CHAPTER 9553
DEPARTMENT OF HUMAN SERVICES
PAYMENT; INTERMEDIATE CARE FACILITIES

DETERMINATION OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

9553.0010 SCOPE.

Parts 9553.0010 to 9553.0080 establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or related conditions participating in the medical assistance program, except intermediate care facilities in state owned hospitals as defined in Minnesota Statutes, section 246.50, subdivision 5. Parts 9553.0010 to 9553.0080 are effective for payment rates established on or after January 1, 1986.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 1148*

9553.0020 DEFINITIONS.

Subpart 1. **Applicability.** For the purposes of parts 9553.0010 to 9553.0080, the following terms have the meanings given them in this part.

Subp. 2. **Addition.** "Addition" means an extension, enlargement, or expansion of the physical plant of an ICF/MR for the purpose of increasing the number of licensed beds or improving resident care.

Subp. 3. **Applicable credit.** "Applicable credit" means a receipt of funds or an expense reduction as a result of public grants, purchase discounts, allowances, rebates, refunds, adjustments for overcharges, insurance claims settlements, recovered bad debts, or any other adjustment or income which reduce the costs claimed by the facility.

Subp. 4. **Capacity days.** "Capacity days" means the total number of licensed beds in the facility multiplied by the number of days in the reporting year.

Subp. 5. **Capital assets.** "Capital assets" means a facility's land, physical plant, land improvements, depreciable equipment, leasehold improvements, capitalized improvements and repairs, and all additions to or replacements of those assets.

Subp. 6. **Capital debt.** "Capital debt" means a debt incurred by the facility for the purpose of purchasing a capital asset, to the extent that the proceeds of the debt were actually applied to purchase the capital asset including points, financing charges, and bond premiums or discounts. Capital debt includes debt incurred for the purpose of refinancing a capital debt.

Subp. 7. **Capital debt interest expense.** "Capital debt interest expense" means interest payable under the terms of a capital debt, amortization of a bond premium or discount, and amortization of financing charges.

Subp. 8. **Class A beds.** "Class A beds" means beds licensed for ambulatory and mobile persons who are capable of taking appropriate action for self–preservation under emergency conditions as determined by part 4665.0500 or 9525.0210 to 9525.0430.

Subp. 9. **Class B beds.** "Class B beds" means beds for ambulatory, nonambulatory, mobile, or nonmobile persons who are not mentally or physically capable of taking appropriate

action for self–preservation under emergency conditions as determined by part 4665.0500 or parts 9525.0210 to 9525.0430.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services.

Subp. 11. **Cost categories.** "Cost categories" means any one of the groupings of costs in part 9553.0040, subparts 1 to 6.

Subp. 12. **Cost report.** "Cost report" means the document and supporting materials specified by the commissioner and submitted by the provider for the facility. The cost report includes the statistical, financial, and other relevant information required in part 9553.0041 for the rate determination.

Subp. 13. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 14. **Depreciable equipment.** "Depreciable equipment" means the standard moveable resident care equipment and support service equipment generally used in an ICF/MR. Depreciable equipment includes the equipment specified in the major moveable equipment table of the depreciation guidelines.

Subp. 15. **Depreciation guidelines.** "Depreciation guidelines" means The Estimated Useful Lives of Depreciable Hospital Assets, issued by the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois 60611 (Chicago: 1983). The depreciation guidelines are incorporated by reference and are available for reference at the Minnesota State Law Library, 25 Constitution Avenue, Saint Paul, Minnesota 55155. Only the 1983 publication will be used and will not change.

Subp. 16. **Desk audit.** "Desk audit" means the determination of the facility's payment rate based on the commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the provider.

Subp. 17. **Direct cost.** "Direct cost" means a cost that can be identified within a specific cost category without the use of allocation methods.

Subp. 18. **Equity.** "Equity" means the historical capital cost of the facility's capital assets subject to the limitations in part 9553.0060, subpart 1, item C; and subpart 3, item H, decreased by the outstanding principal amount of the capital debts, and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed. Increases in the principal amount of existing capital debts due to refinancing, or new capital debts due to a change of ownership or reorganization of provider entity for which the increase in interest expense is disallowed according to part 9553.0060, subpart 3, item G are not included in the outstanding principal amount of the capital debts for the purpose of calculating equity.

Subp. 19. **Facility or ICF/MR.** "Facility" or "ICF/MR" means a program licensed to serve persons with mental retardation or related conditions under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 20. **Field audit.** "Field audit" means the on–site examination, verification, and review of the cost report, financial records, statistical records, and related supporting documentation of the provider or provider group.

Subp. 21. **Fringe benefits.** "Fringe benefits" means workers' compensation insurance, group health insurance, disability insurance, dental insurance, group life insurance, and retirement benefits or plans.

Subp. 22. **Funded depreciation.** "Funded depreciation" means the sum deposited in a separate account as determined in accordance with part 9553.0060, subpart 1, item E and that must be applied only to reduce or liquidate capital debts or replace capital assets.

Subp. 23. **Historical capital costs.** "Historical capital costs" means:

A. for a capital asset first placed in use in the medical assistance program on or after January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use in the medical assistance program; and

B. for a capital asset first placed in use in the medical assistance program prior to January 1, 1984, the cost originally incurred to construct or purchase the capital asset by the person or entity owning the capital asset on December 31, 1983.

Subp. 24. **Historical operating costs.** "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the commissioner has reviewed those costs and determined them to be allowable costs under the medical assistance program and after the application of parts 9553.0010 to 9553.0080.

Subp. 25. **Indirect cost.** "Indirect cost" means a cost incurred for a common or joint purpose of benefiting more than one cost category or not readily assignable to the cost categories benefited.

Subp. 26. **Land.** "Land" means the land owned or leased by the provider or provider group and which is necessary for resident care.

Subp. 27. **Land improvement.** "Land improvement" means an improvement to the land surrounding the facility as specified in the land improvements table of the depreciation guidelines, if the land improvement is the responsibility of the provider.

Subp. 28. **Leasehold improvement.** "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility that reverts to the owner of the property upon termination of the lease.

Subp. 29. **Medical assistance program.** "Medical assistance program" means the program that reimburses the cost of health care provided to eligible recipients pursuant to Minnesota Statutes, chapter 256B and United States Code, title 42, section 1396a, et seq.

Subp. 30. **Necessary service.** "Necessary service" means a function pertinent to the facility's operation that if not performed by the assigned individual would have required the provider to employ or assign another individual to perform it.

Subp. 31. **Payroll taxes.** "Payroll taxes" means the employer's share of social security withholding taxes, and state and federal unemployment compensation taxes or costs.

Subp. 32. **Physical plant.** "Physical plant" means the building or buildings in which a program licensed to provide services to persons with mental retardation or related conditions under Minnesota Statutes, section 252.28 is located, and all equipment affixed to the building and not easily subject to transfer as specified in the building and fixed equipment tables of the depreciation guidelines, and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the same site if related to resident care, and the allocated portion of office space if the office is located in that facility. Physical plant does not include buildings or portions of buildings used by central, affiliate, or corporate offices if those offices are not located in that facility.

Subp. 33. **Private paying resident.** "Private paying resident" means a facility resident whose care is not paid for by the medical assistance program, cost of care program, or the Community Social Services Block Grant for the date of service.

Subp. 34. **Program.** "Program" means those functions and activities of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under parts 9525.0210 to 9525.0430 and Code of Federal Regulations, title 42, section 442.400, et seq.

Subp. 35. **Program director.** "Program director" means the person who supervises individual program planning and program activities related to carrying out the individual program plans.

Subp. 36. **Provider.** "Provider" means the corporation, governmental unit, partnership, person, or persons licensed to operate the facility, which controls the facility's operation, incurs the costs reported, and claims reimbursement under parts 9553.0010 to 9553.0080 for the care provided in the facility.

Subp. 37. **Provider group.** "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurred the costs shown on the cost report which are claimed for reimbursement under parts 9553.0010 to 9553.0080.

Subp. 38. **Rate year.** "Rate year" means the period for which the total payment rate is effective, from October 1 to September 30.

Subp. 39. **Related organization.** "Related organization" means a person that furnishes goods or services to a facility and that is a close relative of a provider or a provider group, an affiliate of a provider or provider group, a close relative of an affiliate of a provider or provider group, or an affiliate of a close relative of an affiliate of a provider or provider group. For the purposes of this subpart, the following terms have the meanings given them.

A. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

B. "Person" means an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

C. "Close relative of an affiliate of a provider or provider group" means an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a provider or provider group is no more remote than first cousin.

D. "Control" including the terms "controlling," "controlled by," and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Subp. 40. **Repair.** "Repair" means the cost of labor and materials needed to restore an existing capital asset to sound condition after damage or malfunction or to maintain an existing capital asset in a usable condition.

Subp. 41. **Replacement.** "Replacement" means a renovation or substitution of an existing capital asset to improve its function or extend its useful life.

Subp. 42. **Reporting year.** "Reporting year" means the period from January 1 to December 31 immediately preceding the rate year, for which the provider submits its cost report, and that is the basis for the determination of the total payment rate for the following rate year.

Subp. 43. **Resident day.** "Resident day" means a day on which services provided to residents are rendered and billable, or a day for which a bed is held and billed.

Subp. 44. **Respite care.** "Respite care" means short–term supervision, assistance, and care provided to persons with mental retardation or related conditions due to the temporary absence or need for relief of the caregiver who normally provides these services and is not an institutional provider.

Subp. 45. **Top management personnel.** "Top management personnel" means owners, corporate officers, general, regional, and district managers, board members, administrators, the facility administrator, and other persons performing executive functions normally performed by such personnel, whether employed full time, part time, or as a consultant. The facility administrator is the person in charge of the overall day–to–day activities of the facility.

Subp. 46. **Total payment rate.** "Total payment rate" means the amount established by the commissioner to reimburse the provider for service provided to each resident. The total payment rate is calculated by adding the total operating cost payment rate, the special operating cost payment rate, and the property–related cost payment rate.

Subp. 47. **Useful life.** "Useful life" means the length of time a capital asset is expected to provide economic service before needing replacement.

Subp. 48. **Vested.** "Vested" means the existence of a legally fixed unconditional right to a present or future benefit.

Subp. 49. **Working capital loan.** "Working capital loan" means a debt incurred to finance a facility's operating costs. A working capital loan does not include a debt incurred to acquire or refinance a capital asset.

Subp. 50. **Working capital interest expense.** "Working capital interest expense" means the interest incurred on working capital loans during the reporting year.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 1148*

9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

Subpart 1. **Cost classification.** Costs must be classified as provided in this subpart. Total costs for each category must be compiled and recorded on the cost report.

A. The provider shall classify costs using direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the facility. The classification of costs must be made according to the cost categories defined in part 9553.0040.

B. In addition to costs which must be included in the administrative cost category, indirect costs such as generic supplies that cannot be readily assignable to one or more cost categories must be classified to the administrative cost category.

C. Except for persons in top management, the compensation of any person having multiple duties, including persons who have only nominal top management responsibilities, must be directly identified and classified to the appropriate cost categories on the basis of time distribution records that show actual time spent, or an accurate estimate of time spent on various activities. Except as provided in item D, the compensation of persons who have top management responsibilities may be classified to a cost category other than administrative operating costs to the extent justified in time distribution records showing the actual time spent, or an accurate estimate of time spent on various activities. Any facility or provider group choosing to estimate the time spent in different cost categories must use a statistically valid method.

D. The compensation of a person who is classified as top management personnel and who performs any service for the central, affiliated, or corporate office must be allocated to the facility's administrative cost category in accordance with subpart 4, item C if the facility or provider group served by the central, affiliated, or corporate office has more than 48 licensed beds.

Subp. 2. **Allocation of personal expenses for owners whose primary residence is in the facility.** Allocation procedures in this subpart must be applied to personal expenses of owners whose primary residence is in the facility to the extent that these costs were included in the facility's costs.

A. Dietary services cost allocation must be based on the number of meals served.

B. Housekeeping, plant operations, and maintenance cost allocation must be based on the ratio of square feet of floor space devoted to personal use divided by the total square feet of floor space of the facility.

C. Depreciation, interest, real estate and personal property taxes, and property and liability insurance costs must be allocated based on the ratio of square feet of floor space devoted to personal use divided by the total square feet of floor space of the facility.

D. Laundry and linen costs, and administrative costs for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

Subp. 3. **Cost allocations for other services.** Costs associated with services other than ICF/MR services such as apartments, semi–independent living services, and any other revenue generating operations, except respite care, must be allocated using the principles in subpart 1 and the procedures in subpart 2.

Subp. 4. **Central, affiliated, or corporate office costs.** Cost allocation for central, affiliated, or corporate offices shall be governed by items A to F.

A. Central, affiliated, or corporate office salary expense representing services of consultants required by law or regulation in areas including dietary, pharmacy, program, or other resident care related activities may be allocated to the appropriate cost category, but only to the extent that those salary expenses are directly identified by the facility.

B. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of program, quality assurance, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a facility according to subitems (1) to (5).

(1) Only the salary, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs must be allocated.

(2) The allocation must be based on direct identification and to the extent justified in time distribution records which show the actual time spent by the consultant performing services in the facility.

(3) The cost in subitem (1) for each consultant must be allocated to only one operating cost category in the facility. If more than one facility is served by a consultant, all facilities shall allocate the consultant's cost to the same operating cost category.

(4) Top management personnel shall not be considered consultants for purposes of this item.

(5) The consultant's entire job responsibility is to provide the services identified in this item.

C. Except as provided in items A and B, central, affiliated, or corporate office costs must be allocated to the administrative cost category of each facility within the group served by the central, affiliated, or corporate office according to subitems (1) to (5).

(1) All costs that can be directly identified with a specific facility must be classified to that facility.

(2) All costs that can be directly identified with a specific operation unrelated to the facility's operation must be allocated to that unrelated operation.

(3) After the costs that can be directly identified according to subitems (1) and (2) have been allocated, the remaining central, affiliated, or corporate office costs must be allocated between facility operations and unrelated operations based on the ratio of expenses.

(4) Next, operations which have facilities both in Minnesota and outside of Minnesota must allocate the central, affiliated, or corporate office costs to Minnesota based on the ratio of total resident days in Minnesota facilities to the total resident days in all facilities.

(5) Finally, the facility related central, affiliated, or corporate office costs must be allocated to each facility based on resident days.

D. Central, affiliated, or corporate office property–related costs of capital assets used directly by a facility in the provision of ICF/MR services must be classified to the property–related cost category of the facility which uses the capital asset. Central, affiliated, or corporate office property–related costs of capital assets that are not used directly by a facility in the provision of ICF/MR services must be allocated to the administrative cost category of each facility using the methods described in item C.

E. The useful life of a capital asset maintained by a central, affiliated, or corporate office must be determined as in part 9553.0060, subpart 1, item B.

F. A governmental or nonprofit organization that has a federally approved cost allocation plan may allocate management fees or central office costs to a related organization based on the governmental or nonprofit organization's federal cost allocation plan. The provider must document that the allocation plan has been approved by the federal government.

Subp. 5. **Allocation of costs to related or nonrelated organizations.** A facility's costs associated with services or goods provided by the facility to a related or nonrelated organization must be allocated on the basis of items A to C.

A. Costs of services must be allocated based on the documentation of time spent performing the service by each individual providing services to the related organization or nonrelated organization. All identifiable expenses including salary, fringe benefits, and payroll taxes, travel, and supplies of an individual providing services for related organizations or nonrelated organizations must be allocated based on the ratio of actual time spent performing the services for each related or nonrelated organization.

B. The cost of goods sold to or used by a related organization or nonrelated organization must be directly allocated to the organization. The cost of goods sold to or used by more than one organization must be allocated proportionally to each related organization or nonrelated organization based on a reasonable estimate of actual use.

C. The cost of goods or services allocated to a related organization or nonrelated organization must not be an allowable cost for the facility.

Subp. 6. **Payroll tax and fringe benefit cost allocation.** A facility's payroll taxes and fringe benefits reported in the payroll taxes and fringe benefit cost category must be classified to the program operating cost category, the maintenance operating cost category, and the administrative operating cost category based on direct identification or an allocation using

the ratio of allowable salary costs in each of those cost categories to total allowable salary costs.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 1711*

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

Subpart 1. **Allowable costs.** Only costs determined to be allowable under parts 9553.0010 to 9553.0080 may be used to compute the total payment rate for facilities participating in the medical assistance program.

Subp. 2. **Licensure and certification costs.** The costs of meeting the applicable licensure and certification standards listed in items A to E are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080. The standards are:

A. federal regulations for ICF/MR services provided by Code of Federal Regulations, title 42, sections 442.400 et seq.;

B. requirements established by the commissioner for meeting program standards under parts 9525.0210 to 9525.0430 and standards for aversive and deprivation procedures established according to Minnesota Statutes, section 245.825;

C. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations;

D. requirements to comply with changes in federal or state laws and regulations; and

E. other requirements for licensing under federal or state law, state rules, federal regulations, or local standards that must be met to provide ICF/MR services.

Subp. 3. **Service costs.** The costs of services including program, maintenance, administrative, payroll taxes and fringe benefits, and property–related costs as defined in part 9553.0040, are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080.

Subp. 4. **Applicable credits.** Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to items A and B:

A. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.501, subdivision 8 and parts 9510.1020 to 9510.1140; and

B. gifts and donations from nongovernmental sources.

Subp. 5. **Adequate documentation.** A facility shall keep adequate documentation.

A. In order to be considered adequate, documentation must:

(1) be maintained in orderly, well–organized files;

(2) not include documentation of more than one facility in one set of files unless transactions may be traced by the department to the facility's annual cost report;

(3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities. If any of the information to be listed on the invoice is not available, the providers shall document their good faith attempt to obtain the information;

(4) include copies of all written agreements and debt instruments to which the facility is a party and any related mortgages, financing statements, and amortization schedules to explain the facility's costs and revenues;

(5) if a cost or revenue item is not documented under subitem (3) or (4), the facility must document the amount, source, and purpose of the item in its books and ledgers following generally accepted accounting principles and in a manner providing an audit trail; and

(6) be retained by the facility to support the five most recent annual cost reports submitted to the commissioner. The commissioner may extend the period of retention if

the field audit was postponed because of inadequate recordkeeping or accounting practice as in part 9553.0041, subpart 12, or if the records are necessary to resolve a pending appeal.

B. Providers must document all consultant, professional, or purchased service contracts. They must maintain copies of all contracts and invoices relating to consultant, professional, or purchased services. These documents must include the name and address of the vendor or contractor, the name of the person who actually performed the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

C. Payroll records must be maintained by a facility and must show the amount of compensation paid to each employee and the days and hours worked. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories or facilities as specified in part 9553.0030.

D. Documentation of mileage must be maintained in a motor vehicle log. Except for motor vehicles exclusively used for facility business, the facility or related organization must maintain a motor vehicle log for each vehicle used by the facility that shows personal and facility mileage for the reporting year. Mileage paid for the use of a private vehicle must be documented.

Subp. 6. **Compensation for services performed by individuals.** Compensation for services performed by individuals includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the reporting period are allowable.

A. Compensation includes:

(1) salaries, wages, bonuses, vested vacation, vested sick leave, and employee benefits paid for managerial, administrative, professional, and other services;

(2) amounts paid by the provider for the personal benefit of the provider or employees;

(3) deferred compensation and individual retirement accounts (IRA's);

(4) the costs of capital assets, supplies, services, or any other in kind benefits the provider or employees receive from the facility or related organization, except the cost of capital assets, supplies, services, or other in kind benefits incurred as a necessary cost for an employee who is required to supervise resident activities or to reside in the facility as a condition of employment; and

(5) payments to organizations of nonpaid workers that have arrangements with the facility for the performance of services by the nonpaid workers.

For purposes of this item, in kind benefit means benefit received in a medium other than cash as identified in parts 3315.0200 to 3315.0220 for personal services performed.

B. The facility must have a written policy for payment of compensation for services performed by individuals. The policy must:

(1) relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual. Only the compensation of persons employed by the hour must be stated in terms of an hourly wage. The number of hours worked by salaried employees may be stated in terms of the average annual hours worked for each facility.

(2) result in compensation payable under the policy which is consistent with the compensation paid to persons performing similar duties in the ICF/MR industry. Employees covered by collective bargaining agreements are not required to be covered by the policy if the collective bargaining agreement otherwise meets the essentials of the policy required by this item.

(3) specify the nature and cost to the provider or provider group of any in kind benefits included in the compensation.

C. Only services which are necessary services shall be compensated.

D. Except for accrued vested vacation and accrued vested sick leave, compensation must be actually paid, whether by cash or negotiable instrument, within 121 days after the close of the reporting year. If payment is not made within 121 days, the unpaid compensation must be disallowed in that reporting year. Payments made after the 121–day period are allowable in the reporting year made.

Subp. 7. **Limitations on related organization costs.** Related organization costs are subject to items A to D.

A. Costs applicable to services, capital assets, or supplies directly or indirectly furnished to the provider by any related organization may be included in the allowable cost of the facility at the purchase price paid by the related organization for capital assets or supplies and at the cost incurred by the related organization for the provision of services to the facility if these prices or costs do not exceed the prices of comparable services, capital assets, or supplies that could be purchased elsewhere. For this purpose, the related organization's costs must not include an amount for mark up or profit, except as provided in the following paragraph.

Except for the rental or leasing of facilities, if the related organization in the normal course of business sells services, capital assets, or supplies to nonrelated organizations, the allowable cost to the provider shall be no more than the price charged to the nonrelated organization provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales of comparable services, or capital assets, or supplies.

B. Lease or rental costs paid to or by a related organization shall be allowed according to part 9553.0060, subpart 7.

C. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation on the asset has been claimed as a facility cost, any gain realized from the sale by the related organization must be transferred to the facility as an offset in the facility's property–related cost category. The amount of gain to be offset shall be determined as in part 9553.0060, subpart 1, item D.

D. A provider that sells, leases, or provides goods or services to a related organization or nonrelated organization shall allocate the cost of the goods or services to the related organization or nonrelated organization and identify the allocations in the facility's cost report. Costs shall be allocated as provided in part 9553.0030, subpart 5.

Subp. 8. **Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than $500. For costs incurred after September 30, 1992, a capital asset listed on the depreciation guidelines shall not be capitalized when the unit cost of that capital asset is $200 or less.

B. Repairs that cost $500 or less may be treated as an expense. Repairs that cost more than $500 and that extend the estimated useful life of the asset by at least two years must be capitalized. Improvements made solely for the purpose of making an asset useful for purposes other than those for which it was originally used or more useful for the same purposes must also be capitalized if the cost exceeds $500. Except for repairs necessitated solely as a result of destructive resident behavior, repairs treated as an expense must be classified in the maintenance operating cost category. Repairs necessitated solely as a result of destructive resident behavior and treated as an expense must be classified as a program operating cost.

C. Construction period interest expense, feasibility studies, and other costs related to the construction period must be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

D. Items, such as land improvements whose maintenance or construction are not the responsibility of the provider, land, and goodwill, are not considered depreciable capital assets.

Subp. 9. **Working capital interest expense.** Working capital interest expense is allowed subject to the requirements of items A and B.

A. Working capital interest expense on working capital debt incurred prior to January 1, 1986, is allowed under 12 MCAR SS 2.05301–2.05315 [Temporary].

B. Working capital interest expense for facilities constructed or established after January 1, 1986, must be limited under subitems (1) and (2).

(1) For the interim and settle–up payment rates the total amount of working capital interest expense allowed must not exceed 2.5 percent of the facility's allowable historical operating costs during the interim reporting period.

(2) For the rate year which follows the settle–up, the total amount of working capital interest expense allowed must not exceed 80 percent of the allowable working capital interest expense as determined in the settle–up cost report.

Subp. 10. **Retirement contributions.** Retirement contributions for each employee must be limited to either a qualified pension plan or a qualified profit sharing plan submitted to, and approved by, the Internal Revenue Service.

Subp. 11. **Therapeutic overnight trips, camping, and vacations for residents.** The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to $300 per year per resident may be allowed for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

Subp. 12. **Preopening costs.** Preopening costs of newly established facilities shall be allowable as in items A to C.

A. Preopening operating costs of newly established facilities which are incurred within 30 days prior to admission of residents must be included in the facility's interim and settle–up cost reports.

B. Preopening costs of newly established facilities which are incurred more than 30 days prior to admission of residents must be capitalized as deferred charges and amortized over a period of not less than 60 consecutive months beginning with the month in which the first resident is admitted for care.

C. Preopening costs do not include property–related costs.

Subp. 13. **Respite care.** The provider must report the costs associated with providing respite care as an allowable cost in the cost report and count respite care days as resident days.

Subp. 14. **Top management compensation.** For establishment of the allowable historical operating cost, annual compensation for top management personnel who perform necessary services shall be limited according to items A to F. Documentation of all necessary service performed must be maintained according to subparts 5 and 6.

A. In no case shall the total compensation reimbursed according to parts 9553.0010 to 9553.0080 to an individual, any portion of whose compensation is reimbursed as top management compensation, exceed $53,820. A person who is included in top management personnel who performs necessary services for the facility or provider group on less than a full–time basis, may receive as allowable compensation no more than a prorated portion of $53,820 based on time worked.

B. If a person compensated for top management functions in a facility or organization is compensated for providing consultant services to that facility or organization, the compensation for consultant services however designated shall be subject to the top management compensation limitation.

C. Top management compensation shall not include, within the limits of items A and B, the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, and governmentally required retirement plans.

D. If the fringe benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level, that portion of the fringe benefits paid to top management personnel which is not provided to all or substantially all of the facility's employees, shall be disallowed.

E. An individual compensated for top management services on a less than full–time basis for a facility or provider group may be compensated for performing other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service except that the total compensation paid to an individual cannot exceed the limit in item A.

F. The percentage difference between the previous two Januarys prior to the beginning of the rate year, the all urban consumer price index (CPI–U) for Minneapolis–Saint Paul, as published by the Bureau of Labor Statistics, new series index (1967=100) shall be used to increase the top management compensation limitation in item A. The consumer price index is incorporated by reference. It is available through the Minitex Interlibrary Loan System. It is subject to frequent change. The adjustment required by this formula shall be effective for the reporting year beginning on January 1, 1986, and each January 1 thereafter.

Subp. 15. **General cost principles.** The commissioner shall use the cost principles in this subpart to determine allowable costs:

A. the cost is ordinary, necessary, and related to resident care;

B. the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction;

C. the cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within 180 days after the close of the reporting year except as provided in subpart 6, item D;

D. the cost effects of transactions that have the effect of circumventing parts 9553.0010 to 9553.0080 are not allowable under the principle that the substance of the transaction must prevail over its form; and

E. costs that are incurred due to management inefficiency, unnecessary care or facilities, agreements not to compete, or activities not commonly accepted in the ICF/MR industry, are not allowable.

Subp. 16. **Pass through of training and habilitation services costs.** Training and habilitation services costs shall be paid as a pass through payment at the lowest rate paid to the training and habilitation services vendor by the county for comparable services at that site under Minnesota Statutes, sections 252.40 to 252.47. The pass through payments for training and habilitation services are paid separately by the commissioner and are not included in the computation of the total payment rate.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 1711; 17 SR 784*

9553.0036 NONALLOWABLE COSTS.

The costs listed in this part are not allowable for purposes of establishing total payment rates. If any of the costs in this part are included in any account of the provider or provider group, they must be identified on the facility's cost report.

A. Contributions, including charitable contributions, and contributions to political action committees or campaigns.

B. Salaries and expenses of a lobbyist.

C. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions of agencies of Minnesota. When the breakdown of dues charged to a facility by an association or professional organization is requested by the commissioner and is not provided, the entire cost shall be disallowed.

D. Advertising designed to encourage potential residents to select a particular facility. This item does not apply to a total expenditure of $2,000 or less for all notices placed in the telephone yellow pages for the purpose of stating the facility's name, location, telephone number, and general information about services in the facility.

E. Assessments levied by the commissioner or the commissioner of the Minnesota Department of Health for uncorrected violations.

F. Purchases or activities not related to resident care such as flowers or gifts for employees or providers, employee parties, and business meals except as in part 9553.0040, subpart 3, item O.

G. Penalties, including interest charged on the penalty, interest charges which result from an overpayment, and bank overdraft or late payment charges.

H. Costs related to the purchase and care of pets which exceed the lesser of $20 per year per licensed bed, or $200 per year per facility.

I. Costs of sponsoring nonresident activities such as athletic teams and beauty contests.

J. Premiums on a life insurance policy for an owner or board member, of a facility, or for an employee of a related organization, except that the premiums shall be allowed if:

(1) the coverage is included in the policy provided for all employees;

(2) the coverage and premium is comparable to that provided for all employees; and

(3) the insured person is an employee of the provider or related organization; or

(4) such a policy is required as a condition of mortgage or loan for the facility and the mortgagee or lending institution is listed as the beneficiary.

K. Personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment.

L. Employee's or owner's membership or other fees for social, fraternal, sports, health, or similar organizations.

M. Training programs for anyone except residents, facility employees, volunteers in the facility, or a resident's family or legal guardians.

N. Training programs to meet the minimum educational requirements of a position, education that leads to a degree, or education that qualifies the employee for a new trade or profession.

O. Bad debts and related bad debt collection fees.

P. Costs of fund raising activities.

Q. Costs of personal need items, such as personal clothing, normally paid for by residents.

R. Costs incurred in providing other than ICF/MR services such as the costs of apartments, day activity center or work activity center costs, regular travel costs to attend day activity or work activity centers, and semi–independent living skills services (SILS).

S. Operating costs for goods and services to the extent that the goods and services are financed by gifts or grants from public funds. A transfer of funds from a local government unit to its governmentally owned facility is not a gift or grant under this item.

T. Telephones, televisions, and radios provided in a resident's room.

U. Costs of agreements not to compete.

V. Costs of services provided to a resident by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

(1) purchase of service fees paid to the vendor or his or her agent who is not an employee of the facility or the compensation of the practitioner who is an employee of the facility;

(2) allocated compensation and related costs of any facility personnel assisting in providing these services; and

(3) allocated cost of any operating or property–related cost for providing these services such as housekeeping, laundry, maintenance, medical records, payroll taxes, space, utilities, equipment, supplies, bookkeeping, secretarial, insurance, and supervisory and administrative staff costs.

If any of the expenses in subitems (1) to (3) are incurred by the provider, these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated by the facility, including any charges by the provider to the vendor.

W. Allowances for uniforms unless required by governmental rules or regulations.

X. Costs of therapeutic overnight trips, camping, or vacations for residents except as in part 9553.0035, subpart 11.

Y. Legal and related expenses for unsuccessful challenges to decisions of governmental agencies.

Z. Fringe benefits or payroll taxes associated with disallowed salary costs.

AA. Costs incurred in providing approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140.

BB. Payments made in lieu of real estate taxes, unless such payments are made according to a legally enforceable, noncancelable, written contract entered into prior to the date upon which parts 9553.0010 to 9553.0080 become effective.

CC. Costs incurred for activities directly related to influencing employees with respect to unionization.

DD. Costs associated with changes in ownership or reorganization of provider entities, including legal fees, accounting fees, administrative costs, travel costs, and the costs of feasibility studies attributed to the negotiation or settlement of a change in ownership or reorganization.

EE. Accruals of vacation and sick leave for employees who are not fully vested.

FF. Costs for pension or profit sharing plans which do not meet the requirements of part 9553.0035, subpart 10.

GG. Costs for which adequate documentation is not maintained or provided as required by parts 9553.0010 to 9553.0080.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298*

9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. **Program operating costs.** The direct costs of program functions must be reported in the program operating cost category. These costs include:

A. salaries of program staff, including the program director, unit coordinators, and nursing staff;

B. supplies;

C. consultant or purchased services;

D. program staff training including the cost of lodging and meals, to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position, or to maintain or update skills needed in performing the employee's present duties;

E. therapeutic overnight trips, camping, or vacations for residents within the limitations in part 9553.0035, subpart 11;

F. membership or other fees for resident participation and staff supervision in social, sports, health, or similar organizations;

G. the operating costs and vehicle insurance expense of a facility owned vehicle except staff compensation costs, or reimbursement for mileage for use of a personal vehicle, to the extent that the vehicle is used to transport residents for program purposes;

H. telephone, television, and radio services provided in areas designated for use by the general resident population, such as lounges and recreation rooms;

I. payroll taxes and fringe benefits allocated in accordance with part 9553.0030, subpart 6;

J. accrued vacation and sick leave; and

K. repairs necessitated solely as a result of destructive resident behavior.

Subp. 2. **Maintenance operating costs.** The costs listed in this subpart are included in the maintenance operating cost category.

A. Direct costs of dietary services including:

(1) salaries of dietary staff;

(2) food;

(3) supplies;

(4) consultant services;

(5) purchased services; and

(6) accrued vacation and sick leave.

B. Direct costs of laundry and linen services include:

(1) salaries of laundry staff;

(2) supplies;

(3) linen and bedding;

(4) purchased services; and

(5) accrued vacation and sick leave.

C. Direct costs of housekeeping services include:

(1) salaries of housekeeping staff;

(2) supplies;

(3) purchased services; and

(4) accrued vacation and sick leave.

D. Direct costs of plant operations and maintenance services include:

(1) salaries of plant operations and maintenance staff;

(2) supplies;

(3) utilities and fuel;

(4) nondepreciable equipment and repairs not subject to capitalization under part 9553.0035, subpart 8, except as in subpart 1, item K;

(5) purchased services;

(6) licensing and permit fees, except as in subpart 5, item F; and

(7) accrued vacation and sick leave.

E. Payroll taxes and fringe benefits allocated in accordance with part 9553.0030, subpart 6.

Subp. 3. **Administrative operating costs.** The costs listed in this subpart are included in the administrative operating cost category:

A. business office functions;

B. travel expenses except as provided in subpart 1, items E and G;

C. motor vehicle operating costs, except as provided in subpart 1, items E and G;

D. telephone and telegraph charges, except as provided in subpart 1, item H;

E. office supplies;

F. insurance except as in subparts 1 and 6;

G. salaries, wages, or fees of top management personnel, accounting and clerical personnel, data processing personnel, receptionists, and other management or administrative personnel;

H. professional fees for services such as legal, accounting, and data processing services;

I. business meetings and seminars;

J. postage;

K. training, including the cost of lodging and meals, for management personnel and other personnel not related to direct resident care if the training either meets the requirements of laws or regulations for keeping an employee's salary, status, or position, or maintains or updates skills needed to perform the employee's present duties;

L. membership fees for associations and professional organizations which are directly related to the operation of the facility;

M. subscriptions to periodicals which are directly related to the operation of the facility;

N. advertising and personnel recruitment costs including help wanted advertising;

O. the costs of meals incurred as a result of required overnight business related travel;

P. security services or security personnel;

Q. management fees of a nonrelated organization;

R. working capital interest expense;

S. indirect costs classified in part 9553.0030, subpart 1, item B;

T. central, affiliated, or corporate office costs excluding the property–related costs of capital assets used exclusively by individual facilities in the provider group as in part 9553.0030, subpart 4, item D. Central, affiliated, or corporate office costs shall be allocated in accordance with part 9553.0030, subpart 4;

U. payroll taxes and fringe benefits allocated in accordance with 9553.0030, subpart 6; and

V. accrued vacation and sick leave.

Subp. 4. **Payroll taxes and fringe benefits.** Only the costs listed in this subpart are to be included in the payroll taxes and fringe benefits cost category. The commissioner shall allocate these costs to other cost categories in accordance with part 9553.0030, subpart 6.

A. the employer's share of the social security withholding tax;

B. state and federal unemployment compensation taxes or costs;

C. group life insurance and disability insurance;

D. group health and dental insurance;

E. workers' compensation insurance;

F. either a pension plan or profit sharing plan as in part 9553.0035, subpart 10; and

G. governmentally required retirement contributions.

Subp. 5. **Property–related costs.** The facility costs listed in this subpart are included in the property–related cost category:

A. allowance for depreciation of capital assets, except land;

B. capital debt interest expenses;

C. rental and lease payments; and

D. payments permitted under part 9553.0036, item BB.

Subp. 6. **Special operating costs.** The facility costs listed in this subpart are included in the special operating cost category:

A. special assessments and real estate taxes;

B. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;

C. real estate insurance;

D. professional liability insurance;

E. the portion of preopening costs amortized as in part 9553.0035, subpart 12, item B;

F. training and habilitation services costs; and

G. physical plant modifications or additional depreciable equipment costs allowed under part 9553.0061.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 1711; 17 SR 784*

9553.0041 GENERAL REPORTING REQUIREMENTS.

Subpart 1. **Required cost reports.** No later than April 30 of each year, the provider shall submit an annual cost report on forms supplied by the commissioner in order to receive medical assistance payments. The reports must cover the reporting year ending December 31, except that for reporting years ending on or after December 31, 1987, a provider operating a facility that is attached to a nursing home that is reimbursed under parts 9549.0010 to 9549.0080 may elect to report the facility's costs and statistical information for the period covered by the nursing home's reporting year. If a certified audit has been prepared, it must be submitted with the cost report. In addition, a provider or provider group which has 48 or more licensed beds shall submit an annual certified audit of its financial records obtained from an independent certified public accountant or licensed public accountant. The examination must be conducted in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants and generally accepted accounting principles. A government owned facility may comply with these auditing requirements by submitting the audit report prepared by the state auditor.

Subp. 2. **Required information.** A complete annual cost report must contain the following items:

A. General facility information and statistical data as requested on the cost report form.

B. Reports of historical operating costs and property related costs with supporting calculations and worksheets as requested on the cost report form.

C. The provider's balance sheet and income statement for each facility prepared in accordance with generally accepted accounting principles unless audited financial statements are required to be submitted according to subpart 1. If audited financial statements are required, the facility must submit a copy of its audited financial statements for the reporting year. The audited financial statements must include a balance sheet, income statement, statement of retained earnings, statement of changes in financial position, notes to the financial statements, and supplemental information, as required of an audit conducted in accordance with generally accepted auditing standards, and the certified or licensed public accountant's opinion. If the financial statements are not sufficiently detailed or the facility's fiscal year is different from the reporting year, the facility shall provide supplemental information that reconciles costs on the financial statements with the cost report.

D. A list of the provider's capital debts and working capital loans outstanding for each facility during the reporting year, the name of the lender, the term of the debt, the interest rate of the debt, interest and principal payments for the current year, and the original amount of each loan.

E. A schedule of the provider's funded depreciation account for each facility.

F. A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner, or a statement that no changes have been made since the last cost report.

If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility must report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed for reimbursement in the facility's cost report must be identified regardless of the proportion of ownership interest.

If a publicly held corporation has an ownership interest of 15 percent or more in the facility, the facility must report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.

G. A list of all related organizations which included costs in the cost report in excess of $1,000 annually, and a list of all facilities in the provider group.

H. Copies of purchase agreements and other documents related to purchase of the physical plant and land, or a signed statement that no changes have been made in the documents which are on file with the department.

I. Copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the commissioner. Lease documents must include information on the historical capital cost of the physical plant and land, and the information listed in item D as paid by the lessor.

J. Complete lapsing depreciation schedules calculated in accordance with part 9553.0060.

K. Charts showing staff assignments classified according to the cost categories in part 9553.0040. The charts must contain the information specified in the cost report form.

L. Documentation of costs included in the payment rate for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140. These costs must be reported on an individual resident basis unless the special needs payment rate was approved for more than one resident.

M. An explanation of all adjustments made by the provider to the cost report and the applicable rule citations.

N. A breakdown of all costs included in the related organization's management fees or central, affiliated, or corporate office costs charged to the provider and the related organization's costs allocable to the facility in accordance with part 9553.0030. The breakdown must contain all costs of items as listed in part 9553.0040, subpart 3 except that related organizations that have a federally approved cost allocation plan which has been documented by the provider, may break down the management fee or central office costs accord-

ing to the approved plan. The supporting schedules must include the related organization's or the central, affiliated, or corporate office income statement; the cost allocated to each facility, related organization, or nonrelated organization; and an explanation of the method of allocation used.

Subp. 3. **Supplemental reports.** In order to substantiate the payment rate, the commissioner may require the provider to provide items A to E:

A. Except as provided in subpart 1, separate, certified audited financial statements, if they have been prepared, for each related organization which include costs in the cost report in excess of $1,000 annually. If a certified audited financial statement is not available, then unaudited financial statements must be submitted for that entity. The commissioner may also require that the financial statements include a balance sheet, income statement, statement of retained earnings, statement of change in financial position, notes to the financial statements, and supplemental information as required of an audit conducted in accordance with generally accepted auditing standards.

B. Copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of equipment, goods, and services.

C. Copies of leases and other documents related to the lease of depreciable equipment, furnishings, and goods. Lease documents include information on the historical capital cost of the equipment, furnishings, and goods, and the information listed in subpart 2, item D as paid by the lessor.

D. Access to federal and state income tax returns for an individual, provider, or provider group having an ownership interest in the facility as specified in subpart 2, item F.

E. Other relevant information required to support a payment rate.

Subp. 4. **Method of accounting.** The accrual method of accounting in accordance with generally accepted accounting principles consistently applied is the only method acceptable for purposes of satisfying reporting requirements. If a government owned facility demonstrates that the use of the accrual method of accounting is not applicable to the facility, and that a cash or modified accrual method of accounting more accurately reports the facility's financial operations, the commissioner shall permit the provider to use a cash or modified accrual method of accounting.

Subp. 5. **Records.** The provider must maintain statistical and accounting records in sufficient detail to support the five most recent annual cost reports submitted to the commissioner.

Subp. 6. **Conflicts.** If conflicts occur between parts 9553.0010 to 9553.0080 and generally accepted accounting principles, then parts 9553.0010 to 9553.0080 shall prevail.

Subp. 7. **Certification of reports.** Required reports must be accompanied by a signed statement attesting to the accuracy of the information submitted on the required reports. The statement must be signed either by the provider or, for a partnership, one of the partners, or, for a corporation, the officer authorized to legally bind the firm. If reports have been prepared by a person other than the above individual, a separate statement signed by the preparer must also be included.

Subp. 8. **Deadlines, extensions, and rejections.** Items A to C govern deadlines, extensions, and rejection of reports.

A. The facility must submit the required annual cost reports to the commissioner by April 30. The annual cost report must cover the reporting year ending on December 31 of each year. A facility that terminates participation in the medical assistance program during a reporting year must submit the required annual cost report covering the period from January 1 of that reporting year to the date of termination. The annual cost report must be submitted within four months after termination.

B. The commissioner may reject any annual cost report filed by a facility that is incomplete or inaccurate or may require supplemental information according to subpart 3. The corrected report or the supplemental information requested must be returned to the commissioner within 20 days of the request or the report must be rejected. The commissioner shall extend this time if the facility submits a written request and if the extension of time will not prevent the commissioner from establishing rates in a timely manner. Except as provided in item C, failure to file the required cost report and other required information or to correct

the form of an incomplete or inaccurate report shall result in the rejection of the cost report and in a reduction of the payment rate as specified in subpart 10. Except as provided in item C, failure to provide the additional information shall also result in a reduction in the payment rate as specified in subpart 10 unless the total payment rate can be calculated by the disallowance of the cost for which the additional information was requested, in which case no rate reduction as specified in subpart 10 shall occur.

C. Except for the copy of the lease agreement, failure to provide the information in subpart 2, item I and subpart 3, item C when the lessor refuses to provide the information shall not result in a reduction in the payment rate as specified in subpart 10 if the lease or rental agreement was arms–length in accordance with part 9553.0060, subpart 7, item B.

Subp. 9. **Effective date of total payment rate.** The commissioner shall provide notice to each facility of its total payment rate by September 1 of each year. The total payment rate is effective from October 1 of that year to September 30 of the following year.

Subp. 10. **Noncompliance.** A facility's failure to comply with reporting requirements subjects the facility to items A to C.

A. If a facility fails to provide reports, documentation, and worksheets required in this part, the commissioner shall reduce the facility's total payment rate to 80 percent of the total payment rate as provided in item B.

B. The reduced total payment rate is effective:

(1) 21 days after a written request for additional information under subpart 8, item B is sent by the commissioner, except when an extension has been granted pursuant to that subpart;

(2) for failure to provide the information required in subpart 1, 2, or 7, on April 30; or 21 days after a written request for the correction or completion of inaccurate reports or financial statements or at the expiration of such further time period as the commissioner may allow under subpart 8, item B.

C. Reinstatement of the total payment rate upon remedy of the failure or inadequacy is retroactive.

Subp. 11. **Audits.** Facility audits are subject to items A to C.

A. The department shall subject reports and supporting documentation to desk and field audits to determine compliance with parts 9553.0010 to 9553.0080. Retroactive adjustments may be made as a result of desk or field audit findings. If the audits reveal inadequacies in facility recordkeeping or accounting practices, the commissioner may require the facility to engage competent professional assistance to correct those inadequacies within 90 days of the written notification by the commissioner so that the field audit may proceed.

B. Field audits may cover the four most recent annual cost reports for which desk audits have been completed and payment rates have been established. The field audit must be an independent review of the facility's cost report. All transactions, invoices, or other documents that support or relate to the costs claimed on the annual cost reports are subject to review by the field auditor.

C. A field audit shall be completed within 90 days after commencement for a provider with a single facility or within 180 days for a provider group.

Subp. 12. **Suspension of audit.** The commissioner may suspend a field audit for good cause or if the provider's books and records are unavailable or unauditable. The commissioner shall notify the provider in writing when a field audit is suspended. If the field audit is suspended, the commissioner shall indicate in writing the date the field audit will again commence. If the field audit is suspended because the provider's books and records are unavailable or unauditable, the commissioner shall follow the procedures in subpart 11, item A. The deadline for completion of the field audit must be extended by the length of the suspension.

Subp. 13. **Adjustments.** Adjustments to the total payment rate may be made as a result of desk or field audit findings or subject to part 9553.0050, subpart 3. Desk or field audit adjustments are made according to items A to G.

A. Field audit adjustments must be made only if the adjustment would result in at least a five cent per resident day or $2,000 cost change, whichever is less.

B. Retroactive adjustments to the facility's total payment rate must be made as a result of desk and field audit findings, except that field audit adjustments shall be limited by the restrictions in item A.

C. If the adjustment results in a payment from the provider, payment must be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider must be made within 120 days after the date of the written notice. Interest charges must be assessed on balances outstanding after 120 days of written notification to the provider.

D. If an appeal has been filed under part 9553.0080, any payments owed by the provider or by the commissioner must be made within 120 days of the written notification to the provider of the commissioner's ruling on the appeal. Interest charges must be assessed on balances outstanding after 120 days of written notification of the commissioner's ruling on the appeal.

E. The annual interest rate charged in items C and D must be the rate charged by the commissioner of the Minnesota Department of Revenue for late payment of taxes, which is in effect on the 121st day after the written notification.

F. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in part 9553.0070, subpart 2.

G. Adjustments to the payment rate are limited to the four complete reporting years preceding the date on which an audit commences. Changes in the total payment rate which result from desk or field audit adjustments to cost reports for reporting years beyond the four most recent annual cost reports, must be made to the four most recent annual cost reports, the current cost report, and future cost reports to the extent that those adjustments affect the total payment rate established by those reporting years.

Subp. 14. **Amended reports.** Amendments to previously filed annual cost reports are governed by items A to E.

A. Facilities may file amendments to previously filed cost reports when errors or omissions in the annual cost report are discovered which would result in at least a five cent per resident day or $2,000 adjustment, whichever is less for each reporting year.

B. The commissioner shall make retroactive adjustments to the total payment rate of an individual facility if the amendment is filed within 14 months of the original cost report to be amended. An error or omission for purposes of this item does not include a facility's determination that a prior choice between alternative methods of reporting costs permitted under the rules was not advantageous and should be changed. Errors or omissions which do not meet the threshold amount required for amended cost reports, or errors or omissions discovered after the 14–month time limitation specified herein, may be claimed at the time of the field audit.

C. Providers must not amend a previously filed cost report for the purpose of removing costs of services for which the facility seeks separate billing.

D. The amended cost report must consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes must be calculated according to parts 9553.0010 to 9553.0080.

E. Providers can file no more than two amendments to a previously filed cost report in which they have found errors or omissions.

Subp. 15. **False reports.** If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

A. immediately adjust the facility's payment rate to recover the entire overpayment;

B. terminate the commissioner's agreement with the provider; and/or

C. prosecute under applicable state or federal laws.

Subp. 16. **Reporting real estate taxes, special assessments, and insurance.** The facility shall submit a copy of its statement of real estate taxes payable for the calendar year in which the rate year begins and a copy of the invoices for the real estate insurance and professional liability insurance for coverage during the rate year by June 30 each year. Except as

provided in this subpart, the commissioner shall disallow the costs of real estate taxes, special assessments, real estate insurance, and professional liability insurance, if the documentation is not submitted by July 31. The disallowance shall remain in effect until the facility provides the documentation and amends the cost report under subpart 14. The historical operating cost for the special operating costs during the reporting year must be shown on the cost report.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 12 SR 2104*

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical operating cost per diem.** The commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical operating cost per diem shall be established according to items A to F.

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to (5).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

(a) The commissioner shall classify each facility into one of two groups based on the number of licensed beds reported on the facility's cost report. Group one shall include those facilities with more than 20 licensed beds. Group two shall include those facilities with 20 or fewer licensed beds.

(b) The commissioner shall determine the administrative allowable historical operating cost per licensed bed for each facility within the two groups in unit (a) by dividing the administrative allowable historical operating cost in each facility by the number of licensed beds in each facility.

(c) The commissioner shall establish the administrative cost per licensed bed limit by multiplying the median of the array for each group of administrative allowable historical operating costs per licensed bed by 105 percent.

(d) For the rate year beginning October 1, 1986, the cost of a certified audit must not be included in the computation of the administrative allowable historical operating cost or its limit. The facility shall report to the commissioner by July 31, 1986, the greater of the cost incurred for a certified audit for either the reporting year ended December 31, 1985, or a fiscal year ending during the 1985 calendar year.

The commissioner shall determine the average cost of a certified audit per licensed bed by totaling the cost of each certified audit submitted to the commissioner by July 31, 1986, and dividing the sum by the total number of licensed beds in facilities which have submitted costs for a certified audit. The maximum allowable cost for a certified audit shall be the lesser of the facility's reported cost or 115 percent of the average cost of a certified audit per licensed bed multiplied by the number of licensed beds in the facility.

(e) For the rate years beginning on October 1, 1986, and October 1, 1987, the maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount in unit (c) multiplied by the facility's licensed beds.

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) The administrative cost per licensed bed limit and the average cost of a certified audit determined in this subitem must not be adjusted as a result of field audits, appeals, and amendments.

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f).

(3) For the rate year beginning October 1, 1986, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

(a) The allowable historical operating costs for each of the program, maintenance, special, and administrative operating cost categories including the portion of payroll taxes and fringe benefits in unit (b) incurred during the reporting year must be divided by the total allowable historical operating costs incurred during the reporting year.

(b) The allowable historical operating costs for payroll taxes and fringe benefits shall be allocated to the program, maintenance, and administrative operating cost categories in accordance with part 9553.0030, subpart 6.

(c) The program, maintenance, special, and administrative operating cost payment rates shall be determined by multiplying each total operating cost payment rate in effect during the reporting year by the program, maintenance, special, and administrative ratios determined in unit (a).

For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E.

(5) The limits in subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

B. The program allowable historical operating cost per diem shall be computed by dividing the program allowable historical operating costs in that cost category incurred during the reporting year by the greater of resident days or 85 percent of capacity days.

C. The maintenance allowable historical operating cost per diem shall be computed by dividing the maintenance allowable historical operating costs in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

D. The administrative allowable historical operating cost per diem shall be computed by dividing the administrative allowable historical operating cost in that cost category

incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

E. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem shall be computed by dividing the allowable certified audit cost as determined in item A, subitem (1), unit (d) by the greater of resident days or 85 percent of capacity days.

F. If a facility's total allowable historical operating cost per diem or allowable historical operating cost per diems in any of the operating cost categories is greater than the respective operating cost payment rate established for the corresponding rate year, there must be no retroactive cost settlement, unless the difference is due to:

(1) a field audit adjustment as in part 9553.0041, subpart 13; or

(2) a settle–up payment rate computed as in part 9553.0075.

Subp. 2. **Establishment of total operating cost payment rate.** The total operating cost payment rate shall be established according to items A to F.

A. For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI–U) for Minneapolis–Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI–U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f).

B. The program operating cost payment rate shall be the adjusted program operating cost per diem computed in item A except as provided in subpart 3.

C. The maintenance operating cost payment rate shall be the adjusted maintenance operating cost per diem computed in item A.

D. The administrative operating cost payment rate shall be the adjusted administrative operating cost per diem computed in item A.

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of $2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. The total operating cost payment rate shall be the sum of items B to E. For the rate year beginning October 1, 1986, the total operating cost payment rate shall be the sum of items B to E and the allowable certified audit cost per diem as determined in subpart 1, item E.

Subp. 3. **One time adjustment to program operating cost payment rate.** For the purposes of this subpart, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one time adjustment shall be determined according to items A to H.

A. A facility is eligible for a one time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The commissioner or the commissioner of health has issued a correction order to the facility under parts 9525.0215 to 9525.0355 or 4665.0100 to 4665.9900.

(2) The federal government has issued a deficiency order under Code of Federal Regulations, title 42, part 442, as amended through October 1, 1991, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual program plans.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under parts 9525.0004 to 9525.0036 and Minnesota Statutes, section 252.28.

(4) The commissioner has approved, under parts 9525.0004 to 9525.0036 and Minnesota Statutes, section 252.28, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section 483.470(j), as amended through October 1, 1991. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

B. To qualify for a one time adjustment the facility must document that:

(1) the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

(2) the deficiency or need cannot be corrected or met through a special needs rate exception as provided in parts 9510.1020 to 9510.1140; and

(3) the provisions in items C to H are met.

C. The facility must submit to the commissioner a written request for the one time adjustment to the program operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate as provided in parts 9510.1020 to 9510.1140;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions during the rate year covering the date of the deficiency order or need determination, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident program plans under payment rates established by current or prior reimbursement rules.

D. The commissioner shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one time adjustment to the program operating cost payment rate in accordance with subitems (1) to (5).

(1) The necessary and reasonable costs of units (a) to (f) shall be determined by the commissioner:

(a) the salary and related fringe benefits and payroll taxes for required additional program staff;

(b) program supplies;

(c) up to $1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the $1,500 equipment limit if the commissioner determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The commissioner's determination shall be final;

(d) program consultants;

(e) repairs to property damaged by the residents; and

(f) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item C shall be subtracted from the amount computed in subitem (2).

(4) For one time adjustments approved after September 30, 1992, the subtraction described in subitem (3) shall in no event extend beyond one year.

(5) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

E. If the amount in item D, is greater than zero, the commissioner shall allow a one time adjustment to the facility's total payment rate equal to that amount. The one time adjustment shall be effective on the first day of the month following the commissioner's determination unless the facility is eligible for a one time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the one time adjustment shall be effective on the first day of the month in which any person identified in the plan approved by the commissioner is admitted to the facility.

F. The one time adjustment to the facility's total payment rate shall remain in effect for at least a 21–month period. At the end of the first full reporting year which occurs during the one time adjustment period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item C, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13, and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item C, subitem (4), and the actual costs incurred during the one time adjustment period ending with the 12–month period which includes a full reporting year are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item C, subitem (4), incurred during the period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional costs identified in item D, subitem (1), shall be allowable.

H. The commissioner shall authorize payments under this subpart only once in a three year period for a facility.

Statutory Authority: *MS s 256B.092; 256B.501*

History: *10 SR 1298; 11 SR 2408; 12 SR 1711; 12 SR 2104; 17 SR 784; 18 SR 2244*

9553.0051 DETERMINATION OF THE SPECIAL OPERATING COST PAYMENT RATE.

The total allowable special operating costs in part 9553.0040, subpart 6, as adjusted by part 9553.0041, subpart 16, must be divided by the greater of resident days or 85 percent of licensed capacity days to compute the special operating cost payment rate.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298*

9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Subpart 1. **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

(1) The historical capital cost of the capital assets as limited by item C is the basis for calculating depreciation.

(2) For donations between a provider and a related organization, the net book value of the capital asset to the donor must be the basis for calculating depreciation for the donee. A donated capital asset is one acquired by the facility without making any payment in the form of cash, property, or services.

(3) Depreciation is not allowed on a capital asset or portion of a capital asset purchased through federal, state, or local appropriations or grants unless the appropriation or grant is required to be repaid through the revenues of the facility.

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to part 9553.0035, subpart 8, items A to D, subject to the limitations in subitem (6) and item C, and must be depreciated according to this subpart. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

(5) When a facility first enters the medical assistance program, the accumulated depreciation of any used capital assets owned by the facility prior to entering the medical assistance program must be calculated by using the useful life schedule in item B starting from the later of the date of completion of construction, or the time of purchase by the current owner. However, the amount of accumulated depreciation must not exceed 50 percent of the historical capital cost of the capital asset.

(6) The historical capital cost of the capital assets and the accumulated depreciation of those capital assets must not be adjusted for either a full or partial change of ownership, reorganization of provider entities, or for any costs associated with replacing existing capital assets as a result of a casualty loss.

(7) In no instance shall the total accumulated depreciation allowance paid for a capital asset exceed the historical cost of that capital asset.

B. The straight line method of depreciation must be used to compute the facility's depreciation for each capital asset. The useful life of a capital asset must be determined in accordance with subitems (1) to (3), except as provided in part 9553.0030, subpart 4, item E.

(1) The useful life of a new capital asset must be calculated as follows:

(a) physical plant and other buildings must be depreciated over 35 years;

(b) physical plant improvements and additions must be depreciated over the greater of the remaining useful life in unit (a) or 15 years;

(c) land improvements must be depreciated over 20 years;

(d) depreciable equipment except vehicles must be depreciated over five years; and

(e) vehicles must be depreciated over four years.

(2) The useful life of a used capital asset must be assigned by the provider, based on the physical condition of the used capital asset. The useful life assigned to the used

capital asset must be the greater of the remaining useful life of the capital asset shown in subitem (1) for this type of capital asset, or one–half of the useful life shown in subitem (1) for that type of capital asset.

(3) The useful life of a leasehold improvement must be determined in accordance with subitem (1) or (2) for that type of capital asset.

C. The facility's historical capital costs shall be limited by subitems (1) to (5).

(1) The facility's total historical capital costs of capital assets, as determined in item A must not exceed the maximum limits established annually per bed for licensed Class A beds and for licensed Class B beds, as follows:

Calendar Year Limits	Class A	Class B
Prior to 1974	$11,000	
1974	13,000	
1975	14,820	
1976	15,413	
1977	16,406	
1978	18,109	
1979	20,010	
1980	25,194	$29,452
1981	28,016	32,751
1982	29,165	34,094
1983	29,952	35,015
1984	30,012	35,085
1985	31,723	37,085

(2) The limitations in subitem (1) shall be adjusted on January 1 each year by the percentage increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the previous two Octobers. The construction index is incorporated by reference. It is available through the Minitex Interlibrary Loan System. Facilities entering the medical assistance program shall be subject to the limitation in effect at the time the facility entered the program.

(3) The depreciation on additions, replacements, or newly acquired depreciable equipment shall be allowed without regard to the limits in this item, if the acquisitions were required subsequent to the facility's certification in order to maintain compliance with the Life Safety Code, as referenced in Code of Federal Regulations, title 42, sections 442.507 to 442.509, as amended through December 31, 1982 or as subsequently amended, or with fire safety orders issued by an appropriate authority.

(4) After the facility's first three full reporting years and every three full reporting years thereafter, the facility's investment per bed limitation established according to subitems (1) to (3) shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous three full reporting years. For purposes of this subitem, a full reporting year must contain at least 12 months. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment in historical capital costs of capital assets shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

(5) For purposes of this item, the facility's total historical capital cost of capital assets must not include the facility's allowable portion of capital assets of the central, affiliated, or corporate office whose costs are allocated to the facility's administrative cost category in accordance with part 9553.0030, subpart 4, item D.

D. Gains and losses on the disposal of capital assets must be included in the computation of allowable costs. A gain on the sale or abandonment of a facility's capital assets must be offset against the property related cost category to the extent that the gain resulted from depreciation expense claimed for reimbursement under parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301–2.05315 [Temporary], or parts 9510.0500 to 9510.0890. Gains or losses on trade–ins shall be reflected in the historical capital cost of the acquired capital asset.

Claims for losses are limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

E. Except as provided in subpart 7, facilities must fund depreciation according to subitems (1) to (8).

(1) The annual deposit to the funded depreciation account must be determined according to the following formula: (allowable depreciation – required annual principal payment on the capital debt) multiplied by (1 – the percentage of equity determined in subpart 5). The required annual deposit to the funded depreciation account and any amount determined in subpart 5, item F, which is not used to reduce capital debts or working capital loans must be deposited to the account no later than the end of the reporting year.

(2) Funded depreciation must be invested in liquid marketable investments such as savings or money market accounts, certificates of deposit, and United States Treasury bills.

(3) Funded depreciation and interest income earned on funded depreciation must be used for capital debt reduction or for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(4) An amount not to exceed 50 percent of the cumulative total amount of allowable depreciation required to be deposited in the funded depreciation account and the interest income earned on funded depreciation may be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility. If the amount in the funded depreciation account after a withdrawal is equal to or greater than the balance of capital debt remaining at the end of the prior reporting year, that excess amount may also be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(5) A separate funded depreciation account must be maintained for each facility.

(6) Income earned on funds withdrawn for purposes other than those allowed in subitem (3) or in excess of the percent allowed in subitem (4) must be offset against the facility's property related costs. These withdrawals must be assumed to be on a first in, first out basis.

(7) Providers who do not deposit the required amount of depreciation in the funded depreciation account by the end of the reporting year will have their allowable capital debt interest expense for the facility reduced. The reduction must be calculated by assuming that the portion of funded depreciation not deposited in the funded depreciation account during the reporting year was applied to reduce capital debts in accordance with subpart 5, item C.

(8) Funds deposited to meet the required Depreciation Reserve of the Minnesota Housing Finance Agency fulfill the requirements of this item. Amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency or other similar accounts are not considered funded depreciation. Facilities financed by the Minnesota Housing Finance Agency must submit a copy of a statement breaking out the interest income according to the type of deposit.

Subp. 2. **Limitations on interest rates.** The commissioner shall limit interest rates according to items A to C.

A. Except as provided in item B, the effective interest rate of each allowable capital debt, including points, financing charges, and amortization of bond premiums or discounts, entered into after December 31, 1985, is limited to the lesser of subitems (1), (2), and (4) for all capital debt except motor vehicles. The limitations on motor vehicle capital debt is the lesser of subitems (1), (3), and (4). The limits are:

(1) the effective interest rate on the capital debt;

(2) a rate 1.5 percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation as published in the Wall Street Journal and in effect on the first day of the month in which the capital debt is incurred;

(3) a rate three percentage points above the prime rate as published in the Minneapolis Star and Tribune and in effect on the first day of the month in which the capital debt is incurred; or

(4) 16 percent.

B. Variable or adjustable interest rates for allowable capital debts are allowed subject to the limits in item A. For each allowable capital debt with a variable or adjustable interest rate, the effective interest rate must be computed by dividing the interest expense including points, financing charges, and amortization of bond premiums or discounts for the reporting year by the average allowable capital debt. The average allowable capital debt shall be computed as in subpart 3, item G, subitem (4).

C. The effective interest rate for capital debts incurred before January 1, 1984, is allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest rate is not in excess of what the borrower would have had to pay in an arms–length transaction in the market in which the capital debt was incurred. For rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is subject to the limit in item A, subitem (4), unless the refinancing of the capital debt is prohibited by the original terms of the agreement with the lender.

Subp. 3. **Allowable interest expense.** Allowable capital debt interest expense shall be determined in accordance with items A to J.

A. Except as in subpart 1, item E, subitem (7), interest income earned on the required funded depreciation shall not be deducted from capital debt interest expense and working capital interest expense. Interest income earned on amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency or other similar accounts and which is available during the reporting year to the provider or provider group shall be deducted from capital debt interest expense. Any other interest income shall not be deducted from capital debt interest expense. Except for interest income earned on the required funded depreciation, interest income available during the reporting year to the provider or provider group shall be deducted from the working capital interest expense.

B. All interest expense for capital debts entered into prior to January 1, 1984, shall be allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest expense is not in excess of what the borrower would have had to pay in an arms–length transaction, except that for rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is allowed subject to subpart 2, item A, subitem (4).

C. A facility which has a restricted fund must use its restricted funds to purchase or replace capital assets to the extent of the cost of those capital assets before it borrows funds for the purchase or replacement of those capital assets. For purposes of this subpart, a restricted fund is a fund whose use is restricted by the donor, the nonprofit facility's board, or any other nonrelated organization, to the purchase or replacement of capital assets.

D. Construction period interest expense must be capitalized as a part of the cost of the physical plant. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients, except that the period of construction cannot extend beyond the date on which the project is complete. A project is complete when a certificate of occupancy is issued or, if a certificate of occupancy is not required, when the project is available for use.

E. Interest expense for capital debts entered into after December 31, 1983, shall be allowed for the portion of the capital debt which together with all other outstanding capital debts does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations in item H and subpart 1, item C.

F. Interest expense for capital debts on capital assets acquired, leased, constructed, or established after December 31, 1983, shall be allowable only for the portion of the capital debt which does not exceed 80 percent of the historical capital cost of the capital asset including points, financing charges, and bond premiums or discounts subject to the limitations in item H and subpart 1, item C.

G. Changes in interest expense, except increases in interest expense due to refinancing of existing capital debts, or changes in ownership, shall be allowed in the calculation of the total payment rate for the rate year following the reporting year in which the cost was incurred. Changes in interest expense due to refinancing of existing capital debts, changes in ownership, or reorganization of provider entities, shall be subject to subitems (1) to (4).

(1) Increases in interest expense due to changes in ownership, reorganization of provider entity, or the refinancing of a capital debt, except for refinancing of a capital debt allowed under subitems (2) to (4), are not allowable costs.

(2) Increases in interest expense due to refinancing of a construction capital debt for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital debt which does not exceed the limitation in item F. The interest rate on the refinanced construction capital debt shall be limited under subpart 2.

(3) Increases in interest expense which result from refinancing of a capital debt with a balloon payment shall be allowed according to units (a) to (c).

(a) The interest rate on the refinanced debt shall be limited under subpart 2, item A.

(b) The refinanced capital debt shall not exceed the balloon payment, except to the extent of refinancing costs such as points, origination fees, or title search.

(c) The term of the refinanced capital debt shall not exceed the term of the original debt computed as though the balloon payment did not exist. If the term of the original debt does not extend beyond the date of the final balloon payment, the term of refinanced capital debt shall not exceed 30 years including the term of the original capital debt.

(4) Increases in interest expense for a variable or adjustable rate capital debt are allowable if the effective interest rate does not exceed the limits in subpart 2, item A, subitem (4). For each variable or adjustable rate capital debt, the effective interest rate shall be computed by dividing the interest expense including points, finance charges, and amortization of bond premiums and discounts, for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital debt shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital debt which has a zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.

H. For purposes of parts 9553.0010 to 9553.0080, the cost of land purchased prior to January 1, 1984, shall be limited according to laws and rules effective on December 31, 1983. The cost of land purchased on or after January 1, 1984, shall be limited to $3,000 per licensed bed.

I. Interest expense incurred as a result of a capital debt or working capital loan between related organizations shall not be an allowable cost, except as in item B.

J. Except as provided in item D, capital debt related financing charges including points, origination fees, and legal fees shall be amortized over the term of the capital debt.

Subp. 4. **Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the facility by the number of days in the facility's reporting year. For rate years beginning on or after October 1, 1988, a facility that has reduced its licensed bed capacity after January 1, 1988, may, for the purpose of computing the property related payment rate under this subpart, establish its capacity days for each rate year following the licensure reduction based on the number of beds licensed on the previous August 1, provided that the commissioner is notified of the change by August 4. The notification must include a copy of the delicensure request that has been submitted to the commissioner of health.

B. The commissioner shall compute the allowable property related costs by reviewing and adjusting the facility's property related costs incurred during the reporting year by applying parts 9553.0010 to 9553.0080. The facility's property related per diem shall be determined by dividing its allowable property related costs by 96 percent of the capacity days. For facilities with 15 or fewer licensed beds, the commissioner shall use the lesser of 96 percent of licensed capacity days or resident days, except that in no case shall resident days be less than 85 percent of licensed capacity days.

C. The facility's property related payment rate shall be determined by adding the amount in item B, and the capital debt reduction allowance in subpart 5, or the allowance in subpart 7, item F.

Subp. 5. **Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G.

A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined according to the following table:

Percentage Of Equity In Capital Assets Used By The Facility	Total Capital Debt Reduction Allowance Per Resident Day (In Dollars)	Amount Which Must Be Applied To Reduce Capital Debt (In Dollars)
Less than 20.01	.50	.40
20.01 to 40.00	.50	0
40.01 to 60.00	.70	0
60.01 to 80.00	.90	0
80.01 to 100.00	1.10	0

B. Except as provided in subpart 7, item F, the provider's percentage of equity in the facility shall be determined by dividing equity by total allowable historical capital cost of capital assets.

C. Each reporting year, the provider shall reduce the capital debt at the end of the reporting year by an amount equal to the portion of the capital debt reduction allowances paid during the reporting year which must be applied to reduce capital debt multiplied by the prorated resident days corresponding to each capital debt reduction allowance paid during the reporting year.

D. The amount of reduction of capital debt computed in item A, must be in addition to the normal required principal payments on the capital debt to be reduced.

E. The amount of reduction of capital debt computed in item C must be applied first to reduce the principal on the allowable portion of any capital debt on which the provider is only required to pay interest expense. The remaining portion of the amount shall be applied to reduce other allowable capital debt starting with the capital debt which had the highest amount of interest expense during the reporting year.

F. If prepayment of a capital debt is prohibited by the funding source and the provider does not have any other capital debts, the portion of the capital debt reduction allowance which must be applied to reduce capital debt shall be applied first to the reduction of any working capital loans; the balance shall be deposited in the funded depreciation account. If prepayment of the capital debt results in the imposition of a prepayment penalty by the funding source, a portion of the capital debt reduction allowance which must be applied to reduce capital debt may be used to pay that penalty and the remainder may be used to reduce capital debt or the entire portion of the capital debt reduction allowance to be used to reduce capital debt may be deposited in the funded depreciation account.

G. For purposes of determining the provider's property related payment rate for the facility, only capital debt interest expense resulting from allowable capital debt reduced in accordance with items C to F shall be allowed.

Subp. 6. **Energy conservation incentive.** The commissioner shall approve requests for exceptions to subpart 3, item F, and part 9553.0035, subpart 8, for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in Minnesota, or by an auditor certified under part 7635.0130 to do energy audits. The cost of the energy audit is an allowable operating cost and must be classified in the plant operations and maintenance cost category. Energy conservation measures identified in the energy audit that:

A. have a payback period equal to or less than 36 months and a total cost not exceeding $1 per resident day shall be exempt from subpart 3, item F and part 9553.0035, subpart 8; or

B. have a payback period greater than 36 months or have a total cost in excess of $1 per resident day shall be exempt from subpart 3, item F.

Subp. 7. **Reimbursement of lease or rental expense.** The provider or provider group's lease or rental costs shall be determined according to items A to H.

A. Lease or rental costs of depreciable equipment shall be allowed if:

(1) the lease or rental agreement is arms–length; and

(2) the lease or rental cost is equal to or less than the cost of purchasing that piece of depreciable equipment. For purposes of this subitem, the cost of purchasing the piece of depreciable equipment must be determined according to subparts 1 to 4 and item E; or

(3) the arms–length lease or rental agreement for the piece of depreciable equipment covers a period of 60 days or less annually.

B. Leases or rental agreements shall be considered arms–length transactions unless the lease or rental agreement:

(1) results from sale and lease–back arrangements;

(2) results from a lease with option to buy at less than anticipated value;

(3) is paid to a related organization; or

(4) for other reasons is required to be capitalized in accordance with generally accepted accounting principles.

C. The costs of a lease or rental agreement for a facility's physical plant shall be subject to the following limitations:

(1) Lease or rental costs which are not arms–length leases as defined in item B shall be disallowed.

(2) Arms–length leases or rental costs shall be allowed subject to the limitations in item E.

(3) Leases or rental costs incurred under agreements entered into on or before December 31, 1983, are allowable under rules and regulations in effect on December 31, 1983, subject to the conditions in item B and the limitations in item E.

(4) Increases in lease or rental costs resulting from the renewal, renegotiation, or extension of a lease or rental agreement in subitem (3) are allowable to the extent that the facility's property related payment rate does not exceed the average property related payment rate of all facilities in the state.

D. For nonarms–length lease or rental costs disallowed under item C, subitem (1) or (3), the provider shall receive in lieu of the lease or rental costs for the facility's physical plant the applicable depreciation, interest, and other reasonable property related costs incurred by the lessor, such as real estate taxes. Depreciation and interest shall be established in accordance with subparts 1 to 5, and shall be based on the lessor's historical capital cost of the capital assets and historical capital debt.

E. The present value of the lease or rental payments allowed in item A, subitem (2) and item C, subitems (2), (3), and (4) together with the historical capital cost of all other capital assets used by the facility shall not exceed the limitations in subpart 1, item C; and subpart 3, item H. The present value of the lease or rental payments must be calculated exclusive of real estate taxes and other costs assumed by the lessor. The interest rate used in calculating the present value of the lease or rental payments shall be the lessor's interest rate subject to the limits in subpart 2. If the lessor's interest rate is not provided by the lessor, the commissioner shall use the interest rate limit established by the rule in effect on the date the lease or rental agreement became effective.

F. Providers with physical plant lease or rental costs disallowed under item C, subitem (1) if such a disallowance was the result of a less than arms–length agreement under item B, subitem (3) may receive the capital debt reduction allowance as in subpart 5 except that for purposes of computing the percentage of equity in subpart 5, the lessor and the lessee's historical capital costs of capital assets in the facility and the related historical capital debt must be used.

G. Facilities which lease capital assets from related organizations must fund depreciation in accordance with subpart 1, item E.

H. Parts 9553.0010 to 9553.0080 shall be used to determine the allowable property related cost for facilities which have lease or rental agreements and subsequently purchase the same capital asset. In no case shall the allowed property related costs on the purchased capital asset exceed the annual cost allowed for the lease or rental agreement prior to the sale under parts 9553.0010 to 9553.0080.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 11 SR 2408; 12 SR 2104; 17 SR 784*

9553.0061 LIFE SAFETY CODE ADJUSTMENT.

Subpart 1. **Determination of adjustment.** Adjustments to the special operating cost payment rate for actions taken to comply with the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, shall be determined under subparts 2 to 9.

Subp. 2. **Conditions.** The commissioner shall allow an adjustment to a facility's special operating cost payment rate when the state fire marshal has issued a statement of deficiencies to the facility under the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986, if the criteria in items A to D are met.

A. The physical plant for which the statement of deficiencies was issued has 16 or fewer licensed beds.

B. The commissioner has determined that the most programmatically sound and cost effective means of correcting the deficiencies is to modify the physical plant or add depreciable equipment.

C. The cost of the physical plant modification or additional depreciable equipment cannot be covered by reallocating facility staff and costs including funds accumulated in the facility's funded depreciation account and other savings or investment accounts of the provider.

D. The provider has complied with the requirements in subparts 3 and 4.

Subp. 3. **Request for life safety code adjustment.** The provider shall submit to the commissioner a written request for a life safety code adjustment to the special operating cost payment rate. The request must include:

A. a copy of the state fire marshal's statement of deficiencies;

B. a copy of the facility's plan of correction approved by the state fire marshal; and

C. a description of the type of physical plant modifications or additional depreciable equipment required to meet the approved plan of correction including the estimated cost based on bids developed in accordance with subpart 4.

Subp. 4. **Bid requirements.** Bids must be obtained from nonrelated organizations. Only the costs of items required to correct the deficiencies may be included in a bid. Each bid must include:

A. a detailed description of the physical plant modifications needed to correct the deficiencies;

B. the cost of any depreciable equipment needed to correct the deficiencies;

C. the cost of materials and labor; and

D. the name, address, and phone number of the bidder.

If the commissioner determines that the bid submitted by the provider is excessive or includes items not required to correct the deficiencies, the commissioner may require a second bid and may recommend another organization that must supply the bid. This subpart shall not apply to a facility that has implemented a plan of correction before July 6, 1987.

Subp. 5. **Evaluation of documents submitted.** The commissioner shall evaluate the documents submitted under subpart 3. If the commissioner determines that the plan of correction is not programmatically sound or cost effective, the commissioner may require the facility to submit an alternative plan of correction to the state fire marshal for approval. If the state fire marshal approves the alternative plan of correction, the commissioner may require the facility to resubmit bids under subpart 4.

Subp. 6. **Computation of life safety code adjustment.** If the request meets the criteria in subparts 2 to 5, the commissioner shall compute the life safety code adjustment to the special operating cost payment rate under items A to E.

A. Upon completion of the physical plant modifications and purchase of the additional depreciable equipment, the facility shall submit copies of invoices showing the total cost of the physical plant modifications and additional depreciable equipment to the commissioner.

B. The commissioner shall allow the lesser of the amount in item A or the final bid approved by the commissioner. The amount allowed shall be reduced by 75 percent of the funded depreciation that may be withdrawn for purchase or replacement of capital assets or payment of capitalized repairs as determined in part 9553.0060, subpart 1, item E, subitem (4), and other savings or investment accounts of the provider or the provider group.

C. If a facility is financed by the Minnesota Housing Finance Agency, the facility must use amounts deposited in the development cost escrow account required by the Minnesota Housing Finance Agency to purchase physical plant modifications or additional depreciable equipment allowed under this part. The amount withdrawn from the development cost escrow account must be reimbursed to the facility as provided in subpart 7. The facility must use the reimbursement to replace the amount withdrawn from the development cost escrow account as required by the Minnesota Housing Finance Agency.

D. If the amount determined in item B is less than $500 per licensed bed, the amount must be divided by the resident days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than $500 per licensed bed, the amount in excess of $500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of $500 per licensed bed must be divided by the resident days from the cost report that was used to set the facility's total payment rate for the rate year following the rate year in which the statement of deficiencies was issued.

Subp. 7. **Adjustment of special operating cost payment rate.** If the amount in subpart 6, item B or C, is greater than zero, the commissioner shall adjust the facility's special operating cost payment rate under items A and B.

A. The per diem amount in subpart 6, item D, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item D, and will be effective on the first day of that rate year.

B. The per diem amount in subpart 6, item E, must be added to the facility's special operating cost payment rate for the rate year identified in subpart 6, item E, and shall be effective on the first day of that rate year.

Subp. 8. **Reimbursement limits.** If a life safety code adjustment to the special operating cost payment rate is allowed under this part, the cost of the physical plant modifications and additional depreciable equipment allowed in subpart 6, item B, must not be claimed for reimbursement under other provisions of parts 9553.0010 to 9553.0080. The cost of the physical plant modifications and additional depreciable equipment not allowed under subpart 6, item B, shall be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

Subp. 9. **Changes in one time adjustment.** If a facility has been given a one time adjustment under part 9553.0050, subpart 3, and the commissioner determines under subpart 2, item A, that the life safety code deficiency should be corrected under this part, the facility's one time adjustment or the portion of that one time adjustment that related to the life safety code deficiency shall be subtracted from the facility's total payment rate on the date the life safety code adjustment under this part is effective. If more than 50 percent of the one time adjustment is subtracted from the facility's total payment rate under this subpart, the facility may apply for another one time adjustment within the three year period established in part 9553.0050, subpart 3, item G.

Statutory Authority: *MS s 256B.501*

History: *11 SR 2408*

9553.0070 DETERMINATION OF TOTAL PAYMENT RATE.

Subpart 1. **Total payment rate.** The total payment rate must be the sum of the total operating cost payment rate, the special operating cost payment rate, and the property related payment rate.

Subp. 2. **Limitations to total payment rate.** The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. This limit does not apply to payments made by the commissioner for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140.

Subp. 3. **Respite care payment rate.** Rates charged for respite care must be identified separately. The respite care payment rate may be different than the total payment rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same period.

Subp. 4. **Adjustment to total payment rate for phase–in of common reporting year.** A facility whose total payment rate established for the rate year beginning during calendar year 1985, will be in effect for a period greater than 12 months due to the phase–in of a common reporting year, shall receive for the months over 12 months, its total payment rate increased by the prorated annual percentage change in the all urban consumer price index (CPI–U) for Minneapolis/St. Paul as published by the Bureau of Labor Statistics between January 1984 and January 1985, new series index (1967=100). That adjusted total payment rate shall be in effect until September 30, 1986. This adjusted total payment rate must not be in effect for more than nine months.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298*

9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. Parts 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which 60 percent of the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle up.

Subp. 2. **Interim payment rate settle up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. An interim payment rate established on or before December 31, 1985, is subject to retroactive upward or downward adjustment based on the settle up cost report and according to rules in effect when the interim rate was established.

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) the settle up property related payment rate must be calculated using the lesser of resident days or 96 percent of licensed capacity days but not less than 80 percent of licensed capacity days;

(3) the settle up operating cost payment rates must be determined by dividing the allowable historical operating costs by the greater of resident days or 80 percent of licensed capacity days;

(4) the settle up special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 80 percent of licensed capacity days; and

(5) the settle–up total payment rate must not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment rate period and the end of the first fiscal period.

Subp. 3. **Total payment rate for nine–month period following settle up period.** For the nine–month period following the settle up reporting period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6 do not apply;

(2) the resident days must be the greater of an annualization of the resident days in the last three months of the interim reporting period or the resident days in the interim reporting period but not less than 85 percent of licensed capacity days; and

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/Saint Paul as published by the Bureau of Labor Statistics between the two most recent Decembers before the beginning of the rate year, new series index (1967=100).

B. The special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 85 percent of licensed capacity days.

C. The property related payment rate must be determined according to parts 9553.0010 to 9553.0080.

Subp. 4. **Payment rate during the first rate year following the interim rate period.** The first total payment rate for the first rate year after the end of the interim rate period must be based on the settle–up cost report and must be calculated as in subpart 3, except that the allowable historical operating cost per diems shall be adjusted in accordance with part 9553.0050, subpart 2, item A.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298; 11 SR 2408; 12 SR 1711*

9553.0080 APPEAL PROCEDURES.

Subpart 1. **Scope of appeals.** A decision by the commissioner may be appealed by the provider, provider group, or a county welfare or human services board if the following conditions are met:

A. the appeal, if successful, would result in a change to the facility's total payment rate;

B. the appeal arises from application of parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301–2.05315 [Temporary] or parts 9510.0500 to 9510.0890; and

C. the dispute over the decision is not resolved informally between the commissioner and the appealing party within 30 days of filing the written notice of intent to appeal under subpart 2, item A.

Subp. 2. **Filing of appeals.** To be effective, an appeal must meet the following criteria:

A. The provider, provider group, or county welfare or human services board must notify the commissioner in writing of its intent to appeal within 30 days of receiving the total payment rate determination or decision which is being appealed. A written appeal must be filed with the commissioner within 60 days after receiving the total payment rate determination or decision which is being appealed.

B. The appeal must specify:

(1) each disputed item and the reason for the dispute;

(2) the computation and the amount that the provider believes to be correct;

(3) an estimate of the dollar amount involved in each disputed item;

(4) the authority in statute or rule upon which the provider is relying in each disputed item; and

(5) the name and address of the person or firm with whom contacts may be made regarding the appeal.

Subp. 3. **Resolution of appeal.** The appeal shall be heard under the contested case provisions in Minnesota Statutes, sections 14.57 to 14.62 and parts 1400.5100 to 1400.8300. Upon agreement of both parties, the dispute may be resolved informally through any informal dispute resolution method such as settlement, mediation, or modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. **Payment rate during appeal period.** Notwithstanding any appeal filed under parts 9553.0010 to 9553.0080, the total payment rate established by the commissioner shall be the total payment rate paid to the provider while the appeal is pending.

Subp. 5. **Payments after resolution of appeal.** Upon resolution of the appeal any overpayments or underpayments shall be paid under part 9553.0041, subpart 13.

Subp. 6. **Appeal expenses.** Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider to the extent that:

A. the provider is successful on each disputed item appealed; and

B. this amount is not in excess of limits determined under parts 9553.0010 to 9553.0080.

Statutory Authority: *MS s 256B.501*

History: *10 SR 1298*