



**Minnesota Department of Health**

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

May 15, 1995

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 Permanent Rules of the Minnesota Department of Health  
Relating to Procedures for Exceptions to Nursing Home Bed Moratorium

Dear Ms. Hruby:

The Minnesota Department of Health intends to adopt permanent rules relating to Procedures for Exceptions to Nursing Home Bed Moratorium. We plan to publish a Notice Of Intent To Adopt Rules in the May 30, 1995 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 Intent To Adopt Rules and a copy of the proposed Rules in this matter.

If you have any questions about these rules, please contact me at 643-2157.

Yours very truly,

A handwritten signature in cursive script that reads "Mary F. Hedges".

Mary F. Hedges  
Management Analyst 3 - Rulewriter

Enclosures: Statement of Need and Reasonableness  
Notice Of Intent To Adopt Rules  
Rules

STATE OF MINNESOTA  
DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED  
ADOPTION OF MINNESOTA RULES,  
PARTS 4655.1070 TO 4655.1098,  
GOVERNING PROCEDURES FOR APPROVING  
EXCEPTIONS TO THE MORATORIUM ON  
THE ESTABLISHMENT OF NEW NURSING  
HOME OR CERTIFIED BOARDING CARE  
HOME BEDS

FISCAL NOTE

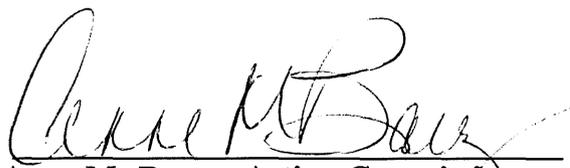
Proposed permanent rules, parts 4655.1070 to 4655.1098, authorized by Minnesota Statutes, section 144A.073, subdivision 8, will not have a fiscal impact on local human services agencies. The proposed permanent rule will affect spending by the state of Minnesota during fiscal years 1994 and 1995 as follows:

Medical Assistance funding is comprised of 54% federal funds with a 46% state match. Whatever Medical Assistance expenditure authorization is designated by the Legislature for the purpose of Moratorium Exception projects will be comprised of 46% state general funds.

If the Legislature authorizes an expenditure of \$550,000 (the amount authorized for the 1994-5 biennium) the state costs would be:

$\$550,000 \times 46\% =$  \$253,000.00

DATE: 5/12, 1995

  
Anne M. Barry, Acting Commissioner  
Minnesota Department of Health



**State Of Minnesota  
Department Of Health  
Facility & Provider Compliance Division**

**Proposed Permanent Rules Relating To Procedures for Exceptions to Nursing Home Bed Moratorium**

**Notice Of Intent To Adopt Rules Without A Public Hearing**

**Introduction.** The Minnesota Department of Health intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Mary Hedges  
Minnesota Department of Health  
393 North Dunlap St., P.O. Box 64900  
St. Paul, MN 55164-0900  
(612) 643-2157 Fax: (612) 643-2593

**Subject Of Rules And Statutory Authority.** The proposed permanent rules are the Procedures for Exceptions to the Nursing Home Bed Moratorium. The statutory authority to adopt the rules is Minnesota Statutes, sections 144A.071, subd.2 and 144A.073, subd. 8. A copy of the proposed rules is published in the State Register. The proposed permanent rules are to replace the emergency rules which have been in effect since November 8, 1988 and are due to expire on June 30, 1995. The proposed permanent rules incorporate the current emergency rules with minimal changes that have been proposed to clarify or to respond to changes in Minnesota Statutes, sections 144A.071 to 144A.073. A free copy of the rules is available upon request from Mary Hedges.

**Comments.** You have until 4:30 p.m., Thursday, June 29, 1995, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by Mary Hedges by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules 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 rules. Your request for a public hearing must be in writing and must be received by Mary Hedges by 4:30 p.m. on June 29, 1995. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. 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 a

public hearing is required, the Minnesota Department of Health will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Minnesota Department of Health and may not result in a substantial change in the proposed rules as printed in the State Register. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

**Statement Of Need And Reasonableness.** A Statement Of Need And Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. A free copy of the Statement may be obtained from Mary Hedges at the address and telephone number listed above.

**Small Business Considerations.** Under Minnesota Statutes, section 14.115, subd. 7, clause (3), the small business consideration applicable to rulemaking does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing facilities. Since the proposed rules govern nursing facilities, the requirements under Minnesota Statutes, section 14.115 do not apply to this rule.

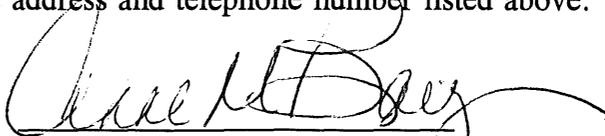
**Expenditure Of Public Money By Local Public Bodies.** Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rules is available upon request from Mary Hedges at the address and telephone number listed above.

**Impact On Agriculture Lands.** Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

**Departmental Charges.** Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**Adoption And Review Of Rules.** If no hearing is required, after the end of the comment period the Minnesota Department of Health may adopt the rules. The rules 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. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you wish to be so notified, or who wish to receive a copy of the adopted rules, submit your request to Mary Hedges at the address and telephone number listed above.

Date: 5/12, 1995

  
Anne M. Barry, Acting Commissioner  
Minnesota Department of Health

**STATE OF MINNESOTA  
DEPARTMENT OF HEALTH**

**IN THE MATTER OF THE PROPOSED  
ADOPTION OF MINNESOTA RULES,  
PARTS 4655.1070 TO 4655.1098,  
GOVERNING PROCEDURES FOR  
APPROVING EXCEPTIONS TO THE  
MORATORIUM ON THE  
ESTABLISHMENT OF NEW NURSING  
HOME OR BOARDING CARE HOME BEDS.**

**STATEMENT OF NEED  
AND REASONABLENESS**

**INTRODUCTION**

The purpose of the moratorium exceptions approval process is to provide a way to selectively permit nursing facilities to refurbish their physical plants.

Such construction projects would otherwise be forbidden by the moratorium law, which prohibits the licensure or certification of additional nursing facility beds, and construction projects that exceed the lesser of \$500,000 or 25% of a facility's appraised value (Minnesota Statutes, section 144A.071). The approval process was established in lieu of legislative case-by-case review of petitions for exceptions to the law.

The improvements permitted under the moratorium exceptions approval process are needed to replace or renovate aging or deficient buildings which naturally deteriorate over time.

The moratorium exceptions approval process is defined in Minnesota Statutes, section 144A.073. The first four rounds of approvals were implemented according to Minnesota Rules, parts 4655.1070 through 4655.1098 [EMERGENCY].

Under the emergency rules the Interagency Long Term Care Planning Committee [INTERCOM] (consisting of representatives from the departments of finance, health, housing finance, human services and the board on aging) must publish a request for proposals for exceptions in the State Register and, in cooperation with an advisory committee, form recommendations on which proposals the Commissioner of Health should approve.

The emergency rules also establish criteria that guide approval of proposals and establish timelines within which the recommendations must be made.

The final decision regarding which proposals to approve is made by the commissioner of health.

The approval process is started by legislative act authorizing a specific amount of additional Medical Assistance program (MA) money that may be used to reimburse nursing facilities for property costs incurred through building improvements. The previous processes completed under the emergency rules were initiated with an authorization of \$300,000 - \$550,000 in additional MA program money for the 1987-1989, 1990-1991, 1992-1993 and 1994-1995 bienniums. The emergency rule was effective November 8, 1988, reinstated on July 1, 1991, and continued July 1, 1993 for the 1994-5 biennium.

## **LEGAL AUTHORITY**

Minnesota Statutes, section 144A.073 govern the exceptions approval process and specific authority to promulgate the permanent rules is found under Minnesota Statutes, section 144A.071, Subdivision 2, and again in section 144A.073, subdivision 8.

To continue the moratorium exceptions approval process the emergency rules must be replaced with permanent rules, since the exceptions process has now become a permanent process. This Permanent Rule incorporates the current Emergency Rule with minimal changes that have been proposed to provide further clarification, or to respond to changes that have been made in Minnesota Statutes, sections 144A.071 through 144A.073.

To prepare the proposed permanent rules the commissioner of health followed the procedures mandated by the Minnesota Administrative Procedures Act and the rules of the Office of Administrative Hearings. A notice of intent to solicit outside opinion concerning the proposed permanent rules was published Monday, June 5, 1989.

The department met with a sample of affected parties to discuss the rules and drafts of the proposed rules were circulated to affected parties and to each person requesting a copy of the draft rules after publication of the notice of intent to solicit outside opinion. Comments received were reviewed and considered by the department when it completed the proposed rules. This Permanent Rule process was abandoned when the Legislature extended the existing Emergency Rule for the next biennium. Efforts were underway in the Spring of 1993 to have the Emergency Rule made permanent when the Emergency Rule was extended once again. Agency staff have continued to consult with nursing home providers and industry association staff to modify the rule. An advisory group, comprised of representatives from the nursing home associations, legal counsel, staff from the departments of health and human services, and the executive director of the Interagency Long Term Care Planning Committee (INTERCOM), was established in November, 1994, to finalize modifications to the Emergency Rule so that the rule could be submitted for permanent rule status. The proposed rule has been discussed at INTERCOM meetings and distributed to providers and consumers for additional comments.

## **SMALL BUSINESS CONSIDERATIONS**

Minnesota Statutes, section 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 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 these rules regulating construction projects in nursing homes and certified boarding care homes are exempt from M.S. § 14.115, because nursing homes are specifically exempted in that statute.

## **STATEMENT OF ANTICIPATED COSTS AND BENEFITS**

Minnesota Statutes, section 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.

These rules govern the moratorium exception process which enables nursing facilities to make substantial improvements in their physical plants. Applications for exceptions are invited when the Legislature authorizes an increase in Medical Assistance expenditures for this purpose. The process is completely voluntary, and competitive. Facilities that submit an application incur the cost of preparing the application, a portion of which is reimbursable under the Medical Assistance program. When selected facilities complete their projects, their Medicaid reimbursement is adjusted to reflect the new appraised value of the facility.

The benefits of the process include maintaining the quality of facilities, improving the efficiency of care delivery and increasing the quality of life for the residents in chosen facilities.

#### **4655.1070 DEFINITIONS.**

Scope, under subpart 1, and the definitions beginning under subpart 2 are needed to clarify which parts of Minnesota Rules the definitions apply to, and provide consistent terminology for use by persons and organizations affected by the moratorium; and to provide a basis for evaluating compliance with Minnesota Statutes, other rules promulgated by the State of Minnesota, and federal laws and regulations. Words or phrases used in a manner consistent with common usage are not defined.

Subpart 1. Scope. This subpart is reasonable because the terms as defined are unique to the nursing home bed moratorium and do not necessarily apply to other parts of Minnesota Rules.

Subp. 2. Advisory review panel. This definition is reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 3.

Subp. 3. Allowable costs. This definition is reasonable because it is for clarification and identification purposes only. Department of Human Services rules are referenced since they govern the Medical Assistance program. Medical Assistance dollars are allocated for the exceptions process

Subp. 4. Alternative care grant. This definition is reasonable because it is clarification and identification purposes only.

Subp. 5. Annual statistical report . This definition is reasonable because it is for clarification and identification purposes only.

Subp. 6. Appraised value. This definition is reasonable because it is for clarification and identification purposes only.

Subp. 7. Attached fixture. This definition is reasonable because it is for clarification and identification purposes only.

Subp. 8. Attached hospital. This definition is reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 1, paragraph (a) where the term attached hospital is used in the definition of conversion.

Subp. 9. Buildings. This definition is reasonable because it is for clarification and identification purposes only.

Subp. 10. Certified boarding care home. This definition is reasonable because the cited regulations establish the licensure requirements for boarding care homes in Minnesota. It is reasonable to include "certification under the Medical Assistance Program" as part of the

definition because the moratorium exceptions approval process under Minn. Stat. 144A.073 applies to certified boarding care homes that receive medical assistance program reimbursements, not those boarding care homes that are only licensed by the department.

Subp. 11. Commenced construction. This definition is reasonable because the term as used in these rules is consistent with the definition of "commenced construction" under Minnesota Statutes, section 144A.071, subdivision 3, paragraph (b).

Subp. 12. Commissioner. This definition is needed to identify the person who, under Minnesota Statutes, section 144A.073 must make the final decision regarding the approval of a proposal for an exception under these rules. Use of the term in lieu of "commissioner of health" is reasonable because such use reduces the number of words needed to refer to an individual who referred to often in the rules. Minnesota Statutes, section 15.06, subdivision 6, paragraph (1) allows a state government commissioner to delegate specified duties and powers. The commissioner is ultimately responsible for the actions of the department. The definition is consistent with the statutes.

Subp. 13. Conversion. See "Renovation".

Subp. 14. Cost report. This definition is reasonable because it is for identification and clarification purposes only. It is reasonable to require the most recent report for which a desk audit has been completed because a desk audited report provides data that is more accurate and verifiable. Since financial data is used by the INTERCOM to form recommendations regarding approval of an exception proposal, it is important to have financial data that is as accurate as it can be at the time the INTERCOM recommendations are formed.

Subp. 15. Department. Two state agency commissioners are referred to in these rules. This definition is needed to abbreviate references to the commissioner of human services and to avoid confusing the commissioner of human services with the commissioner of health.

Subp. 16. Estimated operating costs. This definition is reasonable because it is consistent with the estimated operating costs required by Minnesota Statutes, section 144A.073, subdivision 2, paragraph (4). Although the definition states "for the first year following completion of the project" it is consistent with the cited statute (which says "for the first two years following completion of the project") because a reasonable estimate of operating costs for the two years following completion of the project can be obtained by multiplying the first year's operating costs by two. Since projects receive a rate adjustment when completed, "the first twenty four months after completion" is used to establish that initial costs of the project are not based on calendar or state fiscal years. It is also necessary to determine the first year's operating costs because those costs are used to determine the medical assistance cost of a proposal. Medical assistance costs are based on the state's share of those costs, which can change annually. Therefore it is more accurate for the purposes of this rule to use operating costs estimated for the first year (rather than two years) following completion of the project.

Subp. 17. Facility. This definition is necessary and reasonable because it is for identification and abbreviation purposes only. The term "facility" is used in the rules in the place of "attached hospital, nursing home, or certified boarding care home named on a proposal".

Subp. 18. Hospital. "Hospital" is a term used in these rules. This definition is reasonable because the statute cited in the definition establishes the definition of "hospital" for purposes of licensure by the Minnesota Department of Health.

Subp. 19. Interagency Long Term Care Planning Committee or INTERCOM. This definition is needed for identification purposes only. The definition is reasonable because Minnesota Statutes, section 144A.073 makes the INTERCOM responsible for the administration of the moratorium exceptions approval process.

Subp. 20. Land improvement. This definition is needed to clarify the meaning of "appraised value". The definition is reasonable because the cited reference to Minnesota Rules is used to determine the value of land improvements under Medical Assistance.

Subp. 21. Medical assistance. This definition is reasonable because "Medical assistance" as defined under this subpart is the program referred to under Minnesota Statutes, section 144A.073 subdivision 2.

Subp. 22. Medical assistance cost. This definition is needed because medical assistance is the program referred to in Minnesota Statutes, section 144A.073 as the program that must pay increased medical assistance costs resulting from the approval of an exception. The definition is reasonable because it defines the medical assistance program by citing the federal and state laws that establish the medical assistance program.

Subp. 23. Nursing home. This definition is reasonable because the statute cited in the definition establishes the definition of "nursing home" for purposes of licensure by the Minnesota Department of Health.

Subp. 24. Operating costs. The definition is reasonable because the cited reference to Minnesota Rules is used to determine the operating costs of a nursing home or certified boarding care home under Medical Assistance.

Subp. 25. Proposal. This definition is needed and reasonable because it is for identification purposes only.

Subp. 26. Proposer. This subpart is needed and reasonable because it is for identification purposes only.

Subp. 27. Renovation. The definitions of "renovation", "replacement", "conversion" and "upgrading" are used because the statutes cited in those definitions establish definitions of the types of exceptions that may be approved under Minnesota Statutes, section 144A.073.

Subp. 28. Replacement. This definition, while not inconsistent, provides further clarification and refinement from the definition that is currently in statute. This is done to resolve confusion regarding this definition in previous rounds of the moratorium. The department has introduced the definition that is in rule as an amendment to statute this session.

Subp. 29. Soft costs. This definition is reasonable because it is for identification and clarification purposes.

Subp. 30. Statutory restriction. This definition is needed and reasonable because it is for identification and abbreviation purposes only. The term "statutory restriction" is used where practicable in the rules rather than listing the three types of restrictions listed under Minnesota Statutes, section 144A.073, subdivisions 5, 6, and 7.

Subp. 31. Submission deadline. This definition is reasonable because it is for identification and for abbreviation purposes only. This abbreviation will reduce the number of words used to refer to the submission deadline wherever the deadline is referred to in the rules.

Subp. 32. Upgrading. See "renovation".

Subp. 33. Working day. This definition is necessary to clarify a term used in these rules and to set a standard. Since the Interagency Long Term Care Planning Committee is responsible for approving exceptions to the moratorium, it is reasonable that the term be limited to the hours when the Committee normally conducts business.

#### **4655.1072 INCORPORATION BY REFERENCE OF ANNUAL STATISTICAL REPORT.**

It is reasonable to incorporate this report because information contained in the report is included in the data used by the INTERCOM to evaluate and compare proposals.

## 4655.1074 APPOINTMENT OF ADVISORY REVIEW PANEL

The authority for appointment of the advisory review panel is under Minnesota Statutes, section 144A.073, subdivision 3, which is as follows:

The Interagency Committee shall appoint an advisory review panel composed of representatives of consumers and providers to review proposals and provide comments and recommendations to the committee.

Minnesota Statutes is silent on any other details of the advisory review panel. This part is needed to provide organizational detail for the panel.

Subpart 1. Procedures. This subpart is needed and reasonable because it is for clarification purposes only.

Subp. 2. Membership. It is reasonable for the panel to have members representing consumers and providers because such membership is required by Minnesota Statutes, section 144A.073 subdivision 3. The member required to have a background in long term care and engineering, accounting, design or building construction meets the interests of both groups by being able to provide technical information on construction and costs of projects. It is reasonable to have an odd number of members (5) to avoid stalemates on which exceptions to recommend. It is reasonable to have 5 members instead of 7 or more because there is a limited number of organizations in Minnesota that represent consumers or providers and that have broad-based support or a membership that constitutes a large proportion of providers or consumers. Having fewer than 5 members would not adequately represent consumers and providers because there are at least four major organizations representing those two groups in Minnesota.

Subp. 3. Advisory review panel chairperson. It is reasonable for the INTERCOM executive director to chair and convene the panel because this is consistent with the part of Minnesota Statutes, section 144A.073, subdivision 3 which says that the commissioners of human services and health "shall provide staff and technical assistance to the committee [INTERCOM] for the review and analysis of proposals". The executive director of the INTERCOM is not a member of the advisory review panel and does not have authority to control in any way the recommendations of the panel.

Subp. 4. Nominations. This subpart is needed to give all affected parties an equal opportunity to be considered for a position on the advisory review panel. It is reasonable to use the State Register to advertise the request for nominations because the State Register is the usual place of publication of official announcements of state agencies. The information that must be included with a nomination is needed to ensure that the nominees who are nominated meet the qualifications required under subpart 2.

Subp. 5. Appointments. This subpart is reasonable because Minnesota Statutes, section 144A.073, subdivision 3 requires the INTERCOM to appoint members to the advisory review panel. It is reasonable to require a majority vote because that is the usual way the INTERCOM makes policy related decisions.

Subp. 6. Length of term. This subpart is needed to simultaneously provide flexibility and stability on the advisory review panel and is reasonable because it meets those needs. The two-year terms can be used to appoint people who can advocate the changing needs of the represented groups and the persons serving three-year terms can develop the expertise and

experience needed for continuity and for addressing the most complex issues of the exceptions approval process. It is reasonable to limit the number of consecutive terms of advisory panel members to two consecutive terms to ensure that many interested and qualified parties have an opportunity to be considered for appointment. Persons who had previously served for two consecutive terms could reapply for membership after an absence of one term.

#### **4655.1076 INTERCOM PUBLICATION OR REQUEST FOR PROPOSALS.**

Subp. 1. Date of publication of request for proposals. Publishing a request for proposals (RFP) in the State Register is needed and reasonable because it is required by Minnesota Statutes, section 144A.073, subdivision 2. Subdivision 2 also says that the RFP publication shall be "at the intervals specified in rules". Therefore this subpart is also needed to establish publication intervals. It is important to publish within 30 days after the start of the biennium because the facilities submitting exception proposals need as much time as possible so that they can prepare their proposals, be considered, and then, if approved, implement their proposal during the biennium. The deadline of 30 days of the biennium is reasonable because it gives the INTERCOM sufficient time to prepare the request for proposals without interfering with the other timelines for recommendations and approvals under Minnesota Statutes, section 144A.073, subdivisions 2 and 3. Amendments to Minn. Stat. 144A.073 in the 1995 session would allow the commissioner to have a "rolling" moratorium process with RFPs issued every six to nine months. The language "as frequently as determined by the commissioner" is added to allow this process if the amendments are successful.

Subp. 2. Contents of a request for proposals. This subpart is needed for the INTERCOM to obtain the information needed to consider an exception proposal for approval. Minnesota Statutes, section 144A.073, subdivision 2 requires an RFP to "describe the information that must accompany a request" that is submitted to the INTERCOM.

Item A is reasonable because it is for clarification purposes only. See part 4655.1080, subpart 3 for a further justification of the submission deadline.

Item B is reasonable because the information required by item B is required to be stated by Minnesota Statutes, section 144A.073, subdivision 3.

Item C is reasonable because the information required to be stated will enable a proposer to consider whether its proposal is consistent with the State's long-term care policy goals. Under Minnesota Statutes, section 144A.073, subdivision 4, paragraph (3), one of the criteria the INTERCOM must use to compare and evaluate proposals is "the extent to which the proposal furthers state long-term goals, including the goal of enhancing the availability and use of alternative care services and the goal of reducing the number of long-term care resident rooms with more than two beds".

Item D is needed and reasonable because it provides specificity and clarification for applicants and is consistent with current law and amendments being introduced during the 1995 session.

#### **4655.1078 FORMAT AND CONTENTS OF A PROPOSAL.**

This part is needed for the INTERCOM to have the information needed to evaluate and compare proposals and to make initial determinations about whether a proposal falls under the definition of one of the types of exceptions the INTERCOM may approve (renovation, replacement, upgrading, or conversion). Minnesota Statutes, section 144A.073, subdivision 2,

paragraphs (1) through (7) directly require the collection of some of the information required by this part to be included with a proposal. Authority for the commissioner to require other contents of a proposal is contained under Minnesota Statutes, section 144A.073, subdivision 2, paragraph (8).

Item A is needed to coordinate approval activities with the facility.

Item B is needed and reasonable because the facility for which the project is being proposed may have an address that is different from the address of the business that owns or manages the facility.

Item C is reasonable because the signature makes the entity submitting the proposal accountable for the information on the application.

Item D is necessary and reasonable because it is required by Minnesota Statutes, section 144A.073, subdivision 2, paragraph (1).

Item E is necessary and reasonable because it is required by Minnesota Statutes, section 144A.073, subdivision 2, paragraph (2).

Item F is necessary and reasonable because it is required by Minnesota Statutes, section 144A.073, subdivision 2, paragraph (3).

Items G and H are necessary and reasonable because the information required under them is consistent with the information required under Minnesota Statutes, section 144A.073, subdivision 2, paragraph (4). Information under items I and J is not directly required by paragraph (4), but is reasonable to collect because it is related information that can be used to determine cost data.

Item K is reasonable because Minnesota Statutes, section 144A.073, subdivision 4, paragraph B requires the INTERCOM to evaluate and compare environmental conditions in facilities that submit proposals.

Item L is necessary and reasonable because it is required by Minnesota Statutes, section 144A.073, subdivision 2, paragraph (5).

Item M is necessary and reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 2, paragraphs (5) and (6).

Item N is necessary and reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 2, paragraph (7).

Item O is reasonable because the information required by it could help the INTERCOM make conclusions about the necessity of a proposed renovation or replacement when the renovation is more costly than replacement or when replacement is more costly than renovation.

Item P is reasonable because it provides an applicant an opportunity to provide information that may explain data that staff provides to INTERCOM and the Advisory Review Panel to assist them in their deliberations.

#### **4655.1080 SUBMISSION OF PROPOSAL.**

Subpart 1. Who may submit a proposal. This subpart is necessary and reasonable because it is for clarification purposes only.

Subp. 2. Where to submit a proposal. This subpart is reasonable because the INTERCOM is the entity Minnesota Statutes, section 144A.073, subdivision 3 authorizes to review exception proposals.

Subp. 3. Submission deadline. The submission deadline is reasonable because it is the deadline required by Minnesota Statutes, section 144A.073, subdivision 2.

#### **4655.1082 INITIAL SCREENING OF PROPOSALS BY INTERCOM.**

Items A and B are reasonable because Minnesota Statutes, section 144A.073, subdivision requires that a proposal be submitted according to the deadline. It is reasonable to require the INTERCOM to return a proposal not submitted according to the deadline to the proposer with a notice that the proposal will not be considered because that notice provides documentation to the proposer that the proposal will not be considered.

Item C is reasonable because Minnesota Statutes, section 144A.073 requires that an exception approved under that section be a conversion, renovation, replacement or upgrade. Though it is not likely that a proposer would submit a proposal that does not meet the definition of one of the exception types, this item is necessary because it ensures that only proposals of this type will be considered further by the INTERCOM.

Items D through H are needed to set limits on the time needed to allow the INTERCOM to request additional information that could clarify or verify information contained in a proposal and to limit the type of information that can be collected from a proposer after the proposal submission deadline.

Items I and J are reasonable because they are consistent with Minnesota Statutes, section 144A.073, subdivisions 5, 6, and 7, which establish requirements for approval that pertain only to replacements, conversions, or upgradings. The reason that a proposal must be substantially complete is that it may not be possible to determine whether a proposal satisfies a restriction unless the proposal is clear in all respects.

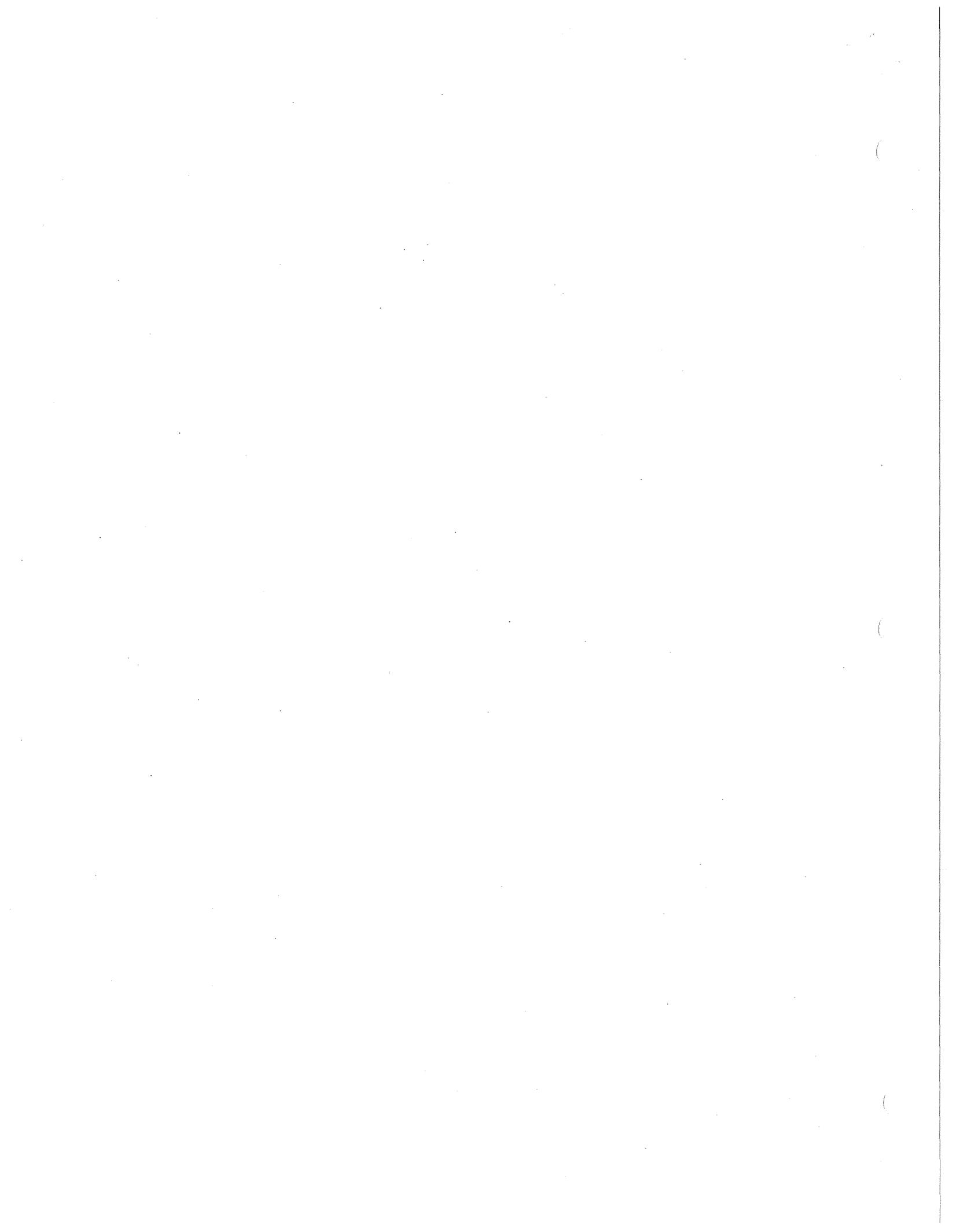
Item K is needed to clarify what to do with a proposal once the INTERCOM has determined that the proposal contains the information needed for the Advisory Review Panel to review the proposals and form recommendation on which proposals to approve. The item is reasonable because Minnesota Statutes, section 144A.073, subdivision 3 requires that the advisory review panel submit recommendations to the INTERCOM before the INTERCOM submits its recommendations to the commissioner of health.

#### **4655.1084 DATA COLLECTION.**

This part is needed to separate pure data collection activities from activities that involve comparisons, evaluations, or rankings of proposals. According to Minnesota Statutes, section 144A.073, subdivision 3, comparisons, evaluations and ranking are to be conducted only by the advisory review panel and the INTERCOM. Overall it is reasonable to collect the data required to be collected by this part because the data relates to one or more of the evaluation criteria contained under Minnesota Statutes, section 144A.073, subdivision 4.

Subpart 1. Staff. It is reasonable to require the INTERCOM to assign staff to collect the data under this part because the assignment of staff is consistent with Minnesota Statutes, section 144A.073, subdivision 2, which says in part that "the commissioners of human services and health shall provide staff and technical assistance to the committee for the review and analysis of proposals".

Subp. 2. Medical assistance costs of a proposal. This data is necessary because the medical assistance cost (the biennial amount by which medical assistance payments to the facility will change if a proposal is implemented) of a proposal cannot be more than the amount the legislature has allocated for exceptions. This data will also be used to evaluate the criteria under Minnesota Statutes, Section 144A.073, subdivision 4, paragraph (a), subparagraph (4) which



and provide comments and recommendations to the committee [INTERCOM]". Although subdivision 3 does not describe a method for advisory review panel review, it says the INTERCOM shall form recommendations "based on a comparison and ranking of proposals using the criteria in [Minnesota Statutes, section 144A.073] subdivision 4". The method of review required by subparts 1 through 4 is reasonable because it is consistent with the method prescribed by statute for the INTERCOM to use. It is clear from the statutes that the purpose of the advisory review panel is to ensure that affected parties share their perspective on the same data, not that they use different data for the formation of their comments and recommendations to the INTERCOM.

It is necessary and reasonable for subpart 2 to require use of the information under parts 4655.1078, 4655.1080 and the data under part 4655.1084 because those are the same data sources the INTERCOM must use when forming its recommendations.

The deadline for submission of panel recommendations under subpart 5 is needed to ensure enough time for the INTERCOM to comply with statutory deadlines. The deadline under subpart 5 is reasonable because the timelines in Minnesota Statutes, section 144A.073, subdivisions 2 and 3 give the INTERCOM only 60 days after the proposal submission deadline to provide their recommendations to the commissioner of health.

#### **4655.1088 PUBLIC HEARING.**

It is necessary and reasonable to hold a public hearing on proposals submitted in response to the request for proposals and before recommendations are submitted to the commissioner of health because that public hearing is required by Minnesota Statutes, section 144A.073, subdivision 3. Although the Statute does not say how early before submitting recommendations to the commissioner the hearing should be held, it is reasonable to hold the public hearing after the submission deadline because that narrows the scope of the hearing to those proposals that will receive consideration by the panel and INTERCOM. Considering proposals that might be submitted for review would be an ineffective and inefficient use of INTERCOM resources.

#### **4655.1090 EVALUATION, COMPARISON, AND RANKING OF PROPOSALS.**

This part is needed to provide a way for the INTERCOM to carry out its mandate under Minnesota Statutes, section 144A.073, subdivision 3 to "submit recommendations [to the commissioner of health] within 150 days of the date of the publication of the notice, based on a comparison and ranking of proposals using the criteria in subdivision 4". This part is reasonable because it is consistent with that mandate.

#### **4655.1092 REIMBURSEMENT LIMITS.**

Subpart 1. Cost reimbursement. This subpart is needed to clarify that the determination of costs under parts 4655.1070 through 4655.1100 is an estimate for purposes of approving a proposal. The clarification is reasonable because using the estimates for actual reimbursement would be inconsistent with parts 9549.0010 through 9549.0080.

Subp. 2. Medical assistance costs. This subpart is necessary to ensure that approved projects do not exceed the amount of Medical Assistance funding authorized by the Legislature.

says that "the proposal's long-term effects on the costs of the medical assistance program" must be used to evaluate and compare proposals.

This subpart is also needed to establish the procedures for determining the medical cost of a proposal.

It is necessary that the medical assistance cost of a proposal be estimated **because the cost data of a proposal is also estimated.** The cost data that is estimated in a proposal is based on the proposer's current actual costs and the costs the proposer estimates will accrue after the exception is implemented.

It is necessary to review the accuracy of operating costs, real estate taxes and special assessments under items A and B because of biases inherent to the calculation of these costs by the proposer and because of the possibility of errors in making the calculations. It is reasonable for the staff of the commissioners represented on the INTERCOM to review the accuracy of the information under items A and B because data on current actual medical assistance reimbursements is available to the commissioners of human services and health. Data and information regarding current or potential real estate taxes and special assessments can be obtained from the relevant taxing authorities. It is important to have accurate estimations of these costs for the benefit of the state and the proposers. For example, the INTERCOM does not want to recommend approval of a proposal whose actual medical assistance costs end up being more than the amount allocated by the legislature for exceptions, and proposers do not want to have their proposal recommended for disapproval when they erroneously estimated their costs to be higher than the amount allocated by the legislature for exceptions.

The procedures listed under items C through I are reasonable because they either state or refer to the rules under Minnesota Rules, chapter 9549 that are normally used to determine the amount of the state's share of medical assistance program reimbursements to nursing homes for nursing care.

The data required to be collected under subparts 3 through 8 are required under Minnesota Statutes 144A.073 Subd. 4 (a) subparagraphs (1) and (2).

Subp. 9. Alternative care grant use. The data required to be collected under this subpart is needed because alternative care grant use is listed under Minnesota Statutes, section 144A.073, subdivision 4, paragraph (a), subparagraph (3) as a criteria that must be used by the INTERCOM to compare and evaluate proposals.

Subp. 10. Environmental conditions for evaluation. The data required under this subpart is necessary and reasonable because it is required under Minnesota Statutes 144A.073 Subd. 4 (b), subparagraphs (1) and (2).

Subparts 11 through 14. The data collected under these subparts is necessary and reasonable because it is required under Minnesota Statutes 144A.073 Subd. 4(a) subparagraph (5), and 4(b) subparagraph (2).

The statute provides authority for the data collection outlined in this section. Since the moratorium exception process is competitive, this data is necessary to provide sufficient information to allow INTERCOM to choose the most worthy proposals for approval.

#### **4655.1086 FORMATION OF ADVISORY REVIEW PANEL RECOMMENDATIONS TO INTERCOM.**

This part is reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 3 where it is stated that the advisory review panel shall "review proposals



#### **4655.1094 INTERCOM RECOMMENDATIONS TO THE COMMISSIONER.**

This part is needed to clarify that INTERCOM recommendations to the commissioner regarding an exception proposal must be based on the comparison, evaluation and ranking performed under part 4655.1090. The part is reasonable because it is consistent with Minnesota Statutes, section 144A.073, subdivision 3.

#### **4655.1096 COMMISSIONER'S APPROVAL OR DISAPPROVAL OF A PROPOSAL.**

Subpart 1. Approval or disapproval of a proposal. This subpart is needed to identify and clarify this deadline for parties affected by the commissioner's approval or disapproval. The 30 day deadline is reasonable because it is the same deadline required by Minnesota Statutes, section 144A.073, subdivision 3.

Subp. 2. Notice of approval or disapproval. This subpart is needed for proposers to determine whether to implement a proposal. It is reasonable to have the commissioner mail a written notice because other forms of communication for this purpose, such person-to-person communication would be ineffective and inefficient. Written communication leaves less room for error and enables the commissioner to more clearly communicate the reasons why a proposal was approved or disapproved.

Subp. 3. Expiration of commissioner's approval. This subpart is needed to identify and clarify the deadline for affected parties. This deadline is reasonable because it is the same deadline required by Minnesota Statutes, section 144A.073, subdivision 3.

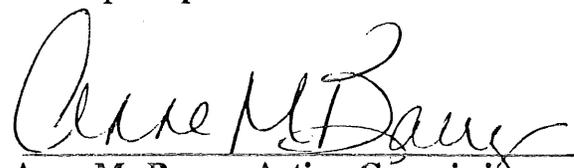
#### **4655.1098 DOCUMENTATION.**

Subpart 1. Preliminary plans; subpart 2, final working drawings; subpart 3, final working drawings and subpart 4, change orders. Subparts 1 through 3 are needed to identify and clarify for proposers that they must follow the same procedures for nursing home construction that must be followed outside of the moratorium exceptions approval process in the nursing home rules, Chapter 4660. The subparts are also needed to ensure that the INTERCOM can follow the construction procedures to verify that the plans, working drawings, and project changes are consistent with the project as originally proposed by the nursing home and as approved by the commissioner of health.

Subp. 5. Cost overruns. This subpart is needed to identify and clarify that reporting of cost overruns is required by Minnesota Statutes, section 144A.073, Subd. 3b.

Subp. 6. Final statement of costs. This subpart is reasonable because the final statement of costs is necessary for the department to establish a facility's reimbursement limit that includes changes made to the facility through the moratorium exception process.

DATE: 5/12, 1995

  
Anne M. Barry, Acting Commissioner  
Minnesota Department of Health