of other interested groups, to consider other revisions to 9553.0010 to 9553.0080. Amendments stemming from those meetings will involve a separate rulemaking effort, and will not be a part of this rulemaking effort.

## STATUTORY AUTHORITY FOR RULE

Statutory authority to promulgate the rule is Minnesota Statutes, section 256B.501.

## SMALL BUSINESS CONSIDERATION IN RULEMAKING

Under Minnesota Statutes, section 14.115, subdivision 7, clause (3), the small business consideration in rulemaking does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals,

providers of medical care, day care centers, group homes, and residential care facilities, but not including businesses regulated under chapter 216B or 237. Since the proposed amendments govern payment rates (standards and costs) for intermediate care facilities for persons with mental retardation or related conditions, the requirements under Minnesota Statutes, section 14.115 do not apply to this rule.

**IMPACT ON AGRICULTURAL LANDS**

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land in this state to comply with additional statutory requirements. The amendments to the rule governing payment rates for intermediate care facilities for persons with mental retardation or related conditions have no impact on agricultural land and, therefore, the additional statutory provisions do not apply.

**FISCAL NOTE**

The amendments to the rule will not have a fiscal impact on state and local spending of more than $100,000 in either of the first two years following promulgation of the amendments.

**RULE AMENDMENTS**

PART 9553.0035 DETERMINATION OF ALLOWABLE COSTS

Subp. 8. **Capitalization.** The amendment to this subpart is necessary to authorize the expensing, rather than capitalizing, of assets of $200 or less. For costs incurred after September 30, 1992, a capital asset shall not be capitalized when the unit cost of that capital asset is $200 or less. The date of September 30, 1992, is used because October 1 is the earliest probable date that the rule amendment can be adopted. October 1 is also the beginning of a new rate year.

The amendment to item A is necessary to establish a standard for the expensing, rather than capitalization, of minor equipment on a per unit basis. The proposed standard relieves ICFs/MR from maintaining accounting information on minor equipment acquisitions by allowing the expensing of that equipment. The amendment eliminates the need to keep records on minor equipment purchases for 5 years.

Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, that the Department would propose an amendment to allow for the expensing, rather than capitalization, of assets which cost $200 or less. The standard is reasonable because it establishes a more immediate standard for repayment of minor equipment purchases. An asset expensed can not be capitalized and depreciated. This principle avoids duplications of payment. It is reasonable to allow providers to expense acquisitions of this dollar amount to reduce the expense of accounting for these costs by eliminating the need to keep records on those minor assets for their useful life.

It is reasonable to set a dollar amount for determining whether an asset should be expensed rather than capitalized because the establishment of a dollar figure provides a standard for deciding when to expense or capitalize a capital asset. It is reasonable to use the unit cost of a capital asset because the purchase cost of a unit can be most easily determined. The use of the term "unit cost" clarifies that the standard is to be applied on each individual asset purchase rather than on an aggregate basis. A capital asset must not, however, be broken down into its components in order to be expensed. A repair to another capital asset would not be broken into its component parts; i.e., materials and labor to repair a wall, television, or car, for example. Repairs of this nature to capital assets continue to be governed by subpart 8, item B.

PART 9553.0040 REPORTING BY COST CATEGORY

Subpart 1. **Program Operating Costs**

The amendment to item G is necessary to classify insurance expense for program vehicles as program costs. Disputes have arisen under the existing rule about whether the correct classification of insurance expenses for vehicles used for program purposes is the Administrative category or the Program category. Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, to amend the rule so that insurance expenses for facility owned vehicles may be classified in the Program category to the extent the vehicle is used to transport residents for program purposes.

Vehicle insurance is a necessary cost in the operation of a motor vehicle used to transport residents for program purposes. Therefore, it is reasonable to classify such expenses for facility owned vehicles, to the extent the vehicle is used to transport residents for program purposes, in the Program category and to exclude the insurance expense from the Administrative category.

Subp. 3. Item F. **Administrative operating costs.**

The amendment to item F is necessary to implement the change identified under Subpart 1, item G. Because subpart 1 is being amended to allow insurance expense for program vehicles to be considered a program cost, it is necessary and reasonable to amend this item to include subpart 1 as an exclusion to the language in this item.

PART 9553.0050. DETERMINATION OF TOTAL OPERATING PAYMENT RATE.

Subp. 3. **One time adjustment to program operating cost payment rate.**

The amendment to item A, subitem (2) is necessary to update the code cite to reflect the most current issue of Title 42 of the Code of Federal Regulations, October 1991. Since providers must comply with the Code of Federal Regulations, it is reasonable to cite the most recent year of publication under this subpart.

The amendment to item A, subitem (4) is necessary to update the code cite of Title 42 of the Code of Federal Regulations (CFR) and to correct a citation reference (Title 42 CFR 483.470 (j) rather than section 442.508). The CFR cite governing standards for impractical evacuation capability is now located under 42 CFR 483.470 (j).

The amendment to item D, subitem (4) is necessary to limit to 12 months the period in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance. The new provision will be effective for one time adjustments granted after September 30, 1992. This amendment provides uniformity as to the period of time that an efficiency incentive or capital debt reduction is offset because of an approved one time rate adjustment.

Representatives of the provider industry and the Department agreed, as part of the lawsuit settlement, to limit to 12 months the period in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance. At present, the amount of time in which the amount paid to a provider for a one time rate adjustment is offset by the efficiency incentive and capital debt reduction allowance can vary depending on when the one time rate adjustment is granted. It is reasonable to provide a uniform period in which these offsets occur so there is no incentive or disincentive for implementing a one time rate adjustment at any specific time, and so providers are affected uniformly. This amendment is effective October 1, 1992, because it is the earliest probable date that the rule amendment will be effective. This is necessary in order to avoid a retroactive rule which would sacrifice federal financial participation for the retroactive period. It also coincides with the beginning of a new rate year which will permit the Department to implement the change in its rate setting systems efficiently.

The amendment to item F is necessary to clarify the period of time in which a one time rate adjustment shall remain in effect and to clarify when a fiscal and program review of a one time rate adjustment will be conducted. These amendments clarify that the one time adjustment will be paid for at least a 21 month period and that this period must include one full reporting year. The program and fiscal review will be conducted following the 12 month period which includes a full reporting year (see attachment A). It is necessary to specify the length of time for a one time adjustment so that providers understand how the settle up will work. It is reasonable to include in the review of the one time rate adjustment the period of time beginning with the effective date of the one time adjustment and ending with the 12 month period which includes a full reporting year, rather than 12 months because the full period of time better represents the spending of (costs incurred by) providers. By reviewing the period of time beginning with the effective date of the one time adjustment and ending with the 12 month period which includes a full reporting year, providers will have at least 12 months to adjust their spending to utilize the one time adjustment. Therefore, it is reasonable to base

review of the one time adjustment and settle up on the longer period of time in which the one time adjustment has been in effect.

PART 9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE

Subpart 1. **Depreciation**

The amendment to item A, subitem (4) simply references the items under part 9553.0035, subpart 8. The amendment is necessary to comply with the language of the lawsuit settlement between the Department of Human Services and representatives of the provider industry. The settlement language states that the Department will amend Minnesota Rules, Part 9553.0060, subp. 1 (1991) to permit the expensing, rather than capitalization, of assets which cost $200 or less. After review of the rule, the Department determined that part 9553.0035, subpart 8, [Capitalization] would be the most appropriate place to amend the rule as dictated by the settlement. Because the settlement language requires amendment of this rule part, language has been added to identify the items under part 9553.0035, subpart 8 which direct the reader to the language that addresses the expensing, rather than capitalization, of assets which cost $200 or less.

DATE: 6-8-92

for NATALIE HAAS STEFFEN
Commissioner