



Minnesota Department of Health

Health Resources Division
393 North Dunlap
P.O. Box 64900
St. Paul, MN 55164-0900
(612) 643-2100

June 2, 1994

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

Re: In the Matter of Proposed Rules of the State Department of Health Relating to Dietary and Food Services in Licensed Nursing Homes

Dear Ms. Hruby:

The Minnesota Department of Health intends to propose rules relating to dietary and food services in licensed nursing homes. We plan to publish a Notice Of Proposed Permanent Rules in the June 20, 1994 State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice Of Proposed Permanent Rules and a copy of the proposed Rules in this matter.

If you have any questions about these rules, please contact me at 643-2551.

Yours very truly,

A handwritten signature in cursive script that reads "Dena Dunkel".

Dena Dunkel
Rules Coordinator

enclosures:

Notice Of Proposed Permanent Rules
Proposed Rules
Statement of Need and Reasonableness

NOTICE TO APPEAR IN *STATE REGISTER* ON JUNE 20, 1994:

DEPARTMENT OF HEALTH

PROPOSED PERMANENT RULES RELATING TO DIETARY AND FOOD SERVICES IN LICENSED NURSING HOMES AND PROPOSED AMENDMENT OF PERMANENT RULES RELATING TO LICENSING OF NURSING HOMES

DUAL NOTICE: NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING AND NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED

Introduction. The Department of Health intends to adopt a permanent rule without a public hearing following the procedures set for in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule within 30 days or by July 20, 1994, a public hearing will be held on August 2, 1994. If fewer than 25 persons request a hearing, the commissioner may still proceed with the scheduled public hearing process. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after July 20, 1994 and before August 2, 1994.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Dena Dunkel
Minnesota Department of Health
Health Resources Division
393 North Dunlap Street
P.O. Box 64900
St. Paul, Minnesota 55164-0900
Telephone: (612) 643-2551
Fax (612) 643-2593

Subject of Rule and Statutory Authority. The proposed rule is about the dietary and food services to be provided in licensed nursing homes. The proposed rule amendment is about the applicability of current rules and proposed rules to licensed nursing homes. The statutory authority to adopt the rule is *Minnesota Statutes*, sections 144A.04, subdivision 3 and 144A.08, with the revisions developed under the authority of *Minnesota Laws 1991*, Chapter 292, Article 4, Section 55. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:00 p.m. on July 20, 1994 to submit written comment in support of or opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:00 p.m. on July 20, 1994. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If fewer than 25 persons request a hearing, the commissioner may still proceed with the scheduled public hearing process.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as attached and printed in the *State Register* and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of hearing. The hearing scheduled for August 2, 1994 will be cancelled if the agency does not receive requests from 25 or more persons that a hearing will be held on the rule. If fewer than 25 persons request a hearing, the commissioner may still proceed with the scheduled hearing process. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Dena Dunkel at (612)643-2551 after July 20, 1994 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. If fewer than 25 persons request a hearing, the commissioner may still proceed with the scheduled public hearing process. The hearing will be held on August 2, 1994 at Capitol View Conference Center, 70 West County Road B2, Little Canada, Minnesota, beginning at 9:00 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Jon L. Lunde. Judge Lunde can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, 612/341-7645.

Hearing Procedure. If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may

be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Statement of Anticipated Costs and Benefits. *Minnesota Statutes*, section 144A.29, subdivision 4 (1993) requires each rule promulgated by the commissioner of health pursuant to sections 144A.01 to 144A.15 to contain a short statement of the anticipated costs and benefits to be derived from the provisions of this rule. This statement has been prepared and is available from the agency contact person.

Small Business Considerations. In preparing these rules, the Department of Health has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. Subdivision 7 of that section exempts rules that affect "service business 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...." It is the Department's position that this rule regulating dietary services provided in nursing homes is exempt from §14.115, because nursing homes are specifically exempted in that statute.

Expenditure of Public Money by Local Public Bodies. The implementation of this rule will not have a total cost of over \$100,000 to local public bodies in either of the two years immediately following the adoption of the rule.

Impact on Agricultural Lands. This rule will not pose any direct adverse impacts on agricultural land as specified in *Minnesota Statutes*, section 17.80 to 17.84.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at First Floor Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, (612) 296-5148.

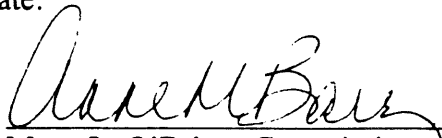
Departmental Charges. *Minnesota Statutes*, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges. Although a portion of the rules relates to the schedule of fines for nursing home violations, the Department believes that the fines are exempt from the procedures of *Minnesota Statutes* section 16A.1285, subdivisions 4 and 5 because the fines are nonrecurring and do not produce significant revenues.

Adoption Procedure if No Hearing. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be

submitted to the attorney general for review as to legality and form to the extent form relates to legality. If fewer than 25 persons request a hearing, the commissioner may still proceed with the scheduled public hearing process. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Dena Dunkel listed above.

Adoption Procedure After the Hearing. If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicated at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Dated May 31, 1994



Mary Jo O'Brien, Commissioner
Minnesota Department of Health

Rules as Proposed

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Dietary and Food Services For Nursing Homes

AGENCY: Department of Health


MINNESOTA RULES: Chapters 4655 and 4658

INCORPORATIONS BY REFERENCE:

Part 4658.0675, subpart 2, Standard No. 3, spray-type dishwashing machines, issued by NSF International, June 1982. Available through Minitex interlibrary loan system.

Part 4658.0675, subpart 5, item A: Standard No. 29, Detergent and Chemical Feeders for Commercial Spray-Type Dishwashing Machines, issued by NSF International, November 1992. Available through the Minitex interlibrary loan system.

The attached rules are approved for
publication in the State Register



Marie E. O'Neill
Assistant Revisor

1 Department of Health

2

3 Proposed Permanent Rules Relating to Dietary and Food Services
4 For Nursing Homes

5

6 Rules as Proposed

7 4655.0090 SCOPE.

8 The rules in chapter 4655 apply to both nursing homes and
9 boarding care homes unless otherwise indicated or when
10 superceded by more recently adopted rules for nursing homes.

11 Rules as Proposed (all new material)

12 4658.0600 DIETARY SERVICE.

13 Subpart 1. Food quality. Food must have taste, aroma, and
14 appearance that encourages resident consumption of food.

15 Subp. 2. Nutritional status. The nursing home must ensure
16 that a resident is offered a diet which supplies the caloric and
17 nutrient needs as determined by the comprehensive resident
18 assessment. Substitutes of similar nutritive value must be
19 offered to residents who refuse food served.

20 Subp. 3. Availability of diet manuals. Current diet
21 manuals must be readily available in the dietary department.

22 4658.0605 DIRECTION OF DIETARY DEPARTMENT.

23 Subpart 1. Dietitian. The nursing home must employ a
24 qualified dietitian either full time, part time, or on a
25 consultant basis. A "qualified dietitian" means a person who is
26 registered by the Commission on Dietetic Registration of the
27 American Dietetic Association, or a person who has a bachelor's
28 degree in dietetics, food and nutrition, or food service
29 management plus experience in long-term care and ongoing
30 continuing education in identification of dietary needs, and
31 planning and implementation of dietary programs.

32 Subp. 2. Director of dietary service. If a qualified
33 dietitian is not employed full time, the administrator must
34 designate a director of dietary service who is enrolled in or

1 has completed, at a minimum, a dietary manager course, and who
2 receives frequently scheduled consultation from a qualified
3 dietitian. The number of hours of consultation must be based
4 upon the needs of the nursing home. A director of dietary
5 service hired after the effective date of parts 4658.0600 to
6 4658.0685 must meet this requirement.

7 4658.0610 DIETARY STAFF REQUIREMENTS.

8 Subpart 1. Sufficient personnel. The nursing home must
9 employ sufficient personnel competent to carry out the functions
10 of the dietary service. "Sufficient personnel" means enough
11 staff to plan, prepare, and serve palatable, attractive, and
12 nutritionally adequate meals at proper temperatures and
13 appropriate times.

14 Subp. 2. Health. The dietary staff must be free from
15 symptoms of communicable disease and from open, infected wounds.

16 Subp. 3. Grooming. Dietary staff must wear clean outer
17 garments. Hairnets, headbands, caps, or other hair restraints
18 must be worn to prevent the contamination of food, utensils, and
19 equipment. Hair spray is not an acceptable hair restraint.

20 Subp. 4. Hygiene. Dietary staff must thoroughly wash
21 their hands and the exposed portions of their arms with soap and
22 warm water in a handwashing facility before starting work,
23 during work as often as is necessary to keep them clean, and
24 after smoking, eating, drinking, or using the toilet. Dietary
25 staff must keep their fingernails clean and trimmed.

26 Subp. 5. Tobacco use. Employees must not use tobacco in
27 any form while on duty to handle, prepare, or serve food, or
28 clean utensils and equipment.

29 Subp. 6. Eating. All employees must consume food only in
30 areas designated for employee dining. An employee dining area
31 must not be designated if consuming food in that location could
32 cause contamination of other food, equipment, or utensils. This
33 subpart does not apply to cooks who test the food for flavor and
34 palatability.

35 Subp. 7. Handling soiled equipment. Employees must handle

1. soiled dietary equipment or utensils in a manner that minimizes
2. contamination of their hands.

3. Subp. 8. **Food handling guide.** A current copy of the
4. department's food handling guide entitled "Information for Food
5. Service Personnel in Hospitals and Related Care Facilities" must
6. be readily available for reference by all dietary personnel.

7. 4658.0615 **FOOD HANDLING.**

8. Potentially hazardous food must be maintained at 45 degrees
9. Fahrenheit (seven degrees centigrade) or below, or 140 degrees
10. Fahrenheit (60 degrees centigrade) or above, including periods
11. when it is being transported. "Potentially hazardous food"
12. means any food subject to continuous time and temperature
13. controls in order to prevent the rapid and progressive growth of
14. infectious or toxigenic microorganisms.

15. 4658.0620 **FREQUENCY OF MEALS.**

16. Subpart 1. **Time of meals.** The nursing home must provide
17. at least three meals daily, at regular times comparable to
18. normal mealtimes in the community.

19. Subp. 2. **Snacks.** The nursing home must offer evening
20. snacks daily. "Offer" means having snacks available and making
21. the resident aware of that availability.

22. Subp. 3. **Time between meals.** There must be no more than
23. 14 hours between a substantial evening meal and breakfast the
24. following day. A "substantial evening meal" means an offering
25. of three or more menu items at one time, one of which includes a
26. high-quality protein such as meat, fish, eggs, or cheese. Up to
27. 16 hours may elapse between a substantial evening meal and
28. breakfast the following day if a resident group, such as the
29. resident council, agrees to this meal span and selects the
30. snacks to be provided.

31. Subp. 4. **Dining room.** Meals are to be served in a
32. specified dining area.

33. 4658.0625 **MENU PLANNING.**

34. Subpart 1. **Menu planning.** All menus must be planned,

1 dated, posted for a minimum of one week in advance, and
2 followed. Residents must be involved in menu planning.
3 Notations must be made of any substitutions in the meals
4 actually served and those substitutions must be of equal
5 nutritional value. The current week's menus, and any changes to
6 those menus, must be posted at a location readily accessible to
7 residents. All menus and any changes for the current week's and
8 following week's menus must be posted in the dietary area.
9 Records of menus and of foods purchased must be filed for six
10 months. A variety of foods must be provided. A file of tested
11 recipes adjusted to a yield appropriate for the size of the home
12 must be maintained.

13 Subp. 2. Food habits and customs. There must be
14 adjustment to the food habits, customs, likes, and appetites of
15 individual residents.

16 4658.0630 RETURNED FOOD.

17 Returned portions of food and beverages from individual
18 servings must not be reused unless the food or beverage is
19 served in a sealed wrapper or container which has not been
20 unwrapped or opened.

21 4658.0635 CONDIMENTS.

22 Condiments, seasonings, and salad dressing for resident use
23 must be provided in individual packages or from dispensers.

24 4658.0640 MILK.

25 Fluid milk and fluid milk products used must be pasteurized
26 and must meet Grade A quality standards in Minnesota Statutes,
27 chapter 32. The milk must be dispensed directly from the
28 original container in which it was packaged, shipped, and
29 received. This container may be individual portions,
30 mechanically refrigerated bulk milk dispenser, or a commercially
31 filled container of not more than one gallon capacity. Dry milk
32 may not be reconstituted and served as fluid milk. Dry milk may
33 be added to fluid milk and other foods to increase nutrient
34 density. Dry milk, dry milk products, and commercial nondairy

1 products may be used in instant dessert and whipped products or
2 for cooking and baking.

3 4658.0645 ICE.

4 Ice must be stored and handled in a sanitary manner.
5 Stored ice must be kept in an enclosed container. If the
6 container is not mechanically cooled, it must be cleaned at
7 least daily and more often if needed. If an ice scoop is used,
8 the scoop must be stored separately to prevent the handle from
9 contact with the ice.

10 4658.0650 FOOD SUPPLIES.

11 Subpart 1. Food. All food must be clean, wholesome, free
12 from spoilage, free from adulteration and misbranding, and safe
13 for human consumption. No hermetically sealed, nonacid, or
14 low-acid food which has been processed in a place other than a
15 commercial food-processing establishment may be used.

16 Subp. 2. Food brought into nursing home. Food items from
17 noncommercial sources including fresh produce, game, and fish
18 may be brought into the nursing home to be served for special
19 occasions, in accordance with nursing home policy. These food
20 items must be maintained in a sanitary and safe manner.

21 Subp. 3. Food containers. Food, whether raw or prepared,
22 if removed from the container or package in which it was
23 obtained, must be stored in a clean, covered container. The
24 container need not be covered during necessary periods of
25 preparation or service.

26 Subp. 4. Storage of nonperishable food. Containers of
27 nonperishable food must be stored a minimum of six inches above
28 the floor in a manner that protects the food from splash and
29 other contamination, and that permits easy cleaning of the
30 storage area. Containers may be stored on dollies, racks, or
31 pallets, provided the equipment is easily movable and
32 constructed to allow for easy cleaning. Nonperishable food and
33 containers of nonperishable food must not be stored under
34 exposed or unprotected sewer lines or similar sources of
35 potential contamination. The storage of nonperishable food in

1 toilet rooms or vestibules is prohibited.

2 Subp. 5. **Storage of perishable food.** All perishable food
3 must be stored off the floor on washable, corrosion-resistant
4 shelving under sanitary conditions, and at temperatures which
5 will protect against spoilage.

6 Subp. 6. **Prohibited storage.** The storage of detergents,
7 cleaners, pesticides, and other nonfood items, including
8 employees' personal items, is prohibited in food storage areas.

9 Subp. 7. **Vending machines.** Storage and dispensing of food
10 and beverages in vending machines must be in accordance with
11 parts 1550.5000 to 1550.5130, and in accordance with any
12 applicable local ordinances.

13 4658.0655 **TRANSPORT OF FOOD.**

14 The food service system must be capable of keeping food hot
15 or cold until served. A dumbwaiter or conveyor, which cab or
16 carrier is used for the transport of soiled linen or soiled
17 dishes, may not be used for the transport of food.

18 4658.0660 **FLOOR CLEANING AND TRASH.**

19 Subpart 1. **Cleaning during food preparation.** There must
20 be no sweeping or mopping in the kitchen during the time of food
21 preparation, except when necessary to prevent accidents.

22 Subp. 2. **Nondietary activity trash, restrictions.** Trash
23 or refuse unrelated to dietary activities must not be
24 transported through food preparation areas or food storage areas
25 for disposal or incineration.

26 4658.0665 **DISHES AND UTENSILS REQUIREMENTS.**

27 The requirements in items A to E apply to the use of dishes
28 and utensils.

29 A. Only dishes and utensils with the original smooth
30 finishes may be used. Cracked, chipped, scratched, or
31 permanently stained dishes, cups, or glasses or damaged,
32 corroded, or open seamed utensils or cookware must not be used.
33 All tableware and cooking utensils must be kept in enclosed
34 storage compartments.

1 B. Accessories for food appliances must be provided
2 with protective covers unless in enclosed storage.

3 C. Enclosed lowerators for dishes are acceptable.

4 D. Clean spoons, knives, and forks must be touched
5 only by their handles. Clean cups, glasses, bowls, plates, and
6 similar items must be handled without contact with inside
7 surfaces or surfaces that contact the user's mouth.

8 E. Dishes or plate settings must not be set out on
9 the tables more than two hours before serving time.

10 4658.0670 DISHWASHING.

11 Subpart 1. **Requirements.** The dishwashing operation must
12 provide proper separation in the handling of soiled and clean
13 dishes and utensils, and must conform with either part 4658.0675
14 or 4658.0680 for washing, rinsing, sanitizing, and drying.

15 Subp. 2. **Sanitization; storage.** All utensils and
16 equipment must be thoroughly cleaned, and food-contact surfaces
17 of utensils and equipment must be given sanitization treatment
18 and must be stored in such a manner as to be protected from
19 contamination. Cleaned and sanitized equipment and utensils
20 must be handled in a way that protects them from contamination.

21 4658.0675 MECHANICAL CLEANING AND SANITIZING.

22 Subpart 1. **Generally.** Mechanical cleaning and sanitizing
23 must be done in the manner described by subparts 2 to 8.

24 Subp. 2. **Cleaning and sanitizing.** Cleaning and sanitizing
25 may be done by spray-type or immersion utensil washing machines
26 or by any other type of machine or device if it is demonstrated
27 that it thoroughly cleans, sanitizes equipment and utensils, and
28 meets the requirements of Standard No. 3, spray-type dishwashing
29 machines, issued by NSF International, June 1982. This standard
30 is incorporated by reference. It is available through the
31 Minitex interlibrary loan system. It is not subject to frequent
32 change. These machines and devices must be properly installed
33 and maintained in good repair. Machines and devices must be
34 operated according to manufacturers' instructions, which must be
35 posted nearby. Utensils and equipment placed in the machine

1 must be exposed to all washing cycles. Automatic detergent
2 dispensers, wetting agent dispensers, and liquid sanitizer
3 injectors must be properly installed and maintained.

4 Subp. 3. **Drainboards.** Drainboards must be provided and be
5 of adequate size for the proper handling of soiled utensils
6 before washing and for cleaned utensils following sanitization,
7 and must be located and constructed so as not to interfere with
8 the proper use of the dishwashing facilities. This does not
9 preclude the use of easily movable dish tables for the storage
10 of soiled utensils or the use of easily movable dish tables for
11 the storage of clean utensils following sanitization.

12 Subp. 4. **Preparing to clean.** Equipment and utensils must
13 be flushed or scraped and, when necessary, soaked to remove
14 gross food particles and soil before being washed in a
15 dishwashing machine unless a prewash cycle is a part of the
16 dishwashing machine operation. Equipment and utensils must be
17 placed in racks, trays, or baskets, or on conveyors, in a way
18 that food-contact surfaces are exposed to the unobstructed
19 application of detergent wash and clean rinse water and that
20 permits free draining.

21 Subp. 5. **Chemical sanitization.** Single-tank machines,
22 stationary-rack machines, door-type machines, and spray-type
23 glass washers using chemicals for sanitization may be used,
24 provided that:

25 A. wash water temperatures, addition of chemicals,
26 rinse water temperatures, and chemical sanitizers used are in
27 conformance with NSF International Standard No. 3, incorporated
28 by reference in subpart 2, and Standard No. 29, Detergent and
29 Chemical Feeders for Commercial Spray-Type Dishwashing Machines,
30 issued by NSF International, November 1992. These standards are
31 incorporated by reference. They are available through the
32 Minitex interlibrary loan system. They are not subject to
33 frequent change;

34 B. a test kit or other device that accurately
35 measures the parts per million concentration of the sanitizing
36 solution must be available and be used, and a log of the test

1 results must be maintained for the previous three months;

2 C. containers for storing the sanitizing agent must
3 be installed in such a manner as to ensure that operators
4 maintain an adequate supply of sanitizing compound; and

5 D. a visual or audible warning device must be
6 provided for the operator to easily verify when the sanitizing
7 agent is depleted.

8 Subp. 6. Hot water sanitization. Machines using hot water
9 for sanitizing may be used provided that wash water and pumped
10 rinse water are kept clean and water is maintained at not less
11 than the temperature specified by NSF International Standard No.
12 3, incorporated by reference in subpart 2, under which the
13 machine is evaluated. A pressure gauge must be installed with a
14 valve immediately adjacent to the supply side of the control
15 valve in the final rinse line provided that this requirement
16 does not pertain to a dishwashing machine with a pumped final
17 rinse.

18 Subp. 7. Air drying. Dishes and utensils must be air
19 dried.

20 Subp. 8. Cleaning of dishwashing machines. Dishwashing
21 machines must be cleaned at least once a day, or more frequently
22 if required, in accordance with the manufacturer's
23 recommendation.

24 4658.0680 MANUAL CLEANING AND SANITIZING.

25 Subpart 1. Generally. Manual cleaning and sanitizing must
26 be done in the manner described in subparts 2 to 9.

27 Subp. 2. Three compartment sink. For manual washing,
28 rinsing, and sanitizing of utensils and equipment, a sink with
29 at least three compartments must be provided and be used. Sink
30 compartments must accommodate food preparation equipment and
31 utensils, and each compartment of the sink must be supplied with
32 hot and cold potable running water. Fixed equipment and
33 utensils and equipment too large to be cleaned in sink
34 compartments must be washed manually or cleaned through pressure
35 spray methods.

1 Subp. 3. **Drainboards.** Drainboards must be provided at
2 each end for proper handling of soiled utensils before washing
3 and for cleaned utensils following sanitizing and must be
4 located so as not to interfere with the proper use of the
5 utensil washing facilities.

6 Subp. 4. **Preparing to clean.** Equipment and utensils must
7 be preflushed or prescraped and, when necessary, presoaked to
8 remove gross food particles and soil.

9 Subp. 5. **Manual dishwashing process.** Except for fixed
10 equipment and utensils too large to be cleaned in sink
11 compartments, manual washing, rinsing, and sanitizing must be
12 conducted in the following manner:

13 A. sinks must be cleaned before use;

14 B. equipment and utensils must be thoroughly washed
15 in the first compartment with a detergent in accordance with the
16 detergent manufacturer's instructions;

17 C. equipment and utensils must be rinsed free of
18 detergent and abrasives with clean water in the second
19 compartment;

20 D. equipment and utensils must be sanitized in the
21 third compartment according to subpart 6.

22 Subp. 6. **Sanitization methods.** The food-contact surfaces
23 of all equipment and utensils must be sanitized by:

24 A. immersion for at least one-half minute in clean,
25 hot water at a temperature of at least 170 degrees Fahrenheit
26 (77 degrees centigrade);

27 B. immersion for at least one minute in a clean
28 solution containing at least 50 parts per million, but no more
29 than 200 parts per million, of available chlorine as a
30 hypochlorite and at a temperature of at least 75 degrees
31 Fahrenheit (24 degrees centigrade);

32 C. immersion for at least one minute in a clean
33 solution containing at least 12.5 parts per million, but not
34 more than 25 parts per million, of available iodine and having a
35 pH range which the manufacturer has demonstrated to be effective
36 and at a temperature of at least 75 degrees Fahrenheit (24

1 degrees centigrade);

2 D. immersion in a clean solution containing any other
3 chemical sanitizing agent allowed under Code of Federal
4 Regulations, title 21, section 178.1010, that will provide at
5 least the equivalent bactericidal effect of a solution
6 containing 50 parts per million of available chlorine as a
7 hypochlorite at a temperature of at least 75 degrees Fahrenheit
8 (24 degrees centigrade) for one minute; or

9 E. for equipment too large to sanitize by immersion,
10 but in which steam can be confined, treatment with steam free
11 from materials or additives other than those specified in Code
12 of Federal Regulations, title 21, section 173.310.

13 Equipment too large to sanitize by immersion must be
14 rinsed, sprayed, or swabbed with a sanitizing solution of at
15 least twice the required strength for that particular sanitizing
16 solution.

17 Subp. 7. Hot water sanitization. When hot water is used
18 for sanitizing, the following equipment must be provided and
19 used:

20 A. an integral heating device or fixture installed
21 in, on, or under the sanitizing compartment of the sink capable
22 of maintaining the water at a temperature of at least 170
23 degrees Fahrenheit (77 degrees centigrade);

24 B. a numerically scaled indicating thermometer,
25 accurate to plus or minus three degrees Fahrenheit (plus or
26 minus two degrees centigrade) convenient to the sink for
27 frequent checks of water temperature; and

28 C. dish baskets or other equipment of such size and
29 design to permit complete immersion of the tableware,
30 kitchenware, and equipment in the hot water.

31 Subp. 8. Chemical sanitization. When chemicals are used
32 for sanitization, they must not have concentrations higher than
33 the maximum permitted under Code of Federal Regulations, title
34 21, section 178.1010, and a test kit or other device that
35 accurately measures the parts per million concentration of the
36 solution must be provided and used, and a log of the test

1 results must be maintained for the previous three months.

2 Subp. 9. Air drying. All dishes and utensils must be air
3 dried.

4 4658.0685 PENALTIES FOR DIETARY AND FOOD SERVICES AND SANITATION.

5 Penalty assessments for violations of parts 4658.0600 to
6 4658.0680 are as follows:

- 7 A. part 4658.0600, subpart 1, \$350;
- 8 B. part 4658.0600, subpart 2, \$350;
- 9 C. part 4658.0600, subpart 3, \$100;
- 10 D. part 4658.0605, subpart 1, \$350;
- 11 E. part 4658.0605, subpart 2, \$300;
- 12 F. part 4658.0610, subpart 1, \$300;
- 13 G. part 4658.0610, subpart 2, \$350;
- 14 H. part 4658.0610, subpart 3, \$350;
- 15 I. part 4658.0610, subpart 4, \$350;
- 16 J. part 4658.0610, subpart 5, \$350;
- 17 K. part 4658.0610, subpart 6, \$50;
- 18 L. part 4658.0610, subpart 7, \$350;
- 19 M. part 4658.0610, subpart 8, \$350;
- 20 N. part 4658.0615, \$350;
- 21 O. part 4658.0620, subpart 1, \$350;
- 22 P. part 4658.0620, subpart 2, \$350;
- 23 Q. part 4658.0620, subpart 3, \$350;
- 24 R. part 4658.0620, subpart 4, \$100;
- 25 S. part 4658.0625, subpart 1, \$300;
- 26 T. part 4658.0625, subpart 2, \$300;
- 27 U. part 4658.0630, \$350;
- 28 V. part 4658.0635, \$350;
- 29 W. part 4658.0640, \$350;
- 30 X. part 4658.0645, \$350;
- 31 Y. part 4658.0650, subpart 1, \$350;
- 32 Z. part 4658.0650, subpart 2, \$350;
- 33 AA. part 4658.0650, subpart 3, \$350;
- 34 BB. part 4658.0650, subpart 4, \$350;
- 35 CC. part 4658.0650, subpart 5, \$350;

- 1 DD. part 4658.0650, subpart 6, \$350;
- 2 EE. part 4658.0650, subpart 7, \$350;
- 3 FF. part 4658.0655, \$350;
- 4 GG. part 4658.0660, subpart 1, \$300;
- 5 HH. part 4658.0660, subpart 2, \$300;
- 6 II. part 4658.0665, \$300; and
- 7 JJ. parts 4658.0670 to 4658.0680, \$300.

MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of
Rules of the Department of Health
concerning Dietary and Food Services in
Licensed Nursing Homes, Minnesota Rules,
Chapter 4658

STATEMENT OF NEED AND
REASONABLENESS

4/6/94

Minnesota Department of Health
Health Resources Division
393 North Dunlap Street
P.O. Box 64900
Saint Paul, MN 55164-0900

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BACKGROUND AND LEGAL AUTHORITY

The proposed Minnesota Rules, parts 4658.0600 through 4658.0685, establish standards for providing dietary and food services in licensed nursing homes, and set forth requirements considered necessary to ensure the health, safety, well-being and appropriate treatment of persons residing in nursing homes receiving dietary and food services. The rules implement Minnesota Statutes, §§144A.02 to 144A.18, under the authority of Minnesota Statutes, §144A.04, subdivision 3 and §144A.08, with the revisions developed under the authority of Minnesota Laws 1991, Chapter 292, Article 4, Section 55. This Statement of Need and Reasonableness is prepared to comply with the requirements of the Administrative Procedures Act, specifically, Minnesota Statutes, §§14.131 and 14.23.

RULEMAKING PROCESS

The 1991 Minnesota Legislature added a section to law authorizing a comprehensive review of the nursing home licensure laws and regulations. This review was necessary to establish an effective regulatory program in the state. The statute added reads:

Sec. 55. [REGULATORY REVIEW.]

The commissioner of health shall study the regulation of long-term care facilities and report to the legislature by January 15, 1992, with any recommendations for changes in the current regulatory structure. The study must address at least the following issues:

- (1) the possibility of unifying the federal and state enforcement systems;*
- (2) the effectiveness of existing enforcement tools;*
- (3) the appropriateness of current licensure standards; and*
- (4) alternative mechanisms for dispute resolution.*

In addition to adding this section to the laws, the 1991 Legislature also passed a two-year budget increase for the Minnesota Department of Health to conduct this review and revision of the state regulations. This budget increase was funded through a surcharge on licensed nursing home and boarding care home beds. The Nursing Home Regulatory Reform Project, as the study authorized by the statute is known, was expected to take several years to complete because of the complexity of the regulations and their interrelations with resident rights and consumer expectations and with reimbursement to these long term care facilities. The project encompasses a review of all of Minnesota Rules Chapters 4655 and 4660, and portions of Minnesota Statutes Chapter 144A.

A "Notice of Solicitation of Outside Information or Opinions regarding Proposed Revision of Adopted Rules Governing the Operation of Nursing Homes and Boarding Care Homes and the Physical Plant Requirements of Nursing Homes and Boarding Care Homes as Conditions of Licensure" was published in the *State Register*, 16 S.R. 1230, on November 18, 1991. The purpose of this notice was to inform interested parties that the Minnesota Department of Health

was beginning the rulemaking process and to request information and opinions from them concerning the regulation of nursing homes and boarding care homes.

INTERACTION OF FEDERAL AND STATE REGULATIONS

The purpose of the review of the existing state licensure requirements for nursing homes and boarding care homes was to assess the appropriateness of the current state regulatory system, to examine interrelationships between federal and state regulatory systems, and to determine what areas needed to be addressed under the state licensure system. Expected results included the deletion of certain current state regulations or laws, as well as additions or supplements to state regulations or laws.

Under the provisions of Minnesota law, nursing homes and boarding care homes must be licensed. The purpose of the licensure law is to assure that the services provided in these facilities meet minimum standards to protect the health, safety, comfort and well being of the facility's residents. The licensure law establishes general conditions relating to the operation and administration of these facilities, authorizes the development of regulations, and requires the inspection of these facilities by the Minnesota Department of Health. Minnesota has traditionally had very strong nursing home licensure standards in comparison to federal certification requirements and many other states' licensure standards.

Licensed nursing homes and boarding care homes wishing to participate in the federal Medicare or Medicaid programs must comply with the federal regulations known as "Requirements for Participation." Nursing homes and boarding care homes are "certified" for participation in the Medicare or Medicaid programs when they are found, through onsite surveys, to be in compliance with the federal Requirements for Participation. Ninety-nine percent of nursing homes in Minnesota are certified to participate in one or both of those federal programs.

In December 1987, the federal Nursing Home Reform Act was signed into law. Since this act was included in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), it is often referred to as "OBRA 87". The majority of the nursing home reform provisions of OBRA 87 became effective on October 1, 1990. The purpose of these provisions was to improve the quality of life and quality of care of residents in certified nursing facilities, as well as to clarify and strengthen residents' rights. These provisions marked a radical shift in the focus of federal regulations from the capacity or capability of the facility to provide appropriate services to actual facility performance in meeting residents' needs in a safe and healthful environment. There is much greater latitude for resident involvement in the care they receive due to the expanded resident notice provisions and other resident empowerment features of OBRA 87.

With the enactment of the extensive OBRA 87 provisions and the development and issuance of their implementing regulations, it was appropriate to establish a process to review Minnesota's licensure standards for areas of overlap or conflict with the new federal regulations. Since the federal regulations are more stringent than they previously were and now have a greater outcome

orientation, it was thought that it may not be necessary nor appropriate for state licensure regulations to be as extensive as they have been. Rather, it might be more appropriate to use the federal certification regulations as the basic model, and modify the state licensure regulations to supplement the federal requirements in the areas deemed by Minnesotans to warrant more stringent stipulations for licensed nursing homes and boarding care homes and the services they provide.

At the same time as these federal requirements are changing, the practice and provision of long term care services are in a state of change. Alternative services are being developed that meet individual needs outside of institutions, nursing home providers are becoming more creative in services they provide in existing physical environments, and specialized service units in nursing homes are being developed or are evolving because of the changing needs of the population being served by those nursing homes. Over the years, resident and family involvement in the care and treatment received in nursing homes has occurred to varying extent. The new OBRA regulations greatly expand the potential and the necessity for that involvement, and that resident empowerment needs to be taken into greater account in our state regulations. Ideally, the regulatory process would respond to those innovations in services and settings in an effective and efficient manner, while continuing to protect the residents.

The goal, then, of this nursing home regulatory reform project is the development of a comprehensive regulatory system that provides an appropriate level of protection to resident health and safety, provides a clear statement of provider responsibility, and promotes an effective regulatory process. The analysis necessary to achieve this goal identifies those state law and rule provisions, not currently part of the federal enforcement regulations, that need to be retained. Provisions remaining in state law and rule after this analysis and revision would complement the federal enforcement provisions. They would build on the strengths in the federal regulatory system, while retaining those provisions of state regulations that are deemed essential to the maintenance of the high standards of care found in Minnesota. The outcome would be the elimination of state regulations that are not needed, even some for which there are no corresponding federal provisions. These proposed changes would result in the integration of the state and federal survey processes to a far greater extent than is presently possible.

PUBLIC AND GOVERNMENTAL VIEWPOINTS

In order to gather public comment and initiate public debate on what type of licensing rules Minnesota should have for its nursing homes, a variety of methods were used to receive comments from the public and from governmental agencies.

Articles describing the regulatory review process and its status have been published regularly in *The Resource*, the quarterly publication of the MDH Health Resources Division. Also, the major provider organizations and many professional organizations have had articles on the regulatory review in their newsletters.

Interviews have been conducted with representatives of groups from whom comments were indispensable. Such groups include legislators, residents and their families, professional organizations, other state and federal officials, and national experts.

In March 1992 a survey was sent to each Minnesota nursing home and boarding care home, addressed to the Resident Councils and Family Councils. This survey attempted to gather information about resident rights, needs, safety, and other issues. There were 142 surveys returned by Resident Councils, and 131 surveys returned by Family Councils. The results of the survey were incorporated into workgroup discussions and summaries.

Public meetings have been conducted at various points throughout the process to ensure that all possible viewpoints are being received. These included approximately 20 meetings with resident and family councils at locations around the state, mainly during calendar year 1992. Many presentations have been given at meetings of professional organizations and nursing home provider associations.

Meetings with legislators or their staff were held to receive their comments and to provide updates on the project. In addition, annual reports to the Legislature on the status of the project have been published and are available to interested persons upon request.

In addition, many of the subject areas required consultation with other divisions of the Department of Health or with other state agencies that have regulations which interact with these nursing home and boarding care home licensure regulations.

REGULATORY REVIEW PROCESS

A project Steering Committee, consisting of 15 members from the public and private sectors, provides oversight to the Department on the regulatory reform process. This Steering Committee began meeting in December 1991. The charge given to the Steering Committee by the Commissioner of Health was to provide policy direction to the Department on the regulatory reform process, the examination of individual issues within that process, and the review of public comments and workgroup recommendations on proposed regulatory changes. The Steering Committee examined the regulatory areas to identify where outcome based regulations would be appropriate and provided guidance to the workgroups on the development of outcome based regulations. The Steering Committee has provided recommendations to the Department on the feasibility and extent of the integration of federal and state regulations.

The members of this Steering Committee have been:

"Greenie" Greenseth, nursing home resident
Judy Liffengren, family member
Iris Freeman, Minnesota Alliance of Health Care Consumers

Sharon Zoesch, State LTC Ombudsman, Minnesota Board on Aging
(replacing Jim Varpness)
Fran Laufle, Minnesota Nurses Association
(replacing Bonnie Peterson)
Dr. Robert Meiches, Minnesota Nursing Home Medical Directors Association
(replacing Dr. Tom Altemeier)
Dr. Robert Kane, Minnesota Chair in LTC and Aging, University of Minnesota
Darrell Shreve, Minnesota Association of Homes for the Aging
Barbara DeLaHunt, Administrator, Ebenezer Luther Field Hall
Patti Cullen, Care Providers of Minnesota
Jayne Stecker, Health Dimensions, Inc.
Gail Dekker, Long Term Care Facilities Division, Minnesota Department of Human Services
(replacing Sandra Bisgaard)
Gary Karger, Long Term Care Facilities Division, Minnesota Department of Human Services
(replacing Pamela Parker)
Liz Quam, Assistant Commissioner, Minnesota Department of Health
(replacing Andrea Mitchell Walsh)
Linda Sutherland, Health Resources Division Director, Minnesota Department of Health

After examination of the existing regulations, the Steering Committee suggested the formation of 15 workgroups to review specific areas of those regulations. There was at least one member of the Steering Committee and one department staff person on each workgroup. This helped to ensure continuity of information flow between the Steering Committee and the workgroups, as well as focusing policy direction throughout the review process. There were some areas of regulations which were addressed by more than one workgroup, or which impacted on other areas.

The Steering Committee developed a document titled, "Guidelines for Workgroups", which outlined expectations of the workgroups' review of regulations. One of the charges contained in that document was to consider how outcomes, both clinical and resident satisfaction, could be incorporated into the regulatory system. Another of the charges was to review the documentation requirements for the specific regulations and to make recommendations on what actually needs to be documented and why. Still another charge was to address how resident choice and autonomy is accounted for and allowed at the same time there are requirements which facilities must comply with.

The Steering Committee developed a prioritization for establishment and suggested membership list for the workgroups. The members of the workgroups were chosen by the Department of Health, from the over 600 names of volunteers. The first set of workgroups addressed physician and dental services, dietary and food services, infection control, nursing services, resident rights, and physical plant. The next set addressed medications and pharmacy services, administration and operations, activities, social services, and environmental services (laundry, housekeeping, and maintenance). The third set of workgroups dealt with rehabilitation services and other ancillary services, medical records, and whether there is a need for regulations specifically for specialized care units. The final step of the review encompasses the enforcement process.

The public Dietary / Food Services Workgroup met five times, on April 3, 1992, May 6, 1992, May 28, 1992, June 5, 1992, and June 15, 1992. During their review of the regulations, the workgroups used a side by side comparison of the current federal and state regulations relating to dietary and food services in nursing homes. Current research and articles were submitted by workgroup members, and incorporated into discussions of what the state regulations should "look like." Also, the recently revised Minnesota Rules Chapter 4625, Requirements for Food and Beverage Establishments, was extensively addressed in the course of the regulatory review.

The members of the public Dietary and Food Services Workgroup were:

Jim Varpness, MN Board on Aging

Carol Opheim, RD, Health Dimensions, Inc.

Janet Wesselman, RD, Twin City Consulting Dieticians

Dawn Froiland, Food Service Supervisor, Episcopal Church Home of Minnesota

Barb Polzin, Food Service Supervisor, Gardenview

Mary Pasek, RN

Annabel Greseth, Office of Ombudsman For Older Minnesotans

Jeanne Swaser, Resident, Northridge Care Center

Patti Paist, Food Service Management, Best, Inc.

Doris Noard, MDH - Survey and Compliance Section

Bob Miles, MDH - Survey and Compliance Section

Once the public workgroup completed its discussions of regulations, an internal workgroup reviewed the same documents, research, other regulations, the summary of those public workgroup discussions, and provided their input on the development and revision of the state licensing regulations. This internal workgroup met 4 times: June 29, 1992, July 31, 1992, September 4, 1992, and October 2, 1992. The members of this internal workgroup were:

Bob Gunkle, Assistant Section Chief, Survey and Compliance Section

Jim Loveland, Chief, Engineering Section

Michelle Chappius, R.N., Surveyor, Marshall District Office

Laurel Koster, R.N., Surveyor, Duluth District Office

Doris Noard, R.D., Surveyor, Metro Office

Gary McAndrew, Sanitarian, Metro Office

Both the public workgroup and the internal workgroup on Dietary and Food Services made strong recommendations that the nursing home licensing rules (MN Rules Chapter 4655) match the Food and Beverage Establishment Rules (MN Rules Chapter 4625), wherever appropriate. The Food and Beverage Establishment Rules were revised in June 1989, and contain more up-to-date standards and language in many areas than the current nursing home licensing rules. Also, there are an increasing number of nursing homes which provide dietary and food services to persons in addition to the residents of the nursing home (such as Meals on Wheels, adult day care, senior housing projects, and so on). These nursing homes must comply with both the Nursing Home licensing rules and the Food and Beverage Establishment rules because of the nature of their business. Many of the proposed revisions to these nursing home rules include language which matches that in the Food and Beverage Establishment rules. By matching the language in the Nursing Home Licensing rules and the Food and Beverage Establishment rules,

we are reasonably attempting to ease the problems of compliance for those dually licensed facilities as well as utilize the necessary current standards of practice which have already been promulgated as state rules. This would increase the efficiency and effectiveness of those operations.

As mentioned earlier in this document, one of the charges of the Legislature to the Department was to "address the possibility of unifying the federal and state enforcement systems." By incorporating specific portions of the federal regulations into these proposed state rules, the Department of Health is addressing that possibility of unifying those two systems, where reasonable and necessary. The intent is not to duplicate all of the federal regulatory language, but rather to utilize those parts which are applicable and appropriate. By coordinating or matching federal and state regulatory language in sections, we are attempting to decrease confusion on pertinent regulations and to eliminate regulations which are in conflict but both of which currently apply to the situation. Of the approximately 450 licensed nursing homes in Minnesota, about 1% are not certified to participate in either the Medicare or Medicaid programs. This means that 99% are certified, and so are required to follow the federal certification requirements as well as the state licensing requirements. By coordinating these two sets of regulations, regulatory expectations should be accordingly easier to understand for consumers, providers, and regulators. This should increase the efficiency and effectiveness of the regulations - and allow for more provider time to be spent providing cares to residents rather than trying to understand the rules, and which might take precedence in a given situation.

When the workgroups had finalized their responses to the outcome and format questions and completed suggestions for revisions to the regulations, those suggestions were forwarded to the Steering Committee, in the form of a summary document describing the various versions of the rule parts that the workgroups devised or suggested. The Steering Committee reviewed those suggestions on October 16, 1992. The document "Dietary and Food Services - First Draft of Proposed Revisions - Fall 1992" was then developed and circulated for public review and comments. This first draft of dietary and food services rules was issued on November 25, 1992. It was circulated to the members of the workgroups, the project Steering Committee, Health Resources Division management, and other interested persons. The written comment period ran through January 15, 1993. A public meeting was held on January 7, 1993, to provide an opportunity for the public to verbally express their comments on the first draft to department staff and to two members of the Steering Committee.

Once the comment period expired on the first draft of proposed revisions, the comments received were compiled and provided to the Steering Committee. The Steering Committee reviewed and discussed the comments received on Friday, March 26, 1993. Following that meeting, a second draft of proposed revisions was issued on April 2, 1993. Again, the draft was circulated to the members of the workgroups, the project Steering Committee, Health Resources Division management, and other interested persons. The written comment period on that draft ran until May 14, 1993. And again, the comments received were compiled and provided to the Steering Committee, with a review and discussion held on June 11, 1993. Final recommendations for proposed revisions to the state licensing rules for nursing home and boarding care home dietary and food services were then developed, and are discussed in detail below.

A new rule chapter, including a new numbering system, is being implemented for these rules. Some of the rule language from the current Chapter 4655 is being maintained, and incorporated in the new Chapter 4658. Due to this, a statement of needs and reasonableness will be established only for material that differs from original language.

RULE PARTS

The remainder of this Statement addresses each provision of the proposed revised rule.

PART 4658.0600 DIETARY SERVICE

During the gathering of public comments and suggestions for revision of all the nursing home licensing rules, the area which prompted the greatest number of comments was arguably that of dietary and food services. Numerous requests were received from residents and families around the state to decrease the amount of food required to be served in facilities because of the excessive waste occurring. Many residents simply cannot consume the mandated proportions that are currently required to be served, and yet are uncomfortable with leaving food on their plates uneaten. There are concerns and questions on how to go about changing the physician orders for current meal plans. Many nursing homes actively encourage resident involvement in menu planning and other food service issues. There were also a number of requests by residents to have more home-like meals and the opportunity for more food choices at meals. What many of the comments boil down to is: The primary function of dietary services in nursing facility is to provide the foods the residents want and will eat, in portion sizes to suit their needs and preferences. Consumers felt it was more important to specify that the dietary service meet the needs of the residents, and less important to specify a certain number of hours of staff or consultant time to be devoted to the dietary service. This allows more flexibility for the nursing home in determining how to provide the dietary and food service, as well as putting more responsibility on the nursing home to meet those needs and choices of the residents.

Subpart 1: The proposed rule language at 4658.0600 subpart 1 would be a replacement of the current 4655.8500 for nursing homes. It is reasonable to have this language in the state rules since this language concisely states the intent of providing the residents with satisfactory meals. It is important to consumers (the nursing home residents) that diets taste and smell good, have nutritional value, and are attractively served. Specific requirements for therapeutic diets have been removed in these proposed rules because it is important that all diets are "prepared as ordered", not just those special or therapeutic diets ordered in writing by the physician. Resident rights concerns played a part in revising this regulation. Residents have the right to refuse special diets ordered by the physician (as they have the right to refuse any treatment). The term "therapeutic diet" is not consistently defined throughout the food service industry. Some people believe that "therapeutic diet" refers to a physician ordered diet to treat a specific nutritional or medical problem. Others believe that any deviation from a regular diet is a therapeutic diet and still others believe all diets served in the nursing home are therapeutic diets. Since there is no generally recognized definition of "therapeutic diet" at this time, we are

proposing to eliminate that term from the state licensing rules, and instead add a new subpart 2 which address the dietary needs and nutritional status of each resident. We are not intending to limit the ability nor responsibility of the physician to order a therapeutic diet if appropriate, or the ability of the dietician or nutritionist to develop a therapeutic diet as necessary. Rather, we are intending that these revisions are a necessary and reasonable way to clarify the intent of this rule. These changes to the regulations should provide nursing homes with greater flexibility in developing a diet to suit each resident's needs, whether there is input from the physician, resident, family, dietitian or nutritionist, or other party.

Subpart 2: This proposed language was based on OBRA 87 guidelines at 42 CFR 483.35(c)(1), and was developed to coincide with other state rules which require a care planning process. The care planning process would identify any dietary problems and preferences a resident might have. The identification of problems is important to maintain or improve the resident's health and well-being. There is no requirement that facilities perform specific laboratory tests to evaluate nutritional status because nutritional status will be based on individual parameters. Specific laboratory values can not be required because some laboratories may have different "normals". For example, two laboratories using different instruments or methods of testing would have different normal ranges, but the same two laboratories using the same methodology or instruments would have the same normal range. Also, laboratory values can not always be expected to be within normal limits because some elderly people have abnormal laboratory values and because abnormal values can be expected in some disease processes. Indicators for meeting caloric and nutrient needs can include unplanned weight loss or gain as well as other indices, including laboratory tests which indicate malnourishment. However, even weight loss or gain might be caused by several factors, which may or may not be in the resident's best interest. Several things should be considered when evaluating weight loss, such as whether the resident is on a reducing diet, whether a newly admitted and obese resident is receiving fewer calories than prior to admission, a resident is refusing to eat, or the presence of an advanced disease process. In other words, any change in a resident's nutritional status must be considered as a part of the entire health status of the resident. This proposed language is more outcome oriented than the current rule language; nutritional status varies by individual and is based on clinical observations rather than on specific requirements. It is reasonable to require substitutes of similar nutritive value to assure that there is an alternative means of satisfying resident needs and preferences.

The proposed rules do not include Recommended Dietary Allowances (RDAs), including portion quantity and the food groups necessary to meet the RDAs, which are currently found at part 4655.8610. The current rule is too restrictive because it specifies portion sizes, food groups and items for menu planning, and does not adequately take into account physical condition and health nor personal choice. The National Research Council writes in Recommended Dietary Allowances - 10th Edition (National Academy Press, 1989):

"RDAs apply to healthy persons. They do not cover special nutritional needs arising from metabolic disorders, chronic diseases, injuries, premature birth, other medical conditions, and drug therapies."

RDAs do not necessarily meet the needs of all residents and therefore are intended to be used more as a guidance for menu planning and food purchasing rather than for the composition of each individual meal. The types and amounts of foods needed vary for different age groups and different physical conditions, and also vary from source to source, depending on the focus of the source (i.e., the U.S. Departments of Agriculture [USDA] and Health and Human Services [HHS], the American Heart Association, the National Dairy Council, and so on). One person may need more or less protein than another person because of a medical/physical condition. Another may need more potassium or some other vitamin or mineral, and so on. RDAs were intended to represent the average intake over time rather than absolute standards for each day. Meal planning guides are available from many reputable sources but must be adjusted to individual nutritional needs if they are to be functional. The National Research Council writes in Recommended Dietary Allowances - 10th Edition (National Academy Press, 1989):

"In planning meals or food supplies, it is technically difficult and biologically unnecessary to design a single day's diet that contains all the RDAs for all the nutrients. Nor is there biological reason for expecting that each meal should contain a fixed percentage of an RDA for a nutrient. As stated previously, the RDAs are goals to be achieved over time - at least 3 days for nutrients that turn over rapidly, whereas one or several months might be adequate for more slowly metabolized nutrients. In practice, menus for congregate feeding should be designed so that the RDAs are met in a 5- to 10-day rotation."

There were numerous comments received from residents and family members about the quantity of food served ("too much!") and the lack of choice by residents to determine what foods are served. By incorporating more quality of care outcomes such as "maintenance of acceptable nutritional status" and "resident satisfaction with food", the state rules can become more outcome oriented. The proposed language at part 4658.0600, subpart 2 incorporates new language in place of the current part 4655.8610. That rule section requires that the nursing home "ensure that a resident is offered a diet which supplies the caloric and nutrient needs as determined by the comprehensive resident assessment. Substitutes of similar nutritive value must be offered to residents who refuse food served." Specifying food groups and quantity in rules does not necessarily assure nor meet the outcomes of meeting caloric and nutrient needs, nor does it incorporate resident choice in menu planning. The proposed language is an attempt to be clear and specific regarding what is expected from the nursing home's dietary service, for each resident.

By requiring the facility to provide for every resident's specific dietary needs and incorporating the provision of reasonable accommodation of resident preferences, we are attempting to allow for diets that meet both clinical and satisfaction outcomes. This puts more responsibility on the dietary director and/or dietitian, and the nursing home to specifically address each individual resident's needs and choices, and to develop a diet that incorporates those needs and choices wherever feasible.

Subpart 3: This proposed subpart contains a minor change from current rule language found at 4655.8500. The current language implies that more than one diet manual must be available in the kitchen. "The kitchen" implies a cooking area, which may not be a suitable area in which

to review a manual. In many instances only one diet manual would be necessary and appropriate to be required, and it is preferable to have the manual "available in the department" rather than located within the food preparation area.

PART 4658.0605 DIRECTION OF DIETARY DEPARTMENT

The current state regulations at part 4655.8510 require each nursing home to have a dietary supervisor. OBRA 87 states at 42 CFR 483.35(a) that the facility must employ a qualified dietitian either full-time, part-time or on a consultant basis; if the dietitian is not employed full-time, the facility must designate a person to serve as the director of food service who receives frequently scheduled consultation from a qualified dietitian. Our state rules have required much the same as that, but in separate rule parts. The proposed revisions to the state rules pull together the requirements for direction of the dietary department, be that by a qualified dietitian or a dietary service director.

Subpart 1: The proposed rule language allows the nursing home to determine if they will use a dietitian or a director of food service with consultation from a dietitian to give direction to the dietary department. This proposed regulation is patterned after the federal OBRA 87 requirements at 483.35(a)(1) and (2), with some changes. The federal definition states: "A qualified dietitian is one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs." To clarify state rules, the definition of a "qualified dietitian" is expanded to include a registered dietitian or "a person who has a bachelor's degree in dietetics, food and nutrition or food service management plus experience in long term care and ongoing continuing education in identification of dietary needs, planning and implementation of dietary programs." The federal definition was modified to clarify what types of post-secondary educational degrees would be acceptable, and to make it easier for noncertified nursing homes to acquire qualified dietitians. The certified nursing homes must continue to follow the federal definition of a "qualified dietitian," while the noncertified nursing homes will have some additional leeway for a "qualified dietitian" under this state definition.

Subpart 2: This proposed language is a revision of existing rule language found at 4655.8500 subpart 1 and 4655.8510, and is also patterned after OBRA 87 requirements [at 483.35(a)(1)], with additional specifications for state licensure rules.

The requirement for directors of dietary service to be enrolled in or have completed a dietary manager course or comparable training is necessary to ensure those dietary managers have a basic knowledge of dietary management. The current rules list the responsibilities of this position; these responsibilities are not included in the proposed rules. Instead, there is a requirement that the director of dietary service be enrolled in, or has completed a dietary manager course or other comparable training. This requirement becomes effective for persons designated as director of dietary services after the effective date of these rules. Persons currently working as the director of dietary services will be "grandfathered" in to this

requirement, and will not be required to complete a dietary manager course or something comparable. This is a reasonable requirement, since that is the standard of practice in the industry at this time, and is a necessary qualification for the person in this position to ensure the competent management of the dietary service. These courses are widely available throughout the state.

The proposed rule language states, "If a qualified dietitian is not employed full time, the administrator must designate a director of dietary service...." This language does not preclude the nursing home with a full time dietitian from designating a different person as director of the dietary service. The Department of Health will leave that operational decision up to the nursing home; it may or may not be the best choice to have the dietitian also be the director of the dietary service, depending on qualifications, time limitations, resident population, or other factors specific to each nursing home's situation. However, those nursing homes which do not employ a dietitian on a full time basis must designate a director of dietary service who meets the requirements listed.

The number of hours of consultation to the dietary service director by a qualified dietitian was specifically omitted under these proposed rules because any specified number of hours would not assure quality menus, diets, or services. Resident needs would determine the required number of dietitian hours; this would be determined by clinical observation. Resident needs vary widely between nursing homes, depending on the level of care needs, the level of cognitive awareness, and any special dietary requirements of the residents. The number of hours needed by one 100-bed facility may vary greatly from another 100-bed facility. Therefore, any minimum number set in rule would not necessarily improve the health and safety of the residents. By stating that "the number of hours of consultation will be based upon the needs of the nursing home", we are putting the responsibility on the dietary service director and on the nursing home to arrange for a sufficient number of dietary consultation hours to ensure that the needs of their residents are met.

PART 4658.0610 DIETARY STAFF REQUIREMENTS

Subpart 1: The current state language in this rule (part 4655.8520) specifies the minimum number of hours dietary staff must be on duty each day, training, and posting of work assignments and duty schedules. The proposed language follows OBRA 87 regulations and guidelines from 42 CFR 483.35(b), and forces the nursing home management to be more responsible, responsive, and outcome oriented in their scheduling and training of dietary staff. Scheduling should be flexible enough to accommodate the needs and preferences of residents. By adding a definition of "sufficient personnel" we are attempting to clarify what is required in order to have sufficient staff. This proposed language mirrors the federal certification regulation and the interpretive guidelines for that regulation. The current state rule at 4655.8520 requires training in the performance of duties and posting of work assignments and duty schedules. Staff do need to have training, and schedules need to be available, but these are more appropriately addressed by nursing home policy and procedures rather than through regulations. By requiring staff to be "competent to carry out the functions of the dietary service," the nursing home has

discretion over how much and what types of training are essential for each staff position within the dietary service. This may be the same training for each member of the dietary staff, or there may be specialization for staff, depending on the needs of the residents and of that dietary service.

Subpart 2: Adding "dietary" to the current rule language clarifies which nursing home staff are affected by this rule, and so must be free from symptoms of communicable disease and from open, infected wounds. There are other infection control rules which apply to the nursing home as a whole. This proposed subpart would apply specifically to the dietary staff.

Subpart 3: This proposed subpart incorporates language from Minnesota Rules Chapter 4625 (Requirements for Food and Beverage Establishments). The revisions make the nursing home rules more consistent with those "Food and Beverage" rules, thus eliminating confusion and differences for nursing homes which fall under the jurisdiction of both sets of rules. We are proposing to delete the requirement for uniforms for dietary staff. Uniforms are not necessary and do not assure positive resident outcomes nor sanitary conditions in the dietary department. "Hairnets or caps" were required in the previous regulation. Since there are other available hair restraints which provide the same or greater hygienic results, the phrase "other hair restraints" has been added to the rule.

Subpart 4: This proposed rule revision also uses language based on Minnesota Rules Chapter 4625 and makes the proposed nursing home rules more consistent with those rules. The wording used in this revision clarifies the intent of the regulation - how and when dietary staff are to wash their hands.

Subpart 5: The language from the current part 4655.8520, item E is deleted under these proposed revisions because sanitation procedures and conditions are covered elsewhere in these proposed regulations. The issue of tobacco use would now be covered under 4658.0610 subpart 5 (currently it is in part 4655.8520, item F). The current rule language is related to smoking and eating in the kitchen area. The proposed language, dealing with tobacco use, is based on language found in Minnesota Rules Chapter 4625. This language was used because it is stated more clearly and concisely.

Subpart 6: This proposed language, dealing with employee consumption of food, corresponds with language found in Minnesota Rules Chapter 4625. This topic was previously covered under part 4655.8520, item F. The proposed language was used because it is more specific and readily understood. The restriction on food consumption would not apply to cooks who test the food for flavor and palatability - that is an acceptable practice.

Subpart 7: The proposed language here is also taken from Minnesota Rules Chapter 4625 and has been added to help promote sanitation in the dietary area and for dietary services throughout the nursing home. This rule would apply to any person assisting with dietary services, not necessarily only the dietary staff. There are occasions when other nursing home staff assist with dietary services, such as when delivering trays or removing trays when the meal is finished.

Subpart 8: The current 4655.8520 item H is proposed to be changed by deleting "it is recommended", and by adding "a current copy". This regulation remains in rule because the Department of Health's food handling guide is a useful tool in the dietary department. Rather than simply recommending that this guide should be available, the rule would be changed to specify that there must be a guide readily available by all dietary staff. The information contained in the guide can help prevent problems which may occur from improper handling of food. A current copy of the guide is needed to assure that the most up-to-date information is readily available to the dietary staff.

PART 4658.0615 FOOD HANDLING

The primary function of sanitation and safety in food preparation is disease prevention. Proper, sanitary food handling and maintenance of safe temperatures is the best way to do this. Some regulations need to be stricter in nursing homes because of the elderly or incapacitated population that is served and because this population often times has decreased resistance to infection. Infection control issues related to food handling are an important part of contributing to a positive outcome. The current rule language found at 4655.8600 needs to be brought up to date with current standards of practice.

The proposed language corresponds with the federal interpretive guidelines found at 42 CFR 483.35(h)(2). This proposed language increases consistency between federal and state regulations and thus makes it easier for facilities to comply with both sets of regulations. It includes a definition of "potentially hazardous foods", and the temperatures at which those foods must be maintained in order to keep cold foods cold and hot foods hot, which is a current rule requirement (from 4655.8630 Subpart 1). Those are the goals of infection control for potentially hazardous foods, as well as the desires of the consumers of those foods - to have foods be served at their correct temperatures.

PART 4658.0620 FREQUENCY OF MEALS

Subpart 1: The proposed language is taken from part 4655.8620 and the OBRA 87 regulation located at 42 CFR 483.35(f)(1). This language is written in a manner which is easier to understand than the current rule. By matching the federal and state language, we can eliminate confusion for implementation of the two sets of rules. We added clarification that meals be served at times comparable to meal times in the community because that would create a more homelike atmosphere.

Subpart 2: The proposed language in subpart 2 is based on OBRA 87 regulations at 42 CFR 483.35(f)(3). There has been some confusion on the meaning of the terms in the federal regulation. Because of that confusion, we are proposing to add language to clarify terms. "Offer" is being defined as having snacks available and making the resident aware of that availability. For further clarification, the term "bedtime" from the federal regulation was changed to "evening" because "bedtime" varies among residents and nursing homes. Also, some

residents prefer snacks before they retire, while others prefer snacks after they have retired for the evening (receiving their snacks when they are in bed), and still others may change their preference depending on a number of factors; the language being proposed does not preclude this nursing home choice and individual resident choice.

Subpart 3: The proposed language is based on the OBRA 87 regulation and interpretive guideline located at 42 CFR 483.35(f)(2) and OBRA 87 regulation located at 42 CFR 483.35(f)(4). The proposed subpart 3 expands on language from the current subpart 1. It also defines a "substantial evening meal" to provide clarification to providers, consumers and regulators on what is expected to be served at that evening meal. Subpart 3 allows for an exception to the 14 hours between the evening meal and breakfast.

The proposed language that permits 16 hours between meals allows resident participation in determining meal times and allows residents the choice of sleeping later in mornings while still getting a nutritious breakfast. It allows flexibility for residents and nursing homes to decide meal times that coincide with their preferences. The resident group has the right to choose the snack if they wish to wait 16 hours between meals. This snack is to actually be provided and served to the resident unless the resident declines the snack.

Subpart 4: The language in subpart 4 is current language found at 4655.8620 subpart 2. The second sentence of the current rule language is not included because it did not address resident choice on where to eat. Practices and social customs have changed some since these rules were originally written, and it is no longer necessary to mandate in rule that "patients or residents shall be encouraged to eat together."

PART 4658.0625 MENU PLANNING

Since the proposed dietary and food service rules (in the proposed Chapter 4658) are in a somewhat different order than the current rules (Chapter 4655), the heading of the current part 4655.8630 ("QUALITY AND VARIETY") is not appropriate to describe the proposed language found at 4658.0625. The heading for this text in Chapter 4658 is "MENU PLANNING" because that heading describes the language in the proposed rule more accurately than the current heading does.

Subpart 1: The current 4655.9630 subpart 1 would be deleted, or more accurately, is not included in the proposed rule because the applicable issues are addressed in other parts of the proposed rule language, and the no-longer applicable issues can be deleted. The first sentence is now addressed in the proposed 4658.0600 Subparts 1 and 2. The second sentence is no longer necessary to be included in the rule; we are eliminating "recommendations", and the standard of practice now is to use dishes rather than compartment trays. It is expected that this practice will continue because of the rules and regulations that address providing cares and services in a "homelike" atmosphere. The third sentence is addressed in the proposed 4658.0610 and 4658.0655. The fourth sentence is addressed in the proposed 4658.0600 Subpart 2.

The current subpart 2 would become the new subpart 1. The first sentence was amended to include the statement that diets would be planned, dated, posted for one week in advance, "and followed". It is important to post menus one week in advance and then to follow those menus to let residents and families know in advance what will be served on particular days, making it easier to plan for meals in the facility or going outside the facility to eat.

The second sentence was added because numerous comments from residents and families indicated that residents want to be involved in planning their own menus. This is an important aspect for maintaining some control in their daily lives. Also, by having input in menu planning they are able to have a better quality of life and often more satisfaction with the meals they are served.

The fourth and fifth sentences were added to clarify which menus must be posted for residents and which must be posted in the dietary area. This is unclear in the current rule language found in the first sentence of this subpart. "Reasonable" was deleted from current rule language in the seventh sentence because it could not be clearly defined.

Subpart 2: In these proposed revisions, the term "patients" is being deleted throughout the nursing home rules, and is being replaced by the term "residents" to better coordinate with the federal OBRA 87 regulatory terms. The term "patient" has meant a person residing in a nursing home, while the term "resident" has meant a person residing in a boarding care home. Since we intend to clarify which rule parts apply to nursing homes and which to boarding care homes, it is no longer necessary to make a distinction between the two groups. "Reasonable" was deleted from current rule language because it could not be clearly defined.

PART 4658.0630 RETURNED FOOD

The language in this proposed rule part is taken from the current 4655.8640 almost verbatim. The proposed language replaces the current "shall" with the term "must", as suggested by the Office of the Revisor of Statutes rule-making manual.

PART 4658.0635 CONDIMENTS

The language in this proposed rule part is taken from Minnesota Rules Chapter 4625 and is needed for clarification in these proposed nursing home rules. This regulation allows condiments to be provided for resident use, and clarifies how those condiments are to be made available for resident use in a sanitary manner. It allows condiments to be placed on tables for resident use when appropriate for resident diets and capability. This does not prevent resident choice in receiving condiments; rather, it is intended to provide more options and greater independence for those residents for whom self-use of condiments is appropriate. And while those choices and independence are encouraged, sanitary conditions will be maintained. As such, it is reasonable to add this part to the licensing rules for nursing homes.

The purpose for this part of the rule is sanitation. The requirement for individual packaging or dispensing of condiments, seasonings, and salad dressings is intended to ensure that those items remain uncontaminated when served to or used by the residents. It is necessary to be specific on the methods by which these items may be provided to residents in order to clarify sanitary conditions can be maintained.

PART 4658.0640 MILK

Some of the language in the current rule part 4655.8650 is outdated. Portions of the proposed language at 4658.0640 is patterned after language found in Minnesota Rules Chapter 4625. Additional language being proposed for this rule clarifies language in the existing rule part 4655.8650.

There are strict state standards for milk suppliers, and strict standards for the different grades of milk. We are proposing to update the reference to the applicable state statutes relating to milk supplies. The rule as it is proposed is necessary and reasonable because there are some food borne illnesses which are addressed by these standards.

Clarification has been added on what is an acceptable original container for milk. Under these proposed rules, the container may be "individual portions, a mechanically refrigerated bulk milk dispenser, or a commercially filled container of not more than one gallon capacity." These three options for milk containers covers the majority of available milk containers. This language allows flexibility for the nursing home to purchase milk supplies in whichever size or sizes (of the three types) are most appropriate for their situation and needs.

There has been much discussion on the use and potential for misuse of dry milk and dry milk products. The last three sentences of this proposed rule addresses the appropriate use of dry milk and dry milk products. Dry milk can not be used for drinking purposes because of the potential for mismeasurement when reconstituting, because of storage problems related to potential and actual contamination, and because of the loss of pasteurization which can result from the dehydration process. Dry milk supplies calcium and protein supplements and therefore is allowed to be added to fluid milk and other foods to increase nutrient density. The last sentence in this part clarifies and updates in which foods dried milk may be used for preparation.

PART 4658.0645 ICE

The proposed language at this part is being retained in the rules because of a need for stricter infection control standards than the federal government has in this area. Proposed language is being added to the current rule language found at 4655.8660 to further promote infection control standards.

A number of nursing homes have been using an insulated, nonmechanically-cooled cooler for ice storage, generally within a nursing unit so that ice is readily available for residents and staff.

It is reasonable and necessary to clarify that these coolers need, at a minimum, daily cleaning in order to maintain good infection control standards. Language on the storage of the ice scoop (for any type of ice storage) has been simplified, making it more flexible and understandable for the nursing home.

PART 4658.0650 FOOD SUPPLIES

Subpart 1: We are proposing to revise the language found at the current part 4655.8670 subpart 1 by deleting the requirement for all food being from sources "approved or considered satisfactory by the commissioner of health." There are other applicable state and federal regulations which address this issue, so it is no longer necessary to include that requirement in these rules. For example, there is an inspection program for food sources, and food suppliers are regulated by the Food and Drug Administration when food is transported across state lines. We are maintaining the requirement that food be clean, safe, wholesome, free from spoilage, adulteration, and misbranding. These are practical and necessary requirements to include in the nursing home rules.

Subpart 2: This proposed rule language addressing food brought into the nursing home from noncommercial sources provides for more freedom of choice to the residents and to the nursing home. The proposed language gives nursing homes the responsibility to develop their own policies pertaining to what foods might be accepted from noncommercial sources for resident consumption. This subpart is all new language being proposed; it is not currently included in the rules.

Numerous comments were voiced by residents and families regarding the opportunity to have food items from noncommercial sources brought into the nursing home for consumption, especially for special occasions or under special circumstances. One example frequently cited is having a family member bring in a birthday cake for a nursing home resident. Another example is when there is an event in the Activities Program such as cookie baking, and allowing those cookies to be available to all residents, not just those who participated in the baking. A third example of a noncommercial food source is the community potluck dinner or special ethnic meal prepared for a large group, of which some or all nursing home residents may be a part. And, a fourth example may be fresh produce from a local farmer or gardener which may not ordinarily be available through a commercial food source. The proposed language demonstrates respect and support of resident rights.

Subpart 3: The current rule language found at 4655.8670 subpart 2 needs to be updated to correspond with current standards for food storage equipment; this proposed subpart intends to do that. There is no approval process for containers, so it is no longer appropriate to state in rule that containers need to be "approved" before use. The proposed language is consistent with Minnesota Rules Chapter 4625, and addresses current standards and practices.

Subpart 4: Language from Minnesota Rules Chapter 4625 is proposed to replace outdated language in the current 4655.8670 subpart 3. The proposed language is worded in a more

specific manner to clarify the intent of the nonperishable food storage requirements. During the workgroup discussions there was mention of including temperature and ventilation standards for storage areas. There were concerns about some existing storage areas in which summertime temperatures can get to be extremely high, mainly because there is no ventilation in those storage areas. Those high temperatures could possibly affect the quality of the food stored in those areas. However, it was felt that by including the proposed language, such as the statement, "in a manner that protects the food from...other contamination," the rule would adequately address those concerns.

Subpart 5: We are proposing to revise the language currently located at 4655.8670 subpart 4 by deleting the temperature requirements for storage of perishable food. Language pertaining to storage at "temperatures which will protect against spoilage" is sufficient and more outcome oriented. There are temperatures provided in the federal requirements; these temperatures which will protect against spoilage" are readily available from a number of sources and should be part of the dietary manager's or dietitian's training. Storage temperatures for potentially hazardous foods would be addressed under the proposed part 4658.0615.

Subpart 6: The current part 4655.8670 subpart 5 is being renumbered as 4658.0650 subpart 6 to coincide with the other proposed language and numbering.

Subpart 7: The proposed revision to the current 4655.8670 subpart 6 updates the reference to the applicable Minnesota Rules, and includes a reference to any applicable local ordinances which may affect the operation of vending machines. It is necessary to include a cite to the current version of state rules which address vending machines, and to remind readers that there may be local regulations which also apply.

PART 4658.0655 TRANSPORT OF FOOD

The first sentence from the current 4655.8680 is proposed to be deleted because it is no longer considered to be a necessary practice for infection control. Covering food during transportation is more important for aesthetics and temperature control of that food than for infection control purposes and therefore is no longer necessary nor reasonable to require in rule. Nursing homes may choose to continue to cover food during transport, whether for aesthetics or to maintain the mandated serving temperatures, but are no longer required to do so. Rather, the intent of this rule part is found in the second sentence of the current language - that the food service system shall be capable of keeping food hot or cold, whichever is appropriate for that food, until it is served.

PART 4658.0660 FLOOR CLEANING AND TRASH

The language in this proposed rule part is taken from the current 4655.8690 almost verbatim. The proposed language replaces the current "shall" with the term "must" in both subparts 1 and 2, as suggested by the Office of the Revisor of Statutes rule-making manual. "Major" sweeping

or mopping was deleted from current rule language and "except when necessary to prevent accidents" was added to the proposed rule because it is important that no sweeping or mopping be done during the time of food preparation unless it is necessary for accident prevention.

PART 4658.0665 DISHES AND UTENSILS REQUIREMENTS.

In the current rules, there are five items listed as A through E under part 4655.8700. These are proposed to be revised to part 4658.0665 items A through E.

The proposed language in 4658.0665 items A, B, C and D are almost identical to the current 4655.8700. The proposed language replaces the current "shall" with the term "may" in item A, and with "must" in both items A and B, as suggested by the Office of the Revisor of Statutes rule-making manual.

Item E: The proposed language in item E is consistent with language in Minnesota Rules Chapter 4625. The intent of the proposed language is to clarify acceptable infection control techniques and practices, including how to keep dishes and utensils clean and sanitized once they have been washed. It is necessary to be more specific in the rule to clarify the intent of this rule. Making the language of these rules consistent with Chapter 4625 means less confusion for providers as well as cost savings realized from the efficiency of following one standard.

PART 4658.0670 DISHWASHING.

With the proposed revisions, the current part 4655.8800 would be revised as part 4658.0670 to incorporate more outcome-oriented language, and to incorporate language from Minnesota Rules Chapter 4625. The intent of these proposed revisions is to clarify expectations for providing appropriate dishwashing services as well as to update standards included in rule to match current standards of practice. By incorporating language from those other rules, we are attempting to provide greater compatibility among state regulations addressing situations where food is being prepared for and served to persons.

The language at the current 4655.8800 would be expanded under this proposed language. The current 4655.8800 would become 4658.0670 subpart 1, with reference to the acceptable methods for dishwashing - mechanical and manual. A new subpart 2 would be added, with general language to provide guidance on washing and sanitation. The language included in the proposed subpart 2 is based on language in the current Chapter 4625.

PART 4658.0675 MECHANICAL CLEANING AND SANITIZING.

In this revision of part 4655.8810, the intent of the current parts 4655.8810 and 4655.8820 are combined into the proposed 4658.0675. Proposed language matches that found in Minnesota Rules Chapter 4625 in most sections, with revisions to those rules where appropriate for nursing

home settings (as opposed to commercial food and beverage establishments).

For infection control purposes, appropriate methods of mechanical cleaning and sanitizing are detailed in the proposed part 4658.0675. These proposed changes are necessary to provide current standards on mechanical washing of food service equipment. They provide reasonable guidelines to nursing homes when those nursing homes establish or remodel their food service areas. For new construction it is more cost effective to set those areas up correctly initially, than to have them go back and retrofit the necessary components. For existing nursing homes there should be no cost effect for implementing these changes, since these proposed revisions would only apply to remodeling or new construction done after the effective date of the proposed rules.

The pertinent standards of NSF International, formerly known as National Sanitation Foundation Standards (NSF) are now incorporated by reference in the proposed language. These NSF standards are recognized internationally as the principles to follow for appropriate sanitation equipment and processes. Specifying those standards and incorporating current state regulatory statements provides a clearer representation of expectations of the mechanical cleaning and sanitization process for dishwashing. It is necessary to update the current rule language from 4655.8810 and 4655.8820, to incorporate current standards of practice while not being too restrictive. This would allow for possible future changes in the practices of mechanical dishwashing. The language being proposed at 4658.0675 is reasonable in that it clarifies the types of equipment facilities should provide, as well as appropriate methods of using that equipment.

The requirement that dishes and utensils are to be air-dried has been retained in the proposed language. The Department recognizes that the materials used to produce dishes, utensils, storage containers, and so on, have changed over the last 20 years and now include many more plastics and other man-made materials which do not air dry as rapidly as metals. However, there remains sufficient concern about infection control and the inappropriateness of using a dishtowel or even a paper towel to "wipe off" dishes, that the requirement for air drying remains in the proposed subpart 6.

The proposed subpart 8 uses current rule language with some revisions. It is unnecessary to tell providers that something must be "thoroughly cleaned", rather, it is sufficient that the rules require it to be "cleaned"; we are proposing the deletion of the word "thoroughly."

Also, language is proposed to clarify that, if necessary, the dishwashing machine should be cleaned more frequently than once a day, which is the minimum. The current language, specifying that the dishwashing machine be cleaned "at least once a day" is being interpreted to mean that the machine is to be cleaned once a day, regardless of whether it needs to be cleaned more frequently. The proposed language attempts to clarify that the machine be cleaned as often as necessary but at a minimum once a day.

The current 4655.8820 Subpart 3, "Test kit to measure concentration of sanitizing solution" would be included in the reference to test kits in the proposed section 4658.0675 subpart 5.

PART 4658.0680 MANUAL CLEANING AND SANITIZING.

With these proposed revisions, the title of the current part 4655.8830 would be changed from "Hand Washing of Pots and Pans" to "Manual Cleaning and Sanitizing" to emphasize and clarify the purpose of the proposed part 4658.0680. The previous rule part (currently part 4655.8810, and proposed 4658.0675) deals with machine dishwashing and sanitizing; this proposed part deals with methods for manual dishwashing and sanitizing, which may include more than just pots and pans.

For infection control purposes, appropriate methods of manual cleaning and sanitizing are detailed in the proposed rule section. These proposed changes are necessary to provide current standards on manual washing of food service equipment. They provide reasonable guidelines to facilities when those facilities establish or remodel their food service areas. It is more cost effective to set those areas up correctly initially, than to have them go back and retrofit the necessary components. For existing facilities there should be no cost effect for implementing these language changes because they already have their equipment and procedures set up, which should already be in compliance with these proposed rules.

Subpart 2: The proposed language maintains the requirement for a three compartment sink, while allowing it to be the size necessary for accommodation of the equipment and utensils being washed in it. It also provides direction on how to wash fixed equipment and equipment too large for sink compartments. It is necessary to specify the size and type of sink to ensure that the equipment is appropriate for the tasks required to be done with that equipment. The equipment specified in this part is reasonable to require because it is standard commercial-type equipment for manual dishwashing.

Subpart 3: The proposed language specifies that there be drain boards at each end of the three compartment sinks for proper handling of the items to be washed. This is necessary to promote the separation of clean and soiled dishes, thus maintaining infection control and appropriate sanitation and drying. Many comments were made by members of the workgroups that there needs to be sufficient space to allow for air drying of dishes and utensils. This specification of drain boards allows for some space to be set aside for that air drying. Facilities may provide for drying space in addition to these drain boards if they feel that will be necessary to meet their needs.

Subpart 4: The proposed language specifies methods for preliminary rinsing or scraping of items prior to their washing. This proposed language is necessary to provide current standards on manual washing of food service equipment. Preliminary rinsing or scraping are conventional methods used in the process of dishwashing. It is reasonable and appropriate to specify in rule that equipment and utensils should be prepared to be cleaned by having any gross food particles and soil removed prior to washing.

Subpart 5: The proposed language specifies methods for washing items using a three compartment sink. The first compartment is to be used for washing items in hot water with a detergent solution. The second compartment is to be used for rinsing items with clean water.

The third compartment is to be used for sanitizing items in an approved manner; various options are detailed in subpart 6. The three compartments are necessary to ensure appropriate dishwashing methods for sanitization and infection control. It is reasonable to state these methods in rule so that providers have clear standards to follow to achieve the goal of having clean and sanitized dishes, using a manual dishwashing method.

Subpart 6: The proposed language provides a variety of approved methods for the sanitization of items in the third compartment of the sink. The current rule language only allows for hot water sanitization. This proposed language allows for hot water sanitization and various methods of chemical sanitization. These incorporate current standards of practice in dishwashing, while maintaining infection control and sanitization standards.

Subpart 7: The proposed language specifies the equipment necessary for hot water sanitization: an integral heating device to maintain a water temperature of at least 170 degrees Fahrenheit; an accurate thermometer; and dish baskets, insulated gloves, or other equipment to remove the items from the hot water.

Subpart 8: The proposed language incorporates federal standards for chemical sanitization concentration limits, and the need for and use of a test kit or other device which measures that concentration in the manual sanitizing process.

Subpart 9: The proposed language retains the current requirement that dishes and utensils shall be air-dried. The Department recognizes that the materials used to produce dishes, utensils, storage containers, and so on, have changed over the last 20 years and now include many more plastics and other man-made materials which do not air dry as rapidly as metals. However, there remains sufficient concern about infection control and the inappropriateness of using a dishtowel or even a paper towel to "wipe off" dishes, that the requirement for air drying remains in the proposed subpart 9.

PART 4658.0685 PENALTIES FOR DIETARY AND FOOD SERVICES AND SANITATION.

One part of the reorganization of the rules for licensing nursing homes involves attaching language containing the penalties for violation of the rules to their applicable parts. In the current rules, there is a separate section of the rules which includes the penalties, or fines, for all the sections. In this proposed format, we are locating the rule parts listing the penalties at the end of each section of the rules. In other words, the penalties for noncompliance with correction orders on the dietary and food services rule parts are located at the end of the section of rules dealing with dietary and food services. This reorganization has been done to make the penalties easier to locate for consumers, providers, and regulators.

There has been some confusion with trying to locate applicable penalties under the current setup because one may have to look in more than one rule part to find the applicable penalty assessment for different sentences or subparts within a rule part. This reorganization should

remove the chances for confusion or missing applicable penalties for noncompliance with correction orders based on the nursing home licensing rules.

The statutory authority for promulgating part 4658.0685 is contained in Minnesota Statutes § 144A.10 subd. 6 (1993) which provides that:

"A nursing home which is issued a notice of noncompliance with a correction order shall be assessed a civil fine in accordance with a schedule of fines established by the commissioner of health before December 1, 1983. In establishing the schedule of fines, the commissioner shall consider the potential for harm presented to any resident as a result of noncompliance with each statute or rule. The fine shall be assessed for each day the facility remains in noncompliance and until a notice of correction is received by the commissioner of health in accordance with subdivision 7. No fine for a specific violation may exceed \$500 per day of noncompliance."

Thus, it should be noted that the provisions of part 4658.0685 will apply only to facilities licensed as a nursing home, and will provide for the daily accrual of fines. This subpart is necessary to implement this statutory requirement. The current system of penalty assessments for noncompliance with correction orders relates the amount of the penalty assessment to the impact on the resident resulting from noncompliance with the statute or rule. In other words, it looks at how noncompliance jeopardized the health, treatment, safety, comfort, or well-being of residents.

The current schedule of penalty assessments includes an 8 tier level of fines: \$50, \$100, \$150, \$200, \$250, \$300, \$350, and \$500. The minimum penalty assessment of \$50 is assigned to those rules that do not directly jeopardize the health, safety, treatment, comfort or well-being of residents. While these rules are required minimum standards necessary to promote the proper operation of the nursing home, the potential for harm presented to residents as a result of noncompliance is not direct. This minimum fine level conforms with the legislative standard that the schedule of fines take into consideration the potential for harm to residents and, at the same time, establishes a sufficient sanction for a nursing home's failure to comply with a correction order. The underlying premise of the correction order / penalty assessment system is to assure that there is an efficient mechanism to promote compliance with the nursing home rules and to assure that the licensee operates the nursing home in accordance with the licensure laws and rules.

The \$100 penalty assessment is assigned to those rules which relate, in a general nature, to the administration and management of the nursing home. While noncompliance with one of these provisions need not necessarily create a substantial risk of harm, the failure to comply has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents.

The \$150 and \$200 penalty assessments are assigned to those rules that are related to the physical environment and physical plant of the facilities. The \$150 penalty assessment is assigned to those rules that do not necessarily impact directly on the health and safety of residents but do impact on the comfort or well-being of residents, and the \$200 penalty

assessment is assigned to those rules that may impact on the health or safety of residents. This also includes the rules relating to the furnishing of resident rooms and other areas of the nursing home. The licensure rules establish minimum requirements which are necessary for the proper construction, maintenance, equipping and operation of the nursing home. The rules which have been assigned to these two assessment levels are necessary to ensure that the physical plant and physical environment are maintained in such a manner to fully protect the health, safety, treatment, comfort, or well-being of the residents. The failure to comply with the provisions of these rules will deprive residents of the minimum requirements established by the department to assure that an adequately furnished and safe environment is provided. For that reason, noncompliance with the rules in this category will create a situation which could potentially jeopardize the health, safety, treatment, comfort, or well-being of residents.

While the rules assigned to these two fine categories relate to similar areas, the impact of noncompliance with the rules on the health, safety, treatment, comfort, or well-being of the residents does differ. Therefore, to comply with the requirement that the schedule of fines take into consideration the potential for harm, the \$150 and \$200 categories were developed. The \$150 penalty assessment has been assigned to those rules for which noncompliance would not necessarily impact directly on the health and safety of residents but would impact on the comfort or well-being of residents.

The \$200 penalty assessment has been assigned to those rules for which noncompliance could impact on the health or safety of residents in the facility. Since the potential for harm is greater than the rules contained in the \$150 category, the \$50 increase in the amount of the fine is appropriate. Rules which are designed to promote safety, proper sanitation, or the prevention of infection have also been included in this category. These rules relate to the environment and do have an impact on the health and safety of residents.

The \$250 penalty assessment is assigned to those rules and statutes that relate to the protection of the individual rights of residents. These provisions are designed to assure that the individual rights of residents are promoted and protected in the nursing home. A violation of one of these provisions could jeopardize the well-being of residents and could also jeopardize the resident's health. The rules are necessary to assure that the residents' rights to privacy and the right to adequate and considerate care are fully protected. The \$250 fine is appropriate to assure that these important interests are fully protected within the nursing home.

The \$300 and \$350 fine levels have been assigned to those rules which relate to the provision of care services with the nursing home. The provisions contained within these rules relate to the primary purpose of a nursing home - to provide nursing care and other services to residents. The failure to provide these services in accordance with the minimum standards contained in the rules has the potential for jeopardizing the health, safety, treatment, comfort, or well-being of residents. The importance of assuring that the mandated services are provided justifies the imposition of the \$300 and \$350 penalty assessments. While the rules contained in this category all relate to the provision of care services to the residents, the impact of noncompliance on the health, safety, treatment, comfort, or well-being of residents does differ. Therefore, to comply with the requirement that the schedule of fines take into consideration the potential for harm, the

two fine levels were established.

The \$300 penalty assessment has been assigned to those rules that are necessary to assure that the service is properly provided, e.g. staffing, general orientation and inservice requirements, development of policies and procedures governing the provision of care, availability of equipment and supplies, etc. Noncompliance with these rules would affect the quality of care that is provided to the residents. These rules are directly related to the actual provision of the service, and compliance with these rules is necessary to assure that the actual provision of the service is done in a safe and effective manner. Noncompliance with these rules would result in the inability to adequately meet the needs of the residents and the department believes that the \$300 fine is appropriate.

The \$350 penalty assessment has been assigned to those rules which relate to the direct provision of services to residents. Since the impact of noncompliance with those provisions would be more immediate, the department believes that the additional increase of \$50 is appropriate. Examples of rules contained in this category would include the provision that medications and treatments be administered in accordance with the physician's instructions, assuring that the dietary needs of residents are met and that the food is of acceptable quality and is prepared, served, and handled in a safe and sanitary manner, and assuring that staff are trained prior to providing care to residents. The direct relationship of these rules to the provision of the service in a safe manner justifies the \$350 fine.

The maximum penalty assessment of \$500 is assigned to those rules and statutes for which noncompliance with a correction order would present an imminent risk of harm to the health, treatment, comfort, safety, or well-being of nursing home residents. Continued noncompliance with these rules would create a substantial probability that a resident would be subjected to serious physical, mental, or psychosocial harm. A violation of the provisions assigned to this fine level justifies the maximum fine due to the potential for harm presented to the resident by noncompliance with these provisions. The maximum fine is appropriate and necessary to fully protect nursing home residents.

Penalty assessments for current rule language which has been renumbered or only editorially revised have not been changed. This includes the proposed parts 4658.0600, 4658.0605, 4658.0610, 4658.0615, 4658.0620, 4658.0625, 4658.0630, 4658.0640, 4658.0645, 4658.0650, 4658.0655, 4658.0660, 4658.0665, 4658.0670, 4658.0675, and 4658.0680.

The only proposed part containing all new language not currently found in Chapter 4655 is subpart 4658.0635, which states, "Condiments, seasonings, and salad dressing for resident use must be provided in individual packages or from dispensers." The purpose for this part of the rule is to promote sanitation. The requirement for individual packaging or dispensing of condiments, seasonings, and salad dressings is intended to ensure that those items remain uncontaminated when served to or used by the residents.

The proposed penalty for noncompliance with a correction order for part 4658.0635 is a fine of \$350. This fine is consistent with fines for related topics within this rule. This penalty is also

consistent with the fine for violations of this language found in M.R. Chapter 4665 Supervised Living Facilities, which incorporate portions of M.R. Chapter 4625 Food and Beverage Establishments. This is a sanitation issue and so it is appropriate that the penalty be consistent with other rule parts that address related issues, and with the schedule for fines associated with nursing home licensing rules, specifically the assessment for rules related to the direct provision of services to residents.

The penalty assessments for these rule parts are consistent with penalties for related topics found in other rule parts. They are reasonable because they take into consideration the potential for harm to residents while at the same time establishing sufficient sanctions to ensure compliance with applicable statutes and this rule chapter.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, §14.115, generally requires the Department to consider five methods for reducing the impact of the rule on small businesses. However, subdivision 7 exempts rules that affect "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..." It is the Department's position that this rule regulating dietary services provided in nursing homes is exempt from §14.115, because nursing homes are specifically exempted in that statute.

STATEMENT OF ANTICIPATED COSTS AND BENEFITS

Minnesota Statutes § 144A.29, subdivision 4 (1993) states that:

Each rule promulgated by the commissioner of health pursuant to sections 144A.01 to 144A.15 shall contain a short statement of the anticipated costs and benefits to be derived from the provisions of this rule.

This law requires that the Department of Health estimate the cost that a nursing home will incur as a result of the promulgation of the rules. This cost estimate must also be accompanied by an explanation of the benefits that will result from the new rules. This analysis will be helpful in ascertaining the total costs of the rules.

Since a substantial portion of the nursing home costs are covered by the Medicaid program this statement will also be helpful in determining to what extent the rules will impact on the cost of the Medicaid program.

A number of rules being proposed at this time will not have a cost impact on nursing homes. Many of the proposed rules relating to dietary and food services in licensed nursing homes match the existing federal certification language. This means that approximately 99% of the licensed nursing homes in Minnesota are already complying with that regulatory language, and the reimbursement rates established under the Medicaid program address the costs of meeting those requirements. The non-certified nursing homes have indicated that they generally provide services of at least the same level as the certified nursing homes because that is the standard by which consumers judge them. So, the promulgation of these proposed rules will likely have little or no financial impact on most of the non-certified nursing homes.

SPECIFIC RULE PROVISIONS

4658.0600 Dietary Service

Subpart 1: The proposed language requires that food have taste, aroma, and appearance that encourages resident consumption of food. There should be no cost impact to nursing homes by adding this requirement to the state rules because most already comply with the intent of this language, and because this is the standard by which the dietary and food services are judged by consumers. There is corresponding language in existing rules (in MN Rules 4655.8630, subpart 1). The benefit to having this language in rule is to provide specification to providers, consumers, and regulators on expectations of the food served in nursing homes.

Subpart 2: The proposed language is not expected to increase costs to nursing homes because they are currently required to meet residents' food and nutritional needs under existing state rules (4655.8610, subpart 1) and under federal certification requirements. The state rules will no longer list daily food groups and quantities to meet the recommended daily dietary allowances for each resident. The benefit of the revision is that it will provide greater flexibility to providers to design diets and select foods and food supplies to meet residents' needs and preferences. Refer to the discussion in the Statement of Need and Reasonableness on this subpart (beginning on page 9).

Subpart 3: No change from existing rule language.

4658.0605 Direction of Dietary Department

Subpart 1: The language being proposed in this subpart is based on current federal certification language. The definition of a "qualified dietitian" has been expanded in this state language to include alternate educational backgrounds. This expansion allows those non-certified facilities to have greater flexibility in the persons who may serve as their dietitian. Existing state rule language requires a qualified dietitian or nutritionist at least 4 hours a month if there are residents in need of medically prescribed therapeutic diets. There should be no costs to certified nursing homes since they are already required to employ a qualified dietitian. A survey was

done of the non-certified nursing homes; all reported that they currently use the services of a dietitian. Therefore, there should be no costs to the non-certified nursing homes.

The proposed language eliminates the requirement for dietary consultation "at least 4 hours a month." The language has been revised to "The number of hours of consultation must be based upon the needs of the nursing home." This is not expected to significantly change the cost of the rule because information provided to the Department indicates that many nursing homes contract for much more than that amount, while some nursing homes contract only for 4 hours per month, and both seem to be meeting the needs of their residents. The benefit to the revision is that it allows nursing homes to determine the number of hours of dietitian consultation necessary to meet the needs of the residents at each nursing home.

Subpart 2: The proposed language in Subpart 2 corresponds with federal certification language, with the exception of the requirement for the enrollment in or completion of a dietary manager course or comparable training (for the director of dietary service). This requirement will affect only those persons designated as directors of dietary service after the effective date of these rules. The existing directors of dietary service will not be expected to have completed a dietary manager or comparable course. It is unknown what cost effect this requirement will have on nursing homes. Since the training course will be a prerequisite of the position of director of dietary service, a person hired for that position must have completed the course prior to designation or be enrolled in a training course when they are designated as director of dietary service. Whether or not the nursing home reimburses the employee or pays for the course itself is a matter to be resolved between the nursing home and the employee, based on any union negotiations, facility policies, or agreements between the two parties. This proposed rule does not state that the nursing home is responsible for the costs of the training course. These training courses are available throughout the state. One course, offered at a metropolitan area technical college, costs \$170 per quarter and lasts 3 quarters. This course includes 39 weeks (136.5 hours) of classroom instruction plus 180 hours of field learning experience.

4658.0610 Dietary Staff Requirements

Subpart 1: The language in this subpart was revised to be more specific. There is no anticipated cost to the revision, because it matches federal language, with an added clarification of the definition of "sufficient personnel." The benefit of the revision is that the rule would no longer require personnel on duty "12 hours per day," but rather sufficient staffing to carry out the functions of the dietary service, at whatever level and for whatever hours per day as is necessary for each nursing home.

Subpart 2: No change from existing state rule.

Subpart 3: The revisions to the language may decrease the costs of implementing this subpart. The requirement for uniforms has been deleted. Nursing homes may choose to continue to require uniforms, but they are not required to do so. The types of objects which may be used to secure hair have been increased. The benefit of the revisions is greater flexibility to nursing

homes and dietary staff for grooming requirements.

Subpart 4: There is no anticipated cost of implementing this proposed subpart. Dietary staff have been required to practice appropriate handwashing under the existing rules. The benefit of the revision is clarification of the language describing appropriate handwashing by dietary staff, and matching the language found in MN Rules Chapter 4625 for Food and Beverage Establishments.

Subpart 5: There is no anticipated cost of implementing this proposed subpart. Smoking or other use of tobacco has not been allowed in the food preparation nor dishwashing areas under the existing rules. The benefit of the revision is clarification of the language describing the prohibition of tobacco use, and matching the language found in MN Rules Chapter 4625 for Food and Beverage Establishments.

Subpart 6: There is no anticipated cost of implementing this proposed subpart. The benefit of the revision is clarification of the language describing employee dining, and matching the language found in MN Rules Chapter 4625 for Food and Beverage Establishments.

Subpart 7: There is no anticipated cost of implementing this proposed subpart. The benefit of the revision is clarification of the language describing sanitary procedures, and matching the language found in MN Rules Chapter 4625 for Food and Beverage Establishments.

Subpart 8: There is no anticipated cost of implementing this proposed subpart. The revision entails deleting the "recommendation" for having a copy of the department's food handling guide, and making it a requirement that nursing homes have that food handling guide. It is likely that most nursing homes already have this document. Copies are available from the department at no cost. The benefit of the revision is the ensured availability of information to dietary staff in all nursing homes regarding safe food handling.

4658.0615 Food Handling

There is no anticipated cost of implementing this proposed subpart. The language matches that found in Chapter 4625, with the exception of the required maintenance temperature for hot food, which matches the interpretive guidelines for the federal certification language. The rest of the language also coordinates with the federal language. The benefit of the revisions is to provide clear standards for providers and surveyors on the appropriate temperatures for potentially hazardous food.

4658.0620 Frequency of Meals

Subpart 1: There is no anticipated cost of implementing this proposed subpart. The benefit of the revisions is the matching of state and federal regulatory language.

Subpart 2: For certified nursing facilities, there is no anticipated cost of implementing this proposed subpart; they are already required to offer snacks at bedtime daily. There may be some additional costs to the non-certified nursing homes if they are not already offering evening snacks, although current state rules require that "...snacks shall be offered to satisfy individual appetites..." The benefit of the proposed language is the matching of state and federal regulations and the strengthening of resident rights and choices.

Subpart 3: There is no anticipated cost of implementing this proposed subpart. The benefit of it is the matching of state and federal regulatory language, and the strengthening of resident rights and choices in these rules.

Subpart 4: There is no anticipated cost of implementing this proposed subpart. The revisions include deleting part of the current language. The benefit of the proposed language is the clarification of expectations, and deletion of language which could be interpreted to be demeaning to residents.

4658.0625 Menu Planning

Subpart 1: There is no anticipated cost of implementing this proposed subpart. The changes include the requirement that planned menus be "followed", and that there be resident involvement in menu planning. It can be expected that current nursing home staff will be able to comply with these requirements with little or no additional resource use. There are many ways to have resident involvement in menu planning, from cursory to very extensive. The benefit to the revisions is a clarification of expectations, and a strengthening of resident rights and choices of the foods they are served.

Subpart 2: No significant change from current rule.

4658.0630 Returned food

There is no change from existing rule language.

4658.0635 Condiments

There is no anticipated cost of implementing this proposed section. Serving condiments, seasonings, and salad dressing for resident use (for example, on the table) in individual packages or from dispenser is common practice. The benefits are to the residents - the ready ability to serve themselves these items in a sanitary manner. Another benefit is to the providers and regulators by having this specificity in rule; expectations are clarified.

4658.0640 Milk

There are no anticipated costs of implementing this proposed section. The language matches that found in Chapter 4625, making it easier for those nursing homes which provide meals to residents and other persons (for example, those places with apartments attached to or located next to nursing homes, where one kitchen provides meals for both housing types). The language on the use of dry milk has been added for clarification, and should eliminate the need for nursing home requests for waivers.

4658.0645 Ice

Most of the language in this subpart matches existing nursing home licensing rule language. There may be some additional costs associated with the addition of the sentence, "If the container is not mechanically cooled, it must be cleaned at least daily and more often if needed." This sentence is being added for sanitation purposes - to protect the health and safety of the residents. The use of portable coolers in nursing units or other areas of the nursing home is occurring. The benefit of this regulation is to provide a standard for maintaining those coolers in a sanitary manner.

4658.0650 Food Supplies

Subpart 1: There are no anticipated costs of implementing this proposed section. The language matches current rule language, with some deletions. Nursing homes are already expected to comply with the language.

Subpart 2: There are no anticipated costs of implementing this proposed section. With the proposed language, nursing homes are required to develop a policy or policies regarding whether or not they will accept food items from noncommercial sources, and which foods they will accept. The nursing home already must develop policies and procedures, under existing state and federal regulations. This requirement can be met through the use of existing facility personnel. One benefit of this subpart is the enhancement of the quality of life of the residents. For example, if the nursing home policy allows, families may bake and bring in birthday cakes or favorite dishes; the community may sponsor a potluck dinner and include the nursing home residents; or, the nursing home may choose to purchase fresh produce from a local grower, thus providing fresher food to the residents at perhaps a lower cost to the nursing home.

Subpart 3: There are no anticipated costs of implementing this proposed language. Current rules address the appropriate use of food containers; there are no major differences between the existing and the proposed language. The benefits of the revisions are the clarification of appropriate practices, while not including the specificity of the current language.

Subpart 4: There are no anticipated costs of implementing this proposed language. The proposed language matches that found in Chapter 4625, and provides clarification on appropriate storage of nonperishable food. Language which was previously included only in the licensing rules addressing the physical plant of nursing homes has been included here, making it easier

for nursing homes, consumers, and regulators to discern the applicable manner of storage.

Subpart 5: There are no anticipated costs of implementing this language. This is current rule language, so nursing homes are already expected to comply with it. The current language on appropriate storage temperatures for meat, dairy products, and fruits and vegetables has been deleted. It is sufficient to say in rule that these items must be stored at "temperatures which will protect against spoilage." The benefit of the revision is the separation of the rule parts on the equipment used for storage and on appropriate storage temperatures.

Subpart 6: There is no change from existing rule language.

Subpart 7: There are no anticipated costs of implementing this language. This is current rule language, revised to include the correct reference to rule parts addressing vending machines. The benefit of this subpart is the identification of those other rule parts, for those nursing homes which have vending machines.

4658.0655 Transport of Food

There are no anticipated costs of implementing this language. This is current rule language, with deletion of the requirement for keeping food covered during transport. That sentence is not necessary for general infection control purposes (if there is a specific infection control problem with transporting food uncovered, the nursing home's infection control program should address covering that food). The important point is that the food service system be capable of keeping the food hot or cold, as appropriate, until served. The nursing home has the choice and responsibility of determining how to accomplish that requirement. The benefit of the revision is greater flexibility for the nursing home to provide appropriate services.

4658.0660 Floor Cleaning and Trash

Subpart 1: There are no anticipated costs of implementing this language. Most is current rule language, with an added exception for floor cleaning during food preparation to prevent accidents. This revision is intended to protect the health and safety of the dietary staff by clarifying that safety is an important issue in the kitchen area. The benefit is clarification of the added intent of accident prevention.

Subpart 2: There is no change from existing rule language.

4658.0665 Dishes and utensils Requirements

There are no anticipated costs of implementing this language. There is no significant change from current rule language. Item D was reworded to match language in Chapter 4625, which has been revised within the last 5 years (in 1989). The benefit of this rule is clarification of the

requirements for dishes and utensils.

4658.0670 Dishwashing

Subpart 1: There is no change from existing rule language.

Subpart 2: There are no anticipated costs of implementing this language. The requirements for sanitization and storage are being added to provide instruction and clarification of the expectations of this rule. The language matches that found in Chapter 4625.

4658.0675 Mechanical Cleaning and Sanitization

Subpart 1: There are no anticipated costs of implementing this language. It states the rule subparts to be followed for mechanical cleaning and sanitization. The benefit is the specification of applicable rule parts.

Subpart 2: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods, and the specification of the national standards to be complied with.

Subpart 3: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 4: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 5: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 6: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 7: There is no change from existing rule language.

Subpart 8: There is no significant change from existing rule language.

4658.0680 Manual Cleaning and Sanitizing

Subpart 1: There are no anticipated costs of implementing this language. It states the rule subparts to be followed for mechanical cleaning and sanitization. The benefit is the specification of applicable rule parts.

Subpart 2: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods, and the specification of the national standards to be complied with.

Subpart 3: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 4: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 5: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 6: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 7: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

Subpart 8: There are no anticipated costs of implementing this language. The language has been revised to match that found in Chapter 4625. There are no significant changes from rule language currently applicable to nursing homes. The benefits of the revisions are the matching of other existing rule language, and clarification of appropriate methods.

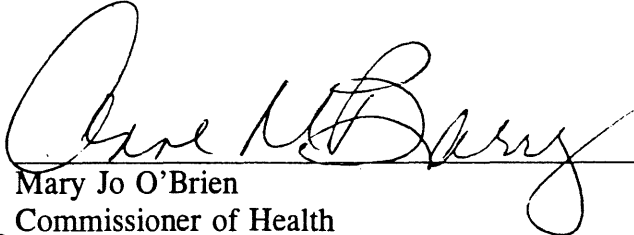
Subpart 9: There is no change from existing rule language.

4658.0685 Penalties for Dietary and Food Services and Sanitation

There are no anticipated costs of implementing this part since there are no mandatory duties imposed on the nursing home by the language. The statute requires a schedule of fines for non-compliance with correction orders.

EXPERT WITNESSES

If a public hearing is held on this rule, the Department does not plan to solicit outside expert witnesses to testify on behalf of the Department. The Department intends to have the following employees testify or be available at the hearing: H. Michael Tripple, Maggie Friend, and Dena Dunkel. Other staff may testify or be available to answer questions about specific aspects of the proposed rule. Other staff may substitute for those named above.

Dated: 5/7/94 
Mary Jo O'Brien
Commissioner of Health