

Exhibit D

Minnesota Department of Veterans Affairs

STATEMENT OF NEED AND REASONABLENESS
Proposed Amendments to Rules Governing the Operation of
Minnesota Veterans Homes,
Minnesota Rule Chapter 9050
Revisor No.: 4384

April 2021

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be available during the public comment period on the Minnesota Department of Veterans Affairs webpage: <https://mn.gov/mdva/about/reports.jsp>

Alternative Format:

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact MDVA DEI office at the Minnesota Department of Veterans Affairs, 20 West 12th Street, St. Paul, Minnesota 55155 telephone (651-296-2562; press 0) or email: VeteransServices.MDVA@state.mn Contact Minnesota Department of Veterans Affairs Diversity and Equality Line at (612) 548-5961 or your preferred telecommunications relay service.

1. Contents	
Acronyms or abbreviations.....	4
2. Introduction and statement of general need.....	5
A. Summary of proposed amendments.....	5
B. Need for the proposed rule amendments as a whole.....	5
3. Public participation and stakeholder involvement.....	8
4. Statutory authority	8
5. Reasonableness of the proposed rule amendments as a whole.....	8
6. Rule-by-rule analysis: proposed changes and specific reasonableness	10
PART 9050.0030 COMPLIANCE WITH STATUTES, RULES, AND CODES.	11
PART 9050.0040 DEFINITIONS.	12
PART 9050.0055 ADMISSIONS PROCESS, WAITING LIST, PRIORITY.	22
PART 9050.0060 ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.	25
PART 9050.0070 TYPES OF ADMISSIONS.....	25
PART 9050.0080 ADMISSION DECISION; NOTICE AND REVIEW.....	27
PART 9050.0100 TRANSFER.	28
PART 9050.0150 BED HOLD.	28
PART 9050.0200 DISCHARGE.....	29
PART 9050.0210 VOLUNTARY DISCHARGE PROCEDURES.....	31
PART 9050.0220 INVOLUNTARY DISCHARGE PROCEDURES.....	32
PART 9050.0230 ENFORCEMENT OF FINAL DISCHARGE ORDER.....	36
PART 9050.0300 CARE PLANNING.....	36
PART 9050.0400 UTILIZATION REVIEW COMMITTEE.....	36
PART 9050.0500 COST OF CARE; BASIS FOR MAINTENANCE CHARGE; BILLING.	37
PART 9050.0510 MAINTENANCE CHARGE; ADDITIONAL SERVICES.....	38
PART 9050.0520 MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.....	39
PART 9050.0530 RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.	39
PART 9050.0550 MAINTENANCE CHARGE; RESOURCES CONSIDERED.....	39
PART 9050.0560 MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.....	40
PART 9050.0590 MAINTENANCE CHARGE; REFUND.	41
PART 9050.0600 PROPERTY LIMITATIONS.....	42

PART 9050.0650 TRANSFERS OF PROPERTY	44
PART 9050.0700 INCOME.	45
PART 9050.0710 CALCULATION OF GROSS INCOME.	45
PART 9050.0720 CALCULATION OF NET INCOME; DEDUCTIONS FROM INCOME.....	46
PART 9050.0750 DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.	47
PART 9050.0760 ANTICIPATING INCOME.....	49
PART 9050.0770 BENEFITS APPLICATION REQUIRED.	49
PART 9050.0800 FINANCIAL INFORMATION AND INTERVIEW.	50
PART 9050.0820 VERIFICATION OF FINANCIAL INFORMATION.	50
PART 9050.1030 RESIDENT CARE PLANNING.	51
PART 9050.1030 RESIDENT CARE SERVICES.....	51
PART 9050.1070 RESIDENT RIGHTS AND RESPONSIBILITIES.....	54
PART 9050.1080 ADULT DAY HEALTH CARE PROGRAM.	59
PART 9050.1090 VETERANS AFFAIRS PHARMACEUTICAL SERVICES.	60
7. Regulatory and additional analysis	61
Minn. Stat. § 14.131, SONAR requirements	61
8. Notice plan	67
A. Required notice	67
B. Additional notice plan.....	69
9. Consideration of economic factors	69
10. Authors, witnesses	70
A. Authors.....	70
B. Witnesses	70
11. Conclusion	71

Acronyms or abbreviations

Chapter	ch.
Code of Federal Regulations	CFR
Minnesota Department of Veterans Affairs	MDVA or department
Minnesota Statutes	Minn. Stat.
Minnesota Rules	Minn. R.
Section	§
Statement of Need and Reasonableness	SONAR
United States Department of Veterans Affairs	USDVA

2. Introduction and statement of general need

A. Summary of proposed amendments

The Minnesota Department of Veterans Affairs (MDVA or department) is proposing to amend Minnesota Rules, chapter 9050 governing its veteran's homes in Minnesota. The proposed amendments to the Veterans Homes rules are about admissions, discharges, and billing affecting residents of the Minnesota Veterans Homes. The nature of the proposed rule amendments to Minn. R. 9050.0040 - 9050.1090 is to continue to further clarify the authoritative basis for the internal functioning and operation of the Minnesota Veterans Homes. These proposed rules comprise the practices currently used at the Minnesota Veterans Homes, as well as practices that will be implemented upon the promulgation of these rules, and are based upon preexisting state rules and laws.

From 1989 to present day, the bodies that have governed the Minnesota Veterans Homes have created and amended a series of rules which serve to create uniform conduct related to the admission, billing, and discharge of residents. To build on the basis of rules amendments from 1989, 1991, 1993, 1994, and 1995, these amendments utilize the recommendations and concerns gathered from meetings with the Minnesota Veterans Homes staff, residents and their family members, MDVA staff, and other stakeholders in the impacted business areas.

The purpose of these rule amendments is to add new or modify existing definitions, obtain compliance with statutory changes, and make technical corrections to existing rule language. These amendments will permit the department to: update and clarify definitions; clarify repayment options; update bed hold requirements; update the discharge process including the addition of an immediate discharge process; clarify the cost of care calculation; update income and property allowances for board and care residents; update Health Insurance Portability and Accountability Act (or HIPAA) requirements; and add new rules for the adult day health care program and pharmaceutical services.

The proposed amendments are the result of a series of several drafts. After each draft, the MDVA sought out internal comment through an open comment period via SharePoint for each impacted business area. As no comments were received from external groups or individuals during the Request for Comment public comment period, the proposed amendments reflect practices which will best serve the Minnesota Veterans Homes staff, residents and their family members.

B. Need for the proposed rule amendments as a whole

Minnesota's rulemaking process requires the MDVA to explain the facts establishing the need for and reasonableness of the rules as proposed, and to address specific procedural requirements (Minn. Stat. ch. 14). In general terms, this means that the MDVA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate,

“need” has come to mean that a problem exists that requires administrative attention, and “reasonableness” means that the solution proposed by the MDVA is appropriate.

Background

In 1988, the Minnesota Legislature reorganized and separated the Veterans Homes from the MDVA. The Veterans Homes Board of Directors (Board) was established, consisting of nine members appointed by the governor. The Board was charged with restructuring the Veterans Homes along the lines of the medical model of operations and turning them into high quality health care facilities while also taking into consideration the special needs of the veteran population. To accomplish this dual focus, the Board's membership consisted of representatives from the health care field and veterans organizations. The Board assured that the Veterans Homes were operated according to stated goals and standardized practices, policies and procedures, that residents' rights are recognized and respected, and that a high quality of life is maintained for the veterans who are residents of the Veterans Homes. The MDVA itself was managed by an Executive Director, who was responsible for ensuring that the Board's vision for the department, mission, and goals, were properly operationalized. Each Veterans Home was managed by an administrator, who at the time reported directly to the Executive Director. All of the facilities had medical directors, directors of nursing, and nursing, social services, financial and other staff appropriate to the needs and levels of care of their veteran residents.

In 1989, the Board developed Minn. R. ch. 9050 through analysis of current and past policy and procedure, consultation with staff, residents, attorneys and physicians, other representatives of state agencies, and advocacy and public interest groups. The original proposed rules contained Minn. R. 9050.0010 to 9050.0900. Chapter 9050 has been amended several times through the years. In 2007, the Board was eliminated and the duties and responsibilities were transferred to the MDVA.

The overall function of chapter 9050 has not changed through the years. The purpose of Minn. R. ch. 9050 is to determine eligibility and suitability for admission to the Minnesota Veterans Homes facilities; to identify and define grounds on which a resident of a Minnesota Veterans Homes facility shall be discharged and to establish a method by which such discharge shall be effected; to clarify the method by which cost of providing care is calculated; to establish an objective and equitable method to determine the amount paid by the resident for services provided by the facility; to provide notice of admission requirements, eligibility standards, financial obligations, service obligations and information which must be disclosed to or by the Minnesota Veterans Homes facilities, and the requirements of disclosure.

Statement of need

The evolving needs of the Minnesota Veterans Homes facility residents, the changing times within the health care industry and the change of social and economic conditions through the years, including the fiscal environment of the MDVA, have established the need for a substantial update to chapter 9050 and how residents are provided care under Minn. Stat. ch. 198.

Chapter 9050 as amended last is not current with health care industry standards as well as fiscal responsibilities of the resident and facility. Chapter 9050 was last updated in most rule parts – the majority of the changes were adding new or modifying existing definitions, assuring compliance with statutory changes, and providing technical corrections. The proposed rule changes are needed to update and clarify definitions; clarify repayment options; update bed hold requirements; update the discharge process including the addition of an immediate discharge process; clarify the cost of care calculation; update fiscal responsibilities for board and care residents; and add new rules for adult day health care program and pharmaceutical services.

3. Public participation and stakeholder involvement

The MDVA conducted outreach activities while developing these rule amendments. This was done in part to comply with the requirements of Minnesota’s rulemaking process, but also to notify, engage, and inform potentially interested parties about this rulemaking and solicit their input on the MDVA’s proposal to amend the rules. This section describes the MDVA’s public outreach efforts and the steps it took to develop and solicit input on the rule amendments.

Webpage

The MDVA maintains the following webpage that is publically accessible and relevant to this rulemaking:

Rulemaking Docket – <https://mn.gov/mdva/about/reports.jsp>

The rulemaking docket contains information and links related to current rulemaking activities of the MDVA. The MDVA posted its notice of Request for Comments for this rulemaking on the rulemaking docket webpage on January 4, 2016, the day the notice was published in the *Minnesota State Register*. Public notices remain posted for the entire comment period. As discussed in Section 8, Notice plan, the MDVA will continue to post official public notices for this rulemaking on the rulemaking docket webpage.

Notifications

In addition to public notice in the *Minnesota State Register* of the Request for Comments on its possible amendments to rules governing the Minnesota Veterans Homes, the MDVA has communicated with specific groups about amending the rules. These groups include the Minnesota Elder Bar of Minnesota, the Minnesota Veterans Home Family Council-Minneapolis, and the Minnesota Department of Human Services, The Office of Ombudsman for Long-Term Care. As requested, the MDVA will ensure that these groups receive the draft rules when they become available.

4. Statutory authority

The MDVA is authorized by Minn. Stat. § 196.04 and Minn. Stat. § 198.003 to adopt rules to govern the procedure of the divisions of the MDVA, and to adopt, amend, and repeal rules for the governance of Minnesota Veterans Homes.

The MDVA's statutory authority to adopt these rules is set forth in Minnesota Statutes as follows:

196.04 RULES.

Subdivision 1. Promulgation.

The commissioner shall adopt reasonable and proper rules to govern the procedure of the divisions of the department and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same, in order to establish the right to benefits provided for by the law.

198.003 POWERS AND DUTIES.

Subdivision 1. Policy; rules.

The commissioner shall determine policy and, subject to chapter 14, adopt, amend, and repeal rules for the governance of the homes. With respect to residents' administrative appeal time periods that are not established by statute, the commissioner may create by rule reasonable time periods within which a resident must appeal an administrative determination to the next administrative level. If the determination is not appealed within the time set by rule, the determination becomes final.

The commissioner shall take other action as provided by law.

Under the state statutory provision, the MDVA has the necessary statutory authority to adopt the proposed amendments into Minnesota Rules.

5. Reasonableness of the proposed rule amendments as a whole

Minn. Stat. ch. 14 requires the MDVA to explain the facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MDVA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that there is a rational basis for the MDVA's proposed action.

Minn. Stat. chs. 196 and 198 give the commissioner multiple duties and responsibilities all of which are directly related to the operation of the MDVA and the governance and operation of the Minnesota Veterans Homes.

The commissioner is not only responsible for operating the MDVA and managing state resources as efficiently as possible, but also administration of the Minnesota Veterans Homes which includes adopting, amending, and repealing rules covering the admission and discharge of residents of the Veterans Homes, the use of the campus, and management of the veterans resource account and the application of federal funding.

How successful the commissioner is in carrying out the duties and responsibilities of the commissioner depends on how efficiently the MDVA operates and how effective the Minnesota Veterans Homes are in providing healthcare services to veterans and their spouses.

The greatest opportunity for success in fulfilling the duties and responsibilities of the commissioner lies in establishing objective attainable admission requirements and reasonable cost-effective measures to assure sustainability of operations of the Veterans Homes.

The proposed rules were drafted with the intent to provide clear and objective criteria for proving a person's admission to the Veteran Homes under Minn. Stat. ch. 198. The admission and cost of care requirements adopted by the commissioner are included in the proposed rules to inform the public, ensure consistency and transparency, and to ensure that Veterans Homes are provided only to whom they are intended, and that funding is used only as intended according to Minn. Stat. ch. 198.

To ensure public accountability and to relieve any burden caused by ambiguity and inconsistency, it is vital to expressly state and clearly identify in the proposed rules all of the information requirements and documentation standards necessary for determining admission, to include the types of individual documents that are recognized by the commissioner as acceptable for proving eligibility for admission to a Veterans Home.

The proposed rules are drafted for clarity and are of sufficient detail to ensure public accountability and to eliminate inconsistent and unpredictable decisions while giving the commissioner enough flexibility to meet the changing needs of veterans and veterans' spouses. The provisions of each rule part are written to ensure the public and persons applying for or receiving healthcare understand how decisions are reached and cost and benefit amounts are arrived at, and what measures are necessary to ensure prompt decisions on healthcare and continued residency.

The proposed rules and the provisions therein implement current regulations and policies that address the current healthcare needs of veterans and their spouses as well as the continued operation of the Veterans Homes. The provisions of each rule part put forth standardized procedures and processes that ensure department operation and healthcare administration are consistent and transparent, and that decisions are made based on reasonable and objective criteria

that are equitable and relevant to the situations and circumstances of persons applying for admission as well as current resident receiving services.

Statement of reasonableness

The MDVA believes that the proposed rules are reasonable as appropriate solutions to the problems and requirements stated above as follows:

1. The reasonable solution to the need for administrative rules created by statutory mandate is to comply with the mandate and adopt administrative rules.
2. The reasonable response to the existing rules, which are outdated, obsolete, and ineffective in providing what the commissioner needs to function effectively and efficiently within the scope of the governing statutes is to amend or repeal the rules to provide the policies, procedures, and processes required by the commissioner to efficiently manage state resources.
3. The reasonable response to the need is to establish, confirm, and identify the Veterans Homes' admission and financial requirements, and the healthcare services necessary for the administration of the state Veterans Homes. The purpose of the proposed rules is to provide new and up-to-date administrative rules that establish the updated governance and the necessary policies, procedures, and processes to effectively and efficiently administer essential healthcare services to Minnesota veterans.
4. The reasonable approach to ensure the commissioner's duties can be fulfilled in a manner that prevents the waste and unnecessary spending of state resources is to ensure: consistency and transparency in the establishment of admission and financial requirements for healthcare services; that every veteran and their spouse who are in need of healthcare services from the commissioner is fully aware of what is required of them; and that only those persons authorized by statute receive such healthcare benefits and services.

6. Rule-by-rule analysis: proposed changes and specific reasonableness

Minn. Stat. ch. 14 requires the MDVA to explain the facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MDVA's proposed action. Explained in this section is the specific reasonableness of the proposed rules, together with an explanation of the need for each change. Since this rulemaking affects multiple parts of the existing chapter 9050 Veteran's Homes rules, the rule changes are grouped by rule part to aid the reader in reviewing this document. The specific reasonableness of each change is discussed below.

Chapter 9050 uses the term “the commissioner of veterans affairs” to describe the individual that ensures Department compliance with applicable laws and rules relating to the operation of Minnesota Veteran’s Homes. Chapter 9050 is being revised throughout to change the reference from “the commissioner of veterans affairs” to “the commissioner.” This change is needed to make the rule more efficient by deleting redundant language. This change also aligns with the new definition of “commissioner” at part 9050.0040, subpart 26b. These revisions are reasonable because they provide consistency and clarity to the proposed rules. The revisions to the rule parts listed below, revising the term “the commissioner of veterans affairs” by deleting “of veterans affairs” are made without changing the applicability of the rules.

- Part 9050.0030
- Part 9050.0040, subparts 5, 8, 14, 18, 21, 28, 30a, 36, 50, 56, 62, 63, 69a, 71, 107, 108, 109, 110, 112, and 115
- Part 9050.0055, subparts 1, 1a, 1b, 2, 3, and 4
- Part 9050.0060, subpart 2
- Part 9050.0070, subparts 2, 3, and 4
- Part 9050.0100, subparts 1, 2, and 4
- Part 9050.0150, subparts 1, 2, 4, 5, and 7
- Part 9050.0200, subpart 1
- Part 9050.0210, subparts 1 and 2
- Part 9050.0220, subparts 2, 3, and 6
- Part 9050.0230
- Part 9050.0300, subparts 1 and 2
- Part 9050.0400, subparts 1 and 3
- Part 9050.0500, subparts 2 and 3
- Part 9050.0530
- Part 9050.0550, subpart 4
- Part 9050.0560, subpart 1
- Part 9050.0580
- Part 9050.0590
- Part 9050.0600, subparts 1 and 3
- Part 9050.0650, subparts 1, 2, 3, and 4
- Part 9050.0700, subpart 2
- Part 9050.0720, subpart 2
- Part 9050.0750, subparts 1b, 2, and 2c
- Part 9050.0800, subpart 2
- Part 9050.1030, subparts 1, 1a, and 1b
- Part 9050.1070, subparts 2, 6, 7, 8, 9, 11, 15, 18, 20, 22, 24, 30, 33, and 39

PART 9050.0030 COMPLIANCE WITH STATUTES, RULES, AND CODES.

Part 9050.0030 identifies the applicable statutes and rules of the Minnesota Department of Health and Minnesota Department of Human Services, and other applicable codes that the commissioner shall ensure the facility and staff comply with.

Part 9050.0030, item L is being revised to delete “patients” Bill of Rights and replace it with “Health Care” Bill of Rights. The patient’s Bill of Rights in Minn. Stat. § 144.651 has been updated and it is now referred to as the “Health Care Bill of Rights.” It is reasonable to revise state rules to align with changes in terminology in Minnesota statute.

Part 9050.0030, item M is proposed for repeal. This item identifies the specific chapter of the United States Department of Veterans Affairs (USDVA) Code M-1 that Minnesota Veterans Homes facility and staff must comply with. Code M-1, part 1, chapter 3 was repealed in 1995 and has been codified in 38 CFR 1. It is reasonable to repeal state rules that reference obsolete federal rules.

PART 9050.0040 DEFINITIONS.

Subp. 5. **Admissions agreement.** Subpart 5 defines the term “admissions agreement” and specifies the agreement must identify the service obligations of the facility, the responsibilities of the resident, and the maintenance amount to be paid toward the cost of care. Item B is revised to add that the resident’s responsibilities include those related to the facility’s policies and safety practices. This revision is needed to clarify the admission agreement must identify the need for an applicant to follow facility policies and practices. This change is reasonable because it assures the admission agreement accurately reflects the expectations of the facility’s residents.

Subp. 6. **Against medical advice.** Subpart 6 defines the term “against medical advice.” This subpart is being revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 16. **Boarding care.** Subpart 16 defines the term “boarding care.” This definition is being revised to specify that boarding care also means supervision over medication that can be safely dispensed. This change is needed to clarify how medication is provided in a boarding care facility and that it can be self-administered or dispensed. This change is reasonable because it accurately reflects how medication can be provided.

Subp. 17a. **Business days.** A new subpart 17a defines the term “business day.” This definition replaces “working days” at subpart 120 which is proposed for repeal. The definition of “business days” remains the same as the definition of “working days,” only the term has changed from “working days” to “business days.” This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule. The MDVA proposes to replace “working days” with “business days” throughout chapter 9050.

Subp. 21. **Care plan review.** Subpart 21 defines the term “care plan review” and identifies the types of review included in a care plan review. This subpart is revised to delete the rule language assessment of a resident’s “physical and mental condition and treatment needs by the care plan team” and replace it with assessment of a resident’s “medical, nursing, mental, and

psychological needs.” This change is needed to more clearly identify the specific areas of concentration of the assessment. It is reasonable to identify what is being assessed in a resident’s care plan review so that the resident and those involved in the resident’s care plan review are informed of what the assessment includes.

Subpart 21, item E is revised to add “interdisciplinary staff, in conjunction with the resident, resident’s family, surrogate, or representative, as appropriate.” This change is needed to identify the appropriate individuals that are part of a resident’s care plan review. This change is reasonable because it assures the staff necessary to correctly assess the care plan are present as well as to identify who else from the family may be needed to assist in the overall care plan review.

Subp. 23. **Chemical abuse.** Subpart 23 defines the term “chemical abuse.” This subpart is revised to delete the reference to part 9530.4100, subpart 5” and to add the definition of ““abuse” in Minn. Stat. § 148F.01, subdivision 2.” This revision is needed because part 9530.4100 was repealed. The term “chemical abuse” as used in Minn. R. ch. 9050 will have the same meaning as the statutory definition of “abuse”: “a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period: 1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home; 2) recurrent substance use in situations in which it is physically hazardous; 3) recurrent substance-related legal problems; and 4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.” This change is reasonable because it aligns Minn. R. ch. 9050 rules with the underlying statute in order to continue the proper interpretation of rules governing chemical abuse. It is reasonable to provide a definition in rule when the corresponding definition in statute has been repealed.

Subp. 24. **Chemical dependency counselor.** Because the Minnesota Legislature repealed Minn. Stat. ch. 148C, the definition of “chemical dependency counselor” is revised to reference the alcohol and drug counselors licensing requirements re-codified in Minn. Stat. ch. 148F. It is reasonable to update references to underlying statutes in order to continue the proper interpretation of rules governing chemical dependency counselors.

Subp. 26. **Chemically dependent; chemical dependency.** Subpart 26 defines the term “chemically dependent; chemical dependency.” This subpart is revised to delete the language “has the meaning given it in part 9530.4100, subpart 6” and a definition of “chemically dependent; chemical dependency” is added. This revision is needed because part 9530.4100 was repealed. The proposed definition is based on review of the federal Centers for Medicare and Medicaid Services and Minnesota Department of Health definitions for chemically dependent and chemical dependency, and in consultation with MDVA business areas for the Minnesota Veterans Homes. It is reasonable to update terms to meet industry standards and practices.

Subp. 26b. **Commissioner.** A new subpart 26b defines the term “commissioner.” This definition is needed to identify that “commissioner” as used in Minn. R. ch. 9050 means the commissioner of the MDVA. It is reasonable to define this term because the reader needs to know who the commissioner represents in the context of these rules.

Subp. 27. **Conservator.** Subpart 27 defines the term “conservator.” This subpart is revised to delete the language “has the meaning given it in Minnesota Statutes, section 525.539, subdivision 3” and to add a definition of “conservator” consistent with the definition found in Minn. Stat. § 524.5-102, subdivision 3. This revision is needed because Minn. Stat. § 525.539 was repealed. It is reasonable to provide a definition in rule when the corresponding definition in statute has been repealed.

Subp. 30. **Cost of care.** Subpart 30 defines the term “cost of care.” This subpart is revised to delete “nursing home” and replace it with “skilled nursing facility.” Because the definition of “nursing home” at subpart 84 is proposed for repeal, and a new definition “skilled nursing facility” added at subpart 105a, this change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp 30a. **Delinquent account.** A new subpart 30a defines the term “delinquent account.” This term is needed to identify the type of account created for a resident when payment for the residents stay at the facility is 30 days past the due date. It is reasonable to define this term so that the resident will know the timeframe for when their account will be considered delinquent, and when certain actions may be taken by the facility.

Subp. 36. **Discharge.** Subpart 36 defines the term “discharge” and identifies the actions that do not constitute a discharge. This subpart is first revised to delete “nursing home” and replace it with “skilled nursing facility.” Because the definition of “nursing home” at subpart 84 is proposed for repeal, and a new definition “skilled nursing facility” added at subpart 105a, this change is needed to reflect current health care industry terminology. Next, “attending physician” is deleted and replaced with “provider.” This change aligns with the new definition “provider” at subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Item C is revised to delete “personal reasons” and replace it with “therapeutic leave” to correctly identify the type of absence from the skilled nursing facility.” This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 38. **Educational expenses.** Subpart 38 defines the term “educational expenses.” This subpart is revised to add rule language that education expenses paid for transportation means transportation to and from high school. It is reasonable to clarify that paid transportation expenses apply only to high school because a nonskilled resident needs to know that transportation expenses are not paid for all types of school.

Subp. 41. **Goal.** Subpart 41 defines the term “goal.” This subpart is being revised to delete “two or more multidisciplinary team members” and replace it with “an interdisciplinary team member.” Because the definition of “multidisciplinary staff” at subpart 80 is proposed for repeal, and a new definition “interdisciplinary staff” added at subpart 58b, this change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 43. **Guardian.** Subpart 43 defines the term “guardian.” This subpart is revised to delete the language “has the meaning given it in Minnesota Statutes, section 525.539, subdivision 2” and to add a definition of “guardian” consistent with the definition found in Minn. Stat. § 524.5-102, subdivision 5. This revision is needed because Minn. Stat. § 525.539 was repealed. It is reasonable to provide a definition in rule when the corresponding definition in statute has been repealed.

Subp. 44. **Health care facility.** Subpart 44 defines the term “health care facility.” This subpart is revised to add “skilled nursing facility” as a type of health care facility licensed by the Minnesota Department of Health. This change aligns with the new definition “skilled nursing facility” added at subpart 105a. Although the definition of “nursing home” at subpart 84 is proposed for repeal, it is not deleted from this subpart because it is a type of health care facility licensed by the Minnesota Department of Health under Minn. Stat. § 144A.01, subdivision 5. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 53. **Inappropriate and harmful use.** Subpart 53 defines the term “inappropriate and harmful use.” This subpart is revised to delete the language “has the meaning given it in part 9530.4100, subpart 14.” This change is needed because Minn. R. 9530.4100 was repealed. Because Minn. R. 9530.4100 was repealed, this subpart is revised to add the definition of “inappropriate and harmful use” in place of the reference to part 9530.4100, subpart 14. It is reasonable to delete reference to a rule that has been repealed.

Subp. 56. **Independent physician.** Subpart 56 defines the term “independent physician.” This subpart is revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 58. **Individual care plan.** Subpart 58 defines the term “individual care plan.” This subpart is being revised to delete “multidisciplinary” and replace it with “interdisciplinary.” Because the definition of “multidisciplinary staff” at subpart 80 is proposed for repeal, and a new definition “interdisciplinary staff” added at subpart 58b, this change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 58b. **Interdisciplinary staff.** A new subpart 58b defines the term “interdisciplinary staff.” This definition replaces the definition of “multidisciplinary staff” in subpart 80 which is proposed for repeal. The definition of “interdisciplinary staff” remains the same as the definition of “multidisciplinary staff,” only the term has changed from “multidisciplinary staff” to “interdisciplinary staff.” (Note - the Minnesota Department of Human Services, Minnesota Health Care Programs (MHCP) Manual provides that mental health practitioners are people who provide services to adults with mental illness or children with emotional disturbance and are not eligible to enroll with MHCP. A mental health professional is the individual who supervises the practitioner and has license and educational requirements.) This change to the term “interdisciplinary staff” is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule. The MDVA proposes to replace “multidisciplinary staff” with “interdisciplinary staff” throughout chapter 9050.

Subp. 59. **International Classification of Diseases; CD-10-CM.** Subpart 59 incorporates by reference the “International Classification of Diseases” into rule. This subpart is revised to update the “International Classification of Diseases” from version “ICD-9-CM” to “ICD-10-CM.” This change is needed to reflect the most recent, the 10th revision, of the manual. This change is reasonable because it assures the incorporation by reference of this publication in subpart 59 is accurate.

Subp. 64. **Licensed psychologist.** Because the Minnesota Legislature repealed Minn. Stat. § 148.91, subdivision 5, the definition of “licensed psychologist” is revised to reference the licensed psychologist requirements re-codified in Minn. Stat. § 148.907. It is reasonable to update references to underlying statutes in order to continue the proper interpretation of rules governing licensed psychologists.

Subp. 72. **Medical condition.** Subpart 72 defines the term “medical condition.” This subpart is revised to update the “International Classification of Diseases” from version “ICD-9-CM” to “ICD-10-CM.” This change is needed to reflect the most recent, the 10th revision, of the manual. Subpart 72 is next revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 73. **Medical director.** Subpart 73 defines the term “medical director.” Revisions to this subpart are mainly for clarification. The rule language “commissioner of Veterans Affairs who is responsible for overall direction of medical practice” is changed to “under contract with the Department of Veterans Affairs for the purpose of the overall direction of medical practice.” The change clarifies and does not change the intent of the rule. It is reasonable to clarify who the medical director is employed by or under contract with and why.

Subp. 74. **Medical treatment plan.** Subpart 74 defines the term “medical treatment plan.” This subpart is revised to delete “attending physician” and replace it with “provider.” This change

aligns with the new definition “provider” at subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 80. **Multidisciplinary staff.** Subpart 80 is proposed for repeal. The term “multidisciplinary staff” no longer reflects current health care industry terminology. The term “multidisciplinary staff” is being replaced with the term “interdisciplinary staff” at new subpart 58b. It is reasonable to repeal rules that are obsolete. The MDVA proposes to replace “multidisciplinary staff” with “interdisciplinary staff” throughout chapter 9050.

Subp. 84. **Nursing home.** Subpart 84 is proposed for repeal. The term “nursing home” no longer reflects current health care industry terminology. The term “nursing home” is being replaced with “skilled nursing facility” at new subpart 105a. It is reasonable to repeal rules that are obsolete. The MDVA proposes to replace “nursing home” with “skilled nursing facility” throughout chapter 9050.

Subp. 88b. **Patient classification system.** A new subpart 88b defines the term “patient classification system.” “Patient classification system” is an industry term with a focus on electronic records. A patient classification system applies an evidence-based approach enabling the Minnesota Veterans Homes to assign, match, and schedule nurses where they are needed the most. This term is used in chapter 9050 but was not defined; it is reasonable to define industry terminology as it is used in this chapter.

Subp. 89. **Personal absence.** Subpart 89 is proposed for repeal. The term “personal absence” no longer reflects current health care industry terminology. The term “personal absence” is being replaced with the term “therapeutic leave” at new subpart 109a. It is reasonable to repeal rules that are obsolete. The MDVA proposes to replace “personal absence” with “therapeutic leave” throughout chapter 9050.

Subp. 94B. **Provider.** A new subpart 94b defines the term “provider.” This new definition is needed because “provider” is a commonly used term in the health care industry. The term “provider” means a physician licensed to practice medicine under Minn. Stat. ch. 147, who is an applicant or residents primary treating or supervising physician. “Provider” generally refers to the “combined claim” and it includes both facility and professional component. When submitting a claim, the “provider” must also identify the attending physician information (i.e. provider - facility and professional - attending physician). It is reasonable to update definitions to match the terminology used in the rule. The MDVA proposes to replace “attending physician” with “provider” in most of chapter 9050, though not entirely. This is because the existing definition of “attending physician” at subpart 11 is the same as the new definition of “provider” with the additional rule language “An attending physician may be a Minnesota veterans home facility staff physician.” and there are several parts in chapter 9050 where the use of “attending physician” rather than “provider” is more applicable.

Subp. 100. **Reporting year.** Subpart 100 defines the term “reporting year.” This subpart is revised to delete “nursing home” and replace it with “skilled nursing facility.” Because the definition of “nursing home” at subpart 84 is proposed for repeal, and a new definition “skilled nursing facility” added at subpart 105a, this change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 105a. **Skilled nursing facility.** A new subpart 105a defines the term “skilled nursing facility.” This definition replaces “nursing home” at subpart 84 which is proposed for repeal. The definition of “skilled nursing facility” remains the same as the definition of “nursing home,” only the term has changed from “nursing home” to “skilled nursing facility.” This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule. The MDVA proposes to replace “nursing home” with “skilled nursing facility” throughout chapter 9050.

Subp. 106. **Social worker.** Subpart 106 defines the term “social worker.” Because the Minnesota Legislature repealed Minn. Stat. §§ 148B.18 to 148B.289, the definition of “social worker” is revised to reference the licensed social worker requirements re-codified in Minn. Stat. ch. 148E. It is reasonable to update references to underlying statutes in order to continue the proper interpretation of rules governing licensed social workers.

Subp. 109a. **Therapeutic Leave.** A new subpart 109a defines the term “therapeutic leave.” This definition replaces “personal absence” at subpart 89 which is proposed for repeal. The definition of “therapeutic leave” remains the same as the definition of “personal absence,” only the term has changed from “personal absence” to “therapeutic leave.” This change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule. The MDVA proposes to replace “personal absence” with “therapeutic leave” throughout chapter 9050.

Subp. 110. **Transfer.** Subpart 110 defines the term “transfer.” Item B of this subpart is revised to delete “nursing home” and replace it with “skilled nursing facility.” Because the definition of “nursing home” at subpart 84 is proposed for repeal, and a new definition “skilled nursing facility” added at subpart 105a, this change is needed to reflect current health care industry terminology. It is reasonable to update definitions to match the terminology used in the rule.

Subp. 114. **Unemployment compensation.** Subpart 114 defines the term “unemployment compensation.” Because the Minnesota Legislature repealed Minn. Stat. § 268.231, the definition of “unemployment compensation” is revised to reference the unemployment insurance requirements in Minn. Stat. §§ 268.03 to 268.23. It is reasonable to update references to underlying statutes in order to continue the proper interpretation of rules governing unemployment compensation.

Subp. 120. **Working days.** Subpart 120 is proposed for repeal. The term “working days” no longer reflects current health care industry terminology. The term “working days” is being

replaced with “business days” at new subpart 17a. It is reasonable to repeal rules that are obsolete. The MDVA proposes to replace “working days” with “business days” throughout chapter 9050.

PART 9050.0050 PERSONS ELIGIBLE FOR ADMISSION.

Part 9050.0050 establishes the eligibility requirements for admission to a Minnesota Veterans Homes facility. This part is needed to ensure every veteran and nonveteran seeking admission to a Veterans Homes facility is informed of the requirements for admission. Part 9050.0050 identifies the specific eligibility requirements dependent on what classification the individual qualifies as, veteran or nonveteran. Amendments to this part are needed to make corrections to statutory references as well as clarifications of what is required for a “veteran” or “nonveteran” to gain admission to a Veterans Homes facility operated by the MDVA.

Subpart 1. General qualifications. Subpart 1 is proposed for repeal. The MDVA has the obligation to admit persons to the Veterans Homes who are residents of Minnesota, pursuant to Minn. Stat. ch. 198. Since the requirements for eligibility are different for veterans and nonveterans, the MDVA believes that the general qualifications in subpart 1 are not needed to understand the eligibility requirements for admission of the two identified group of individuals. Further, the eligibility requirements for veterans and nonveterans are provided in subparts 2 and 3 of this part. It is reasonable to repeal rules when they have no further need or purpose and when the language creates confusion and uncertainty.

Subp. 2. Veterans. This subpart identifies the eligibility criteria for a veteran seeking admission to a Minnesota Veterans Homes facility. Subpart 2 is first revised to delete the rule language that states a person must meet the criteria in Minn. Stat. §§ 197.447 and 198.022 (1) and (2) to be eligible for admission. Subpart 2 is next revised to add new items A to C to establish the criteria a veteran seeking admission to a Veterans Homes facility must meet. It is reasonable to establish the criteria for admission because the veteran needs to know the requirements they must meet to be eligible for admission to a Veterans Homes facility. Additionally, the revisions separate the requirements of a non-veteran to lessen the chance of misinterpretation of the requirements.

New item A establishes that a veteran must meet the requirements of Minn. Stat. § 197.447 (Veteran, Defined), and Minn. Stat. § 198.01 (Veterans Home, Eligibility of Veterans), which states “The word “veteran” as used in this section has the meaning provided in section 197.447.” This requirement is reasonable so the applicant is informed they must meet the statutory definition of “veteran” to be eligible for admission.

New item B establishes that the veteran meet the residency requirements in subpart 3a of this part. To be eligible for admission to a Minnesota Veterans Homes facility, a veteran must be a resident of Minnesota pursuant to Minn. Stat. ch. 198. Item B is needed to ensure the veteran seeking admission to a Minnesota Veterans Home is a Minnesota resident. It is reasonable to identify the criteria for residency so that an applicant veteran is aware of the Minnesota residency requirements to be admitted to a Minnesota Veterans Home facility.

New item C establishes that the veteran must meet the criteria for admission in part 9050.0070. To be eligible for admission, veterans are considered for the type admission under the criteria in part 9050.0070 which identifies the type of admissions and the requirements for stay. Item C is needed because there are specific criteria for each of these types of admission that must be met. It is reasonable to establish the admission criteria a veteran must meet when seeking admission to a Minnesota Veterans Home so that those veterans who want to apply for admission are informed of the requirements to do so.

Also, subpart 2 establishes the requirement that current medical need for admission as well as financial information as specified in parts 9050.0800 to 9050.0900 must be provided. To be eligible for admission, veterans must provide current financial information as required in part 9050.0800 to 9050.0900, to include the executed authorization to release information. This requirement is necessary because a veteran must demonstrate they have a documented medical need for admission to a Minnesota Veterans Homes facility as identified in part 9050.0070 and also to determine the veteran's financial obligation for stay in a boarding care facility or a skilled nursing home. It is reasonable to require that medical and financial information be provided when seeking admission to a Veterans Homes facility so that those veterans who want to apply for admission are informed of the requirements to do so.

Subp. 3. **Nonveterans.** This subpart identifies the eligibility criteria for a nonveteran seeking admission to a veteran home facility. Subpart 3 is first revised to delete the rule language that states a person that is not a veteran must meet the criteria in Minn. Stat. §§ 198.022 (1) and (3) to be eligible for admission. Subpart 3 is next revised to add new items A to D to establish the criteria a nonveteran seeking admission to a Minnesota Veterans Homes facility must meet. It is reasonable to establish the criteria for admission because the nonveteran needs to know the requirements they must meet to be eligible for admission to a Veterans Homes facility and to keep the criteria separate from when a veteran is applying for admission.

New item A establishes that a nonveteran must meet the requirements of Minn. Stat. § 198.022 (Eligibility of Spouses and Surviving Spouses). Under Minn. Stat. § 198.022, spouses and surviving spouses are eligible for admission to a Veterans Homes facility under certain conditions. This requirement is reasonable so the nonveteran is informed that that there are statutory requirements they must meet to be eligible for admission.

New item B establishes that the nonveteran meet the residency requirements in subpart 3a of this part. To be eligible for admission to a Minnesota Veterans Home facility, a nonveteran must be a resident of Minnesota pursuant to Minn. Stat. ch. 198.022. Item B is needed to ensure the nonveteran seeking admission to a Minnesota Veterans Home is a Minnesota resident. It is reasonable to identify the criteria for residency because the nonveteran needs to know that they must meet the Minnesota permanent residency requirements be admitted to a Minnesota Veterans Homes facility.

New item C establishes that the nonveteran must meet the criteria for admission in part 9050.0070. To be eligible for admission, nonveterans are considered for the type admission under the criteria in part 9050.0070 which identifies the requirements for stay in a boarding care facility or a skilled nursing home. Item C is needed because there are specific criteria for each of these types of admission that must be met. It is reasonable to establish the admission criteria a nonveteran must meet when seeking admission to a Veterans Home so that those nonveterans who want to apply for admission are informed of the requirements to do so.

New item D establishes that if a nonveteran is a spouse of a veteran, the veteran must meet the requirements of Minn. Stat. § 197.447 (Veteran, Defined), and Minn. Stat. § 198.01 (Veterans Home, Eligibility of Veterans), which states “The word “veteran” as used in this section has the meaning provided in section 197.447.” This requirement is reasonable so the applicant is informed their veteran spouse must meet the statutory definition of “veteran” to be eligible for admission.

Also, subpart 3 establishes the requirement that current medical need for admission as well as financial information as specified in parts 9050.0800 to 9050.0900 must be provided. To be eligible for admission, a spouse of a veteran must provide current financial information as required in parts 9050.0800 to 9050.0900, to include the executed authorization to release information. This requirement is necessary because an applicant must demonstrate they have a documented medical need for admission to a Minnesota Veterans Homes facility as identified in part 9050.0070 and also to determine the veteran’s financial obligation for stay in a boarding care facility or a skilled nursing home. It is reasonable to require that medical and financial information be provided when seeking admission to a Veterans Homes facility so that those applicants who want to apply for admission are informed of the requirements to do so.

Subp. 3a. **Residency.** This subpart establishes residency requirements for admission to a Minnesota Veterans Homes facility. Revisions to subpart 3a are needed to make corrections to statutory references as well as to provide clarification to the requirement of a “veteran” or “nonveteran” to fulfill the obligation of residency for the purpose of admission to a veteran home facility operated by the MDVA. Subpart 3a is first revised to delete the rule language that residency is determined under Minn. Stat. § 198.022 (2) and (3). The requirements of Minn. Stat. § 198.022 appear to apply only to nonveterans under subpart 3, item A; the requirements of this subpart do not make the distinction between veteran and nonveteran, but instead clarify that all applicants must be a Minnesota resident. Next, the rule is revised to add “permanent” to establish that for purposes of determining residency. The proposed amendment identifies that an applicant for residency at a Minnesota Veterans Home must be a permanent resident of Minnesota and meet the conditions in items A and B for permanent residency. This requirement is reasonable so the applicant knows that residency is based on a person being a permanent resident of Minnesota.

Item A is first revised to delete the rule language that the person currently resides in Minnesota and they intend to reside in Minnesota permanently. Next, the rule is revised to add specific requirements to rent, own, maintain, or occupy a residence in Minnesota suitable for year round

use for at least 90 days before submitting an application to a Veterans Homes facility. These revisions are needed to clarify what it means to be considered a resident in order to meet the eligibility requirements for admission to a Minnesota Veterans Homes facility. In seeking to define residency, the constitutional limitations on residency requirements, as determined by state and federal law, were taken into consideration. This rule is reasonable because it reflects these limitations yet assures that the Veterans Homes facility will be available to those eligible applicants who are residents of the state of Minnesota.

Item B is revised to add that in addition to the requirement that the person not own or maintain a home in another state, the person also cannot rent or occupy a home in another state. This revision is needed to clarify what it means to be considered a resident in order to meet the eligibility requirements for admission to a Minnesota Veterans Homes facility. This rule is reasonable because it reflects these limitations yet assures that the Veterans Homes facility will be available to those eligible applicants who are residents of the state of Minnesota and do not have a home in another state.

Subp. 4. **Exceptions.** Subpart 4 is proposed for repeal. This subpart identifies when an applicant otherwise eligible for admission to a Minnesota Veterans Homes facility under Minn. Stat. § 198.03 and this subpart is not eligible. Specifically, if an applicant has past unpaid bills to the state for prior residence in a Veterans Homes facility. Since the requirements for eligibility are different for veterans and nonveterans, the MDVA believes that the exceptions in subpart 4 are not needed to understand the eligibility requirements for admission. Further, the eligibility requirements for veterans and nonveterans are provided in the proposed revisions to subparts 2 and 3 of this part. It is reasonable to repeal rules when they have no further need or purpose.

Subp. 5. **Exclusion.** A new subpart 5 establishes the exclusion conditions for an applicant's eligibility for admission. An applicant with past unpaid bills to the state for prior residence in a Veterans Homes facility must pay the debt or enter into an agreement, that conforms to Minn. Stat. § 198.03, subd. 3, to repay the debt before they will be placed on the waiting list. Subpart 5 is needed to provide clear direction to the applicant who may be excluded from admission to a Veterans Homes facility due to the unpaid debt to the MDVA. This requirement is reasonable so the applicant knows the conditions that will cause an application for admission to be excluded and what is required to remedy the exclusion.

PART 9050.0055 ADMISSIONS PROCESS, WAITING LIST, PRIORITY.

Subpart 1. **Process.** Subpart 1 identifies the process for a person seeking admission to a Minnesota Veterans Homes facility and the facility staff that can assist the person with completing the application form and process. This subpart is being revised to delete "social services" as the only facility staff that can assist with the admission process. This change is needed to allow other staff of the facility to assist in the admission process. It is reasonable to clarify which facility staff can assist with the admission process and make the clarification that it is not just limited to social services staff.

Subp. 1a. **Preadmission screening.** Subpart 1a identifies the process for preadmission screening of applicants by facility staff. This subpart is being revised to delete the rule language that references preadmission screening prescribed in Minn. Stat. § 256B.0911. This change is needed because preadmission screening, as its name implies, is intended to determine whether the applicant meets the basic eligibility requirements for admission (i.e. veteran status). Because Minn. Stat. § 256B.0911 (Long Term Care Consultation Services) does not provide any clear direction specific to applicants under Minn. R. ch. 9050, MDVA believes it is ambiguous and confusing. Additionally, Minn. Stat. § 256B.0911 has been amended several times since the last amendments to chapter 9050, its applicability to this rule no longer is consistent with the original intent. It is reasonable that the rules be written clearly to decrease misunderstandings.

Subp. 1b. **Admission application.** Subpart 1b identifies what information the facility staff must obtain about an applicant prior to admission. This subpart is being revised to add the phrase “or designee.” This change is needed to clarify that an administrator or its designee can deviate from the admission application procedures in subpart 1b as long as the administrator or designee obtain information equivalent to items A to G in this subpart. This change is reasonable because it clearly identifies who is responsible for obtaining the application information if admission application procedures are deviated from. It is reasonable to provide clarity in rules so that the requirements are consistently interpreted and applied.

Item D is revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 2. **Timing of review by admissions committee.** Subpart 2, items A and B establish the timelines for review of an application for admission. Items A and B are revised to delete “working” days and replace it with “business” days. This change aligns with the new definition “business days” at part 9050.0040, subpart 17a. This revision is needed to update the references to “business days” and identify a clear time line when the review must start. It is reasonable because it assures the timeframe for review is accurate.

Subp. 3. **Waiting lists.** Subpart 3 establishes the waiting list process for admission to a Minnesota Veterans Homes facility. This subpart is revised to simplify the waiting process for admission into the Veterans Homes facility by maintaining one waiting list for each facility. Reference to the two types of waiting lists – “active” and “inactive,” are deleted and replaced with “admission” waiting list. The applicants name will still be placed on a waiting list once the application is received, but the name will be recorded on one admission waiting list. This revision is needed to prevent the accumulation of documentation that may be obsolete by the time an eligible applicants name switches from one waiting list to another one. Subpart 3 is also revised to clarify the process when an eligible applicant cannot be considered for immediate admission. It is reasonable to expedite placing an applicants' name on a waiting list that is in

need of a Veterans Homes facility so that the applicant may be considered for admission to a facility as soon as practicable.

Subp. 4. **Priority.** Subpart 4 establishes the process for priority consideration for admission to another Minnesota Veterans Homes facility when a current resident needs a level of care not offered at their current facility. The requirements of this subpart have been separated into new items A to D. Subpart 4, new item A, is existing rule language revised to clarify this item applies to a current resident of a Minnesota Veterans Homes facility. Item A is further revised to clarify that the current resident has priority for consideration for admission to other facilities if the resident meets the criteria for that level of care and a bed is available. This change is reasonable because it makes clear the requirements for priority consideration for admission.

New item C is existing rule language revised to delete “active” waiting list and replace it with “admission” waiting list. This revision aligns with the revision to subpart 3 of this part which was needed to simplify the waiting process for admission into a Veterans Homes facility by maintaining one waiting list per each facility. It is reasonable to make this change so that the requirements of this part are consistently interpreted and applied.

New item D is existing rule language revised to update the process for when a person is offered admission to a Veterans Homes facility. The phrase “to a facility operated by the commissioner” is added as a qualifier in front of requirements of this item. Item D is further revised to delete “working” days and replace it with “business” days. This change aligns with the new definition of business days at part 7050.0040, subpart 17a. This revision updates the references to “business days” and identifies a clear time line when an offered admission to a facility must be accepted. Next, the existing rule language is revised to delete “active” waiting list and replace it with “admission” waiting list. This revision aligns with the revision to subpart 3 of this part which was needed to simplify the waiting process for admission into a Veterans Homes facility by maintaining one waiting list per each facility. This revision is needed in order to expedite the admission process. Identifying the time that an applicant may accept an offer of admission to a Veterans Homes facility as well as limiting the number of waiting lists hastens the process of going through the waiting list for applicants willing and able to accept an offer of admission. This change is reasonable because it still allows applicants a reasonable amount of time, after receipt of the offer, to determine whether they wish to accept an offer of admission.

Subp. 5. **Limitations on refusals to exercise option for admission from admission waiting list.** Subpart 5 establishes that a person on the admission waiting list who refuses admission two times must be removed from the admission waiting list and reapply to be considered for future admission. This revision is needed to limit refusals of admission to two per applicant, when they are on the admission waiting list. A limitation on refusals is needed to eliminate multiple reviews and multiple refusals, and to make the admission waiting list a more accurate indicator of demand. This revision is reasonable because it provides advance warning of the consequence for multiple refusals. This consequence is intended to separate applicants who are merely taking up space on the waiting list from those who, based on information current at the time, made valid

choices to reject chances for admission but whose circumstances have changed significantly due to an unexpected health condition such as a sudden stroke, heart attack or condition not previously diagnosed.

Subp. 6. Initial financial status review. Subpart 6 establishes that the facility will evaluate the financial resources of a person who is anticipated to be within 60 days of admission to the facility. This revision is needed to advise applicants that a preliminary assessment by facility staff of their financial condition will be made as part of the admissions process. This subpart, when read in conjunction with cost of care, billing, maintenance charges and transfer of property provisions, acts as a "check" as to the status of the property on admission to the facility and provides a basis for calculation after the person is admitted and any financial benefits are recalculated. This revision is reasonable because it provides concise and advance warning of this review for all applicants on the admission waiting list.

PART 9050.0060 ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.

Subp. 2. Composition of admissions committee. Subpart 2 is revised to delete the extensive list of facility staff members the admissions committee may consult with on the applicants diagnosis, and replace it with "other interdisciplinary team members based on" the diagnosis of the applicant. This revision provides a quick reference of the staff members that may be attending the admission process by using the term "interdisciplinary team members" rather than identifying all that may be attending the review. The term "interdisciplinary staff" is defined in part 9050.0040, subpart 58b. This revision is needed because the admission review process is fluid and the personnel necessary to attend changes based on the needs and situation of the applicant. This change is reasonable because it provides advance warning of this review by interdisciplinary team members for all applicants on the admission waiting list. This change is reasonable because it provides concise and advance warning of this review for all applicants on the admission waiting list.

PART 9050.0070 TYPES OF ADMISSIONS.

Subp. 2. Selection of residents. Subpart 2 is revised to delete the statutory references and to provide clarification of what is required for a "veteran" and "nonveteran" to gain admission to a facility operated by the MDVA. The reference to applicants eligible for admission under part 9050.0050 is retained to provide consistency throughout the rule and provide clarity in regards to an applicant who is a "veteran" or a "nonveteran." It is reasonable that the rules be written clearly, to decrease misunderstanding. Subpart 2 is also revised to delete "attending physician" and replace it with "provider." This change aligns with the new definition "provider" at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 3. Criteria for admission to and continued stay in a boarding care facility. Subpart 3 establishes that admission to or continued stay in a boarding care facility must be based on the

facility's ability to meet the care needs of the applicant or resident. The resident or applicant must meet the criteria in subpart 3, items A to N to be admitted, placed on the waiting list or retained as a resident. Multiple items under subpart 3 are being revised as follows.

Items B, C, K and N are revised to delete "attending physician" and replace it with "provider." This change aligns with the new definition "provider" at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Item D requires that a person who has a diagnosis of mental illness must be assessed by a staff psychiatrist or psychologist. Item D is revised to add that a person who has a diagnosis of mental illness must be "reviewed and may be" assessed by a staff psychiatrist or psychologist. This revision is needed to provide clarity for what a psychiatrist or psychologist is reviewing to determine if the applicant meets the criteria for continued stay or admission into the facility. It is reasonable that a staff psychiatrist or psychologist review a diagnosis of mental illness in order to make such a determination.

Item E is revised to add that a person who has a diagnosis of mental illness must be "reviewed and may be" assessed by a staff psychiatrist or psychologist, and that "the psychiatrist or psychologist must conclude the person does not pose a risk to themselves or other residents." This revision is needed to provide clarity for what a psychiatrist or psychologist is reviewing to determine if the applicant is able to recognize and appropriately react to hazards in the environment, and to ensure the safety of the person and facility residents. It is reasonable that a staff psychiatrist or psychologist review a diagnosis of mental illness in order to make such a determination.

Item I is revised to delete the requirement "for up to five days" for continued stay face-to-face monitoring for special needs that may exceed twice daily. This revision is needed should face-to-face monitoring for special needs be necessary for more than five days. Item I is also being revised to delete "the assistant director of nursing" as a person who can approve face-to-face monitoring beyond twice daily and add "designee." This revision is needed to clarify that the director of nursing or designee can approve the monitoring. This change is reasonable because it clearly identifies who is responsible for approving monitoring beyond twice daily. It is reasonable to provide clarity in rules so that the requirements are consistently interpreted and applied.

Subp. 4. Criteria for admission to and continued stay in a skilled nursing facility. Subpart 4 establishes that admission to or continued stay in a skilled nursing facility must be based on the facility's ability to meet the care needs of the applicant or resident. The resident or applicant must meet the criteria in subpart 4, items A to G to be admitted, placed on the waiting list or retained as a resident. Multiple items under subpart 4 are being revised as follows.

Item A is revised to delete the requirement that the person must "have or be assigned to an appropriate bed through a patient" classification system, and to add the requirement that the

person be reviewed through the state or federal resident classification system in order to assist with facility admission determinations. This revision is needed to use the updated federal system that will be used to classify residents in a covered Medicare Part A stay into payment groups. This change is reasonable because it helps the admission team coordinate to the proper level of care and payment coverage.

Items B, C, D, and E are revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. Items B and C are revised to delete nursing “home” and replace it with “skilled nursing facility.” This change aligns with the new definition “skilled nursing facility” at part 9050.0040, subpart 105a. These changes are needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Items F and G are revised to add that in addition to being assessed by an attending psychiatrist or psychologist, persons with a history of violent or self-abusive behavior or an active substance use disorder can also be assessed by the “provider or the facility medical director.” This change is needed to clarify that a provider or the facility medical director can also conduct the assessment. This change is reasonable because it clearly identifies all personnel who are qualified to conduct the assessment in order to determine the facility’s ability to meet the safety needs of the person being assessed and other persons at the facility.

PART 9050.0080 ADMISSION DECISION; NOTICE AND REVIEW.

Subpart 1. **Notice.** Subpart 1 is revised to delete “working” days and replace it with “business” days. This change aligns with the new definition “business days” at part 9050.0040, subpart 17a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 2. **Review and reconsideration.** Subpart 2, is restructured to provide an item A and item B. Item A establishes an applicant can request a review by the admission committee of its decision to deny the applicant’s admission, and the time limits to request a review. Item A revises the rule language “30 days” to “30 calendar days.” This change is needed to specify that in counting 30 days, the 30 days are consecutive and include weekends and holidays, which would be excluded under the definition of “business days.” It is reasonable to provide clarifying language to aid in interpreting the rule.

A new item B is added and the existing rule language is revised to delete language that the administrator may request the admission committee to reconsider its decision to deny the applicant’s admission, and adds the requirement that after a request for review by the review committee regarding the denial of admission to the facility, the applicant or applicant’s representative may forward a written request for reconsideration to the administrator of the facility. The request for reconsideration is an additional examination available to the applicant to assure the denial is correct. The request for reconsideration must be within 14 calendar days of the applicant’s receipt of the review, and the administrator must make a decision on the denial of

admission within 30 calendar day from receipt of the request. This revision is needed to specify the requirements to request a “review” and a “reconsideration” of the denial of admission by the facility. It is reasonable to clarify the types of challenges available to an applicant, and that the applicant or applicant’s legal representative understands the process to maximize the applicant’s protections of fair and accurate decisions for admission into the facility.

PART 9050.0100 TRANSFER.

Subpart 1. **Generally.** Subpart 1 is first revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. Subpart 1 is next revised to delete “Patient’s” Bill of Rights and replace it with “Health Care” Bill of Rights to align with Minn. Stat. § 144.651. These change are needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule, and terminology in Minnesota statutes.

Subp. 2. **Notice.** Subpart 2 is revised to delete the rule language that identifies the types of situations under which a resident would not be notified that they are being transferred from the facility. This subpart is further revised to add that the resident must be notified in writing within the timeframes identified in items A to C. This revision requires that notification to the resident that is being transferred must be provided to the resident in all cases. However, the timeframes under which the resident must receive the notification are different based on the requirements in items A, B, and C. It is reasonable to provide notice to a resident of their transfer within a specified timeframe because a resident has a right to be informed that they will no longer be a resident of the facility they are being transferred out of.

PART 9050.0150 BED HOLD.

Subp. 1. **Generally.** Subpart 1 is revised to delete the reference to part 9050.0540. This revision is needed to clarify that any payment associated with the requirement to hold a resident’s bed is addressed in subpart 5 of this part. This change is reasonable because subpart 5 is the specific rule that addresses that action; part 9050.0540 is not required and creates confusion and redundancy.

Subp. 2. **Hospital absence.** Subpart 2 is revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 3. **Treatment absence.** Subpart 3 is revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 4. **Therapeutic leave.** Subpart 4 is first revised to delete the term “personal absence” and replace it with “therapeutic leave.” This change aligns with the new definition “therapeutic

leave” at part 9050.0040, subpart 109a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule. Subpart 4 is next revised to add rule language that specifies the allowable number of days per year a resident can take therapeutic leave, unless definitive arrangements have been made with the administrator for a longer absence. This change is needed to align with the federal per diem rate as provided under 38 CFR 51. It is reasonable that state rules comply with federal law.

Subp. 7. Monitoring of bed hold status. Subpart 7 is first revised to change the review timeframe for the appropriateness of continued bed hold from at least once every 30 days to every seven days during the resident’s ongoing absence. This revision is needed to update the amount of review time in which the facility will determine the appropriate length of absence. The MDVA has found in its experience monitoring the status of bed holds that 30 days provides too much time in between required reviews by the facility, and believes that seven days is reasonable. Next, subpart 7 is revised to delete the requirement that “Continued bed hold or continued residency with personal absences exceeding 36 cumulative days per year must be reviewed by the utilization review committee.” This change is reasonable as it applies a consistent standard for the facility by making the review time more frequent to better assess the resident’s current and ongoing absence from the facility. Last, this subpart is revised to delete the term “personal absence” and replace it with “therapeutic leave.” This change aligns with the new definition “therapeutic leave” at part 9050.0040, subpart 109a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

PART 9050.0200 DISCHARGE.

Subpart 1. General criteria. Subpart 1 is revised to add the rule language “A resident may be discharged from any veteran’s home facility.” This revision is needed to identify that the MDVA has the ability to pursue discharge, when necessary, in all of its facilities. This rule is reasonable because it informs the reader and all residents at MDVA facilities that a resident of a Minnesota Veterans Home can be discharged from a facility. Subpart 1 is next revised to delete nursing “care” facility and replace it with “skilled” nursing facility. This change aligns with the new definition “skilled nursing facility” at part 9050.0040, subpart 105a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 2. Types of discharge and grounds for discharge. Subpart 2 is revised to add rule language that a resident can be discharged from a facility “immediately” according to the conditions in items A to C for the three types of discharge – voluntary, involuntary, or immediate. This revision is needed to update the types of discharge to include immediate discharge as provided for in new item C. Immediate discharge is a necessary option for the MDVA when the resident poses an immediate threat to the resident, other residents, or staff and must be removed to protect those interests. This change is reasonable because it assures the three types of discharge under this subpart are referenced accurately.

Item A establishes the requirements for a voluntary discharge. Item A is first revised to delete the resident's spouse and attending physician as providing mutual consent for a voluntary discharge. This revision is needed to correctly identify all the participants necessary to meet the qualifications of a "voluntary discharge." A legal representative may include a "spouse" if the resident was not able to make his or her own decision, but the terminology of "legal representative" covers all options. Additionally, when a facility receives a request from a resident or the legal representative, the facility, through its administrator, refers to all its care providers before providing consent to the discharge. This change is reasonable because it assures the necessary participants required to consent to a voluntary discharge are identified. Item A is next revised to add language identifying that a voluntary discharge begins when the resident or resident's legal representative submits written notice to the facility. This revision is needed so that is clear to the facility that the resident or resident's legal representative are the persons who are initiating the voluntary discharge request. It is reasonable that the resident or resident's legal representative initiate the request, because it is the resident who voluntarily wants to be discharged from the facility.

Item B establishes the requirements for involuntary discharge. Item B is first revised to delete the resident's spouse and attending physician as persons who do not provide mutual consent for the resident's involuntary discharge. This revision is needed to correctly identify all the participants necessary to meet the qualifications of an "involuntary discharge." A legal representative may already include a "spouse" if the resident was not able to make his or her own decision, but the terminology of "legal representative" covers all options. Additionally, when a facility acts to involuntarily discharge a resident, the facility, through its administrator, refers to all its care providers by relying on the utilization review committee described in part 9050.0400 before acting on the recommendation for discharge. This change is reasonable because it assures the necessary process and followed and the required participants are consulted before an involuntary discharge is acted upon.

Because Minn. R. 9050.0200, subpart 3, "Grounds for discharge" is proposed for repeal, item B is next being revised to add new subitems (1) to (6) to establish the circumstances that would need to exist for involuntary discharge procedures to start. New subitems (1) to (6) align with the requirements of Minn. R. 9050.0200, subpart 3, proposed for repeal. This revision is needed to more clearly and concisely identify all the circumstances for which the MDVA may initiate involuntary discharge proceedings against a resident of one of its facilities. It is reasonable to provide the circumstances under which involuntary discharge procedures start in order to ensure that the facility and resident are informed that specific circumstances will lead to an involuntary discharge.

New item C establishes the requirements for immediate discharge, previously referenced in Minn. R. 9050.0200, subpart 3, which is proposed for repeal. However, the proposed item C creates a clearer direction for the reader and the facility. Item C identifies that a resident can be immediately discharged if they willfully or deliberately disregard state or federal laws, rules, and

regulations. Immediate discharge begins when the residents' behavior poses an immediate threat to the health or safety of themselves or others; this determination is made by the utilization review committee and the home administrator. Furthermore, unlike the previous version, the proposed actions identified in item C is also followed up with the process of executing the immediate discharge in part 9050.0220, subpart 7. This new subpart is needed to identify that immediate discharge is a type of discharge allowed under part 9050.0200, and to clearly identify when it can be used as a preventive measure against unsafe conditions of the resident, other residents in the facility, or facility staff. It is reasonable to have a discharge mechanism in place that provides for the safety of residents and facility staff.

Existing Minn. R. 9050.0200, subpart 3 identifies the circumstances under which discharge procedures must begin. Minn. R. 9050.0200, subpart 3 is being repealed because Minn. R 9050.0200, subpart 2, types of discharge and grounds for discharge, is being revised to include the existing subpart 3 requirements for when involuntary discharge procedures begin. It is reasonable to eliminate repetitive and redundant rule language.

Existing Minn. R. 9050.0200, subpart 4 identifies the requirements for notice of involuntary discharge. Minn. R. 9050.0200, subpart 4 is being repealed because Minn. R 9050.0220, involuntary discharge procedures, is being revised to include the existing subpart 4 requirements for involuntary discharge. It is reasonable to eliminate repetitive and redundant rule language.

Existing Minn. R. 9050.0200, subpart 5 identifies the contents of the notice of involuntary discharge. Minn. R. 9050.0200, subpart 5 is being repealed because Minn. R 9050.0220, involuntary discharge procedures, is being revised to include the existing subpart 5 requirements for notice of involuntary discharge. It is reasonable to eliminate repetitive and redundant rule language.

PART 9050.0210 VOLUNTARY DISCHARGE PROCEDURES.

Subp. 2. Responsibilities of facility staff. Subpart 2 establishes the requirements and voluntary discharge procedures the facility staff are to follow. Subpart 2, tem A, subitem (1) is being revised to delete “multidisciplinary” staff and replace it with “interdisciplinary” staff to update the list of persons that may be attending the discharge conference. This change aligns with the new definition “interdisciplinary staff” at part 9050.0040, subpart 58b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subpart 2, item B is first being revised to delete “attending physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. Item B is next revised to delete “multidisciplinary” staff and replace it with “interdisciplinary” staff. This change aligns with the new definition “interdisciplinary staff” at part 9050.0040, subpart 58b. These changes update the list of persons who are to complete the resident’s medical record. These changes are needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

PART 9050.0220 INVOLUNTARY DISCHARGE PROCEDURES.

Subpart 1. **Generally, recommendations.** Subpart 2 is revised to add “facility financial staff, or facility social services staff” as personnel that can recommend involuntary discharge, and to require that the recommendation be provided to the facility administrator. This revision is needed to correctly identify the facility personnel that can recommend involuntary discharge to the facility administrator. It is reasonable to correctly identify who can recommend involuntary discharge because these are the personnel most qualified to do so.

Subpart 1a. **Neutral administrator.** Subpart 1a is added to provide a specific definition to the term “neutral administrator” as used in this part. The term creates a specific identification of the individual that can oversee a discharge reconsideration hearing. This addition to this part is reasonable as it provides additional safeguards to a resident facing an involuntary discharge by identifying a neutral individual to oversee the discharge and confirm if the recommendation by the utilization review committee and the notice of discharge by the administrator is consistent with the rules. The addition is necessary so the reader is provided direct reference to a new term used within this part.

Subp. 2. **Review, notice, and service.** Subpart 2, item A is revised to delete the rule language that requires the administrator to issue a notice of involuntary discharge if the administrator agrees with the utilization review committee or Management and Budget Department recommendation. New rule language is added that requires the administrator to review the recommendation and documentation from the review committee, facility financial or social services staff; and then if the administrator agrees with the recommendation, issue a notice of involuntary discharge to the resident or the resident’s legal representative. This revision is needed to correctly identify the process for review of a recommendation for involuntary discharge from designated staff in the facility. It requires that the recommendation must be reviewed by the administrator and approved before moving forward. This change is reasonable because it provides more direct instruction for the review and approval or disapproval of the recommendation, and it assures the required personnel are identified and the process is clear.

Because Minn. R. 9050.0200, subpart 4, notice of involuntary discharge, is proposed for repeal, new item B is added to establish the requirements for how a resident must be notified of the administrator’s intent to proceed with involuntary discharge proceedings, the timeframe for notification, and when the timeframe can be extended or lessened. The requirements of item B align with the requirements of Minn. R. 9050.0200, subpart 4 proposed for repeal. This revision is needed to more clearly and concisely identify the process for notice of involuntary discharge based on the review and approval of an involuntary discharge by the administrator. This change is reasonable because it provides more direct instruction and the timeframes for the notice of involuntary discharge, and helps to ensure the process is clear.

Because Minn. R. 9050.0200, subpart 5, contents of notice, is proposed for repeal, new item C is added to establish what information the notice of involuntary discharge must contain. The items

listed in item C, subitems (1) to (5) align with the items listed in Minn. R. 9050.0200, subpart 5 proposed for repeal. This rule is needed to identify the required content of the notice requirement when initiating an involuntary or immediate discharge, and to provide direct instructions as it pertains to the content of the notice and the appropriate individual to execute the notice. It is reasonable to identify the information the notice must contain to help ensure the notice process is clear.

Because Minn. R. 9050.0200, subpart 5 is proposed for repeal, new item D is added to establish the requirements for how the notice of involuntary or immediate discharge is to be delivered to the resident, where it is to be delivered, and when it must be sent by certified mail. The notice must be delivered to the resident through personal services, that is, physically handing it to another individual who the content of the paperwork is referencing (see Minnesota Court Rules, Civil Procedure, 4.03 Personal Service), or U.S. mail. This rule is needed to correctly identify the required service process of the notice when initiating an involuntary or immediate discharge, and to provide direct instructions as it pertains to the method of service of the notice. It is reasonable to identify how the resident will receive the notice to help ensure the process is clear.

Subp. 3. Reconsideration hearing. Subpart 3, item A is revised to delete the rule language that allows a resident to request the reconsideration hearing. New rule language is added that requires the facility to schedule a reconsideration hearing at least 10 days from the date of the notice of involuntary discharge, and that the reconsideration must be before a neutral administrator or neutral designee. This revision is needed to assure protection for a resident facing an involuntary discharge and correctly identify the requirement for the facility to automatically create a reconsideration hearing when a notice of involuntary discharge is presented to a resident. Additionally, the revision is needed to specifically identify the facility personnel at the facility that will oversee the reconsideration hearing. Previously, a reconsideration hearing was only scheduled if requested by the resident identified in the notice of discharge. To protect a resident's rights, MDVA will now be required to provide a reconsideration hearing of each resident who receives a notice of involuntary discharge. The time requirement for the hearing is consistent with existing Minn. R. 9050.0220, subpart 3. This change is reasonable because it helps to ensure the process is clear and that the resident's due process rights are protected.

Because Minn. R. 9050.0200, subpart 5 is proposed for repeal, new item B is added to establish that a reconsideration hearing may be conducted by telephone if the resident requests it, the parties mutually decide it's advisable, and the resident's consent and why the hearing is held via telephone is documented. This rule is needed to identify the alternative formats to conduct a reconsideration hearing. This change is reasonable because it helps to ensure the process is clear for holding a reconsideration hearing in an alternative format.

New item C establishes the conditions for when the date and time of the reconsideration hearing may be extended for the resident for good cause as determined by the neutral administrator. Subitems (1) to (7) list the conditions and include: illness or injury of the resident or resident's

family member, death of a resident's family member, employment or school obligations that cannot be changed, a judicial proceeding or nonmedical emergency that requires the resident's presence. This rule is needed to identify conditions when additional time to schedule a reconsideration hearing shall be provided by the MDVA to the resident. The conditions of subitems (1) to (7) align with Minn. R. 9050.0220, subpart 4, item D, which is proposed to be deleted. It is reasonable to provide an extension because situations may arise that would prevent the resident from attending the reconsideration hearing at the scheduled time.

New item D establishes what the term "emergency" means under subpart 3. This language is consistent with Minn. R. 9050.0220, subpart 4, item D, subitem (6), which is proposed to be deleted. It is necessary and reasonable to define the term "emergency" so that the resident or resident's representative is informed what constitutes a nonmedical emergency as a condition of extending the time to conduct a reconsideration hearing.

Subp. 4. Reconsideration procedures, scheduling, representation. Subpart 4 is being revised and restructured to correctly identify and clarify the general procedure for the reconsideration hearing.

Subpart 4, item A is revised to add "The general procedure for reconsideration is as follows." The existing remaining requirements in items A, and the existing requirements in items B and C are restructured as new subitems (1), (2), and (3), respectively, under item A. Item A also added two new subitems (4) and (5). Subitem (4) requires that the resident and facility submit all evidence in a time and manner as prescribed by the neutral administrator. Subitem (5) requires the facility provide a copy of all information upon the residents request.

Subpart 4, item D is revised to delete subitems (1) to (6), which has been restructured in proposed item subpart 3, item C (see above). It is reasonable to establish general procedures when conducting a reconsideration hearing so that the resident or resident's representative, neutral administrator, and facility can be informed of how the reconsideration hearing will be conducted.

Subpart 4, new item B establishes how the reconsideration hearing will be conducted. New subitems (1) to (7) identify the requirements for opening the hearing, the order in which the facility and the resident present their facts and supporting evidence, requesting clarification, the order for providing closing statements, and the requirements for closing the hearing. These rules are needed to correctly identify and clarify the procedures for conducting the reconsideration hearing. The rules ensure the resident is provided due process to challenge the involuntary discharge and places the burden of proof on the facility to show that it meets the purpose of discharge under Minn. R. 9050.0200, subpart 2. It is reasonable to establish procedures for conducting a reconsideration hearing so that the resident or resident's representative, neutral administrator, and facility can be informed of what to expect at the hearing.

Subp. 5. Reconsideration decision and order. Subpart 5 is first revised to add rule language that the "neutral" administrator or an "identified neutral designee shall issue their decision and

order” within ten “calendar” days after the reconsideration hearing. Subpart 5 is next revised to require the decision and order explain the decision and identify the resident’s appeal rights. This change is needed to correctly identify the deciding authority, and to clarify the ten day timeframe as well as the procedure of issuing a decision based on the information gathered from the reconsideration hearing. This change is reasonable because it helps to ensure a structured and timely process after the reconsideration hearing, and that the resident’s due process rights are protected.

Subp. 6. Appeals process. Subpart 6 is first revised to delete the rule language “an administrator’s discharge or transfer order” as the action being appealed, and rule language is added that a resident or resident’s representative may appeal “a neutral administrator’s or an identified neutral designee’s order.” The timeframe for a resident to request an administrative appeal after issuance of an order is revised to delete ten “working” days, and to add ten “business” days. These changes are needed to correctly identify and clarify the resident’s rights to appeal a decision from the reconsideration hearing for an involuntary discharge. Next, the subpart 6 rule language proposed for deletion that pertains to notice rights when the resident no longer resides at the facility, including items A to D, is moved to new subpart 8 of this part in order to provide under one subpart, all the requirements for appeal when the resident no longer resides at the facility. It is reasonable to make rule changes for clarification.

Last, subpart 6 is revised to delete the reference to Minn. Stat. § 14.48 because rules for an appeal hearing have been adopted under Minn. Stat. § 144A.135, and the reference to Minn. Stat. § 14.48 is no longer needed. The reference to parts 9050.0100, subpart 2 and 9050.0200, subpart 4 are also deleted as 9050.0100, subpart 2 applies to notice of transfer, and 9050.0200, subpart 4 is proposed for repeal. It is reasonable to delete outdated rule language. The changes to subpart 6 are reasonable because they help to ensure a proper appeal process and properly identify the statutory requirements for an appeal of the order.

Subp. 7. Immediate involuntary discharge. New subpart 7, items A to F establish the requirements for immediate involuntary discharge of a resident, one of the types of discharges available to the facility, as identified in part 9050.0200, subpart 2, item C. Subpart 7 is needed to correctly identify the resident’s rights and appropriate procedures when the facility conducts an immediate discharge of a resident based on an immediate threat to the health and safety of the resident, other residents, or staff. An immediate involuntary discharge has always been an option for the facility (see Minn. R. 9050.0200, subpart 3, item E, proposed for repeal); however, the lack of a documented proper procedure and guidance has limited its application when the threat presented itself. Proposed part 9050.0200, subpart 2, item C identifies when a resident must be immediately discharged from the facility. New subpart 7 identifies the internal decision process of the facility, notice requirement to the resident, the procedure to be implemented to assure resident’s rights, as well as the appeal process. This change is reasonable because it helps to ensure the facility can maintain safety within its operations as well as provide due process to the resident.

Subp. 8. **When the resident no longer resides at the facility.** New subpart 8 establishes the requirements for when a resident no longer resides at the facility while either an active or immediate involuntary discharge appeal is pending and the resident fails to provide written notice to the administrator whether or not the appeal should continue; items A to D identify the steps that must be taken. Subpart 8 is needed to correctly identify the procedure for providing notification to the resident when the resident no longer resides at the facility. Existing subpart 6 rule language proposed for deletion that pertains to notifying the resident when the resident no longer resides at the facility, including items A to D, is moved to new subpart 8 of this part in order to provide under one subpart, all the requirements for notifying the resident when the resident no longer resides at the facility. This change is reasonable because it clearly identifies the procedure when the discharge process has been implemented and the resident leaves the facility prior to conclusion of the process.

PART 9050.0230 ENFORCEMENT OF FINAL DISCHARGE ORDER.

Part 9050.0230 establishes what the final discharge order is, who issues the order and when, and action the administrator may take when a resident refuses to comply with the terms of a final discharge order. This part is revised to add rule language that the order is issued following “reconsideration or” review of the administrator’s discharge order, or the discharge order issued by the “neutral” administrator “or an identified neutral designee” of a facility. These revisions are needed to correctly identify when a final discharge order is needed, and to specifically identify the facility personnel that can issue the final discharge order. To assure proper notification and final review, this revision clarifies that the commissioner must issue a discharge order after each reconsideration hearing or review by the Office of Administrative Hearings. This change is reasonable because it provides the commissioner the opportunity to review each involuntary discharge from the facility under his control and confirm the decision before implementing the discharge.

PART 9050.0300 CARE PLANNING.

Subpart 1. **Generally.** Subpart 1 establishes the requirement that the facility must have and implement a care planning procedure, and who initiates and reviews a resident’s care plan. Subpart 1 is first revised to delete “the care plan” team and to add “an interdisciplinary” team as the facility personnel who initiate and review a resident’s care plan. This change aligns with the new definition “interdisciplinary staff” at part 9050.0040, subpart 58b. This revision is needed to properly identify the team to initiate and review care plans of residents and to reflect current health care industry terminology. Subpart 1 is next revised to delete “physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

PART 9050.0400 UTILIZATION REVIEW COMMITTEE.

Subp. 2. **Composition.** Subpart 2 identifies the facility personnel that comprise the utilization review committee, which conducts utilization reviews. Utilization reviews are the ongoing evaluation of the necessity for the quality and timeliness of services provided in the facilities and to the residents. This subpart is revised to delete “physician” and replace it with “provider” as one of the personnel that may be on the utilization review committee. This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. Subpart 2 is next revised to add that the medical records technician or designee must not participate in a voting capacity on the committee. This change is needed to identify the proper personnel who will participate on the utilization review committee and in what capacity. It is reasonable to update terminology to match the definitions used in the rule. It is also reasonable to identify all the personnel who are to comprises the utilization review committee so that residents and facility are informed who is carrying out the duties of the committee.

Subp. 3. **Duties.** Subpart 3, items A to G establish the duties of the utilization review committee. Item C is revised to delete the term “medical” when referring to the care evaluation study to be conducted by the utilization review committee. This change is needed to clarify that the care evaluation encompasses more than just a medical evaluation; as it includes the entire review of an individual’s health, mental, physical, social, behavior, and food. Item C is also revised to delete the committee’s duty to review “assessments of residents” and to add review “care needs of residents based on the state licensure of the facility” based on requirements of the Minnesota Department of Health and the current licensure of the facility.

Subpart 3, item G is revised to delete review of a resident’s “case record annually” and to add review of a resident’s “medical and minimum data set records as required” to address the conditions identified in item G, subitems (1) to (4). The change is consistent with federally mandated process for clinical assessment of all residents in Medicare or Medicaid certified nursing homes. This change is needed to update rule language to be consistent with industry terms. The changes in subpart 3, items C and G clarify the general procedure when assuring notification to the resident when he or she no longer resides at the facility.

PART 9050.0500 COST OF CARE; BASIS FOR MAINTENANCE CHARGE; BILLING.

Subp. 2. **Costs to be included in calculating cost of care.** Subpart 2 establishes that the costs of providing resident care, both direct and indirect, are to be compiled separately for each facility. This subpart is revised to delete the rule language that states the facility costs are compiled “on the basis of whether nursing home or boarding home care services are provided.” This change is reasonable because the deleted rule language is not needed to explain to the reader that each facility operated by the commissioner is determined separately. The change provides additional clarity to the purpose of the subpart, and deletes language that is confusing.

Subpart 2, items A and B are revised to align with how direct costs and indirect costs are defined, as provided by the federal Center for Medicare Service manual system. In item A, rule

language is deleted that references direct costs of staff care that are those that are directly attributed to facility services that directly benefit the resident. New rule language is added that makes clear that direct costs of staff care provided to the resident are those that can be directly traced to a specific cost center or cost object. In item B, rule language is deleted that references indirect costs include those for common or joint purposes identified with more than one level of care. Rule language is added that makes clear indirect costs must be reduced by the amount of receipts received, not to include reimbursement. The rule language referencing receipts for “lease or rent payments, meals, and other common purpose sources” is deleted as indirect costs are not to be reduced by these costs. It is reasonable for state rules to align with federal rules and requirements when appropriate.

Item C is revised to delete “revenue” and replace it with “receipts,” this is consistent with the fiscal record activity of the facility and the MDVA. Calculation of the cost of care does not include the expenses of the commissioner and capital expenditures or receipts; the facility is not making a profit but providing a service for veterans who are Minnesota residents. This change is reasonable because it provides clarity to the terms of basic maintenance charges.

Subp. 3. Method of calculating average daily per resident cost of care. Subpart 3 and items C and G of this subpart are revised to delete nursing “home” and replace it with “skilled nursing facility.” This change aligns with the new definition “skilled nursing facility” at part 9050.0040, subpart 105a. These change are needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 4. Cost of care related to maintenance charge. Subpart 4 is revised to delete the vague term of “ability to pay” and replace it with the “financial assessment as specified in parts 9050.0700, 9050.0710, and 9050.0720.” Each rule part cited in the proposed revision specifically addresses income and how the facility calculates income received by or on behalf of the applicant when determining maintenance charge. These changes are needed to provide a clear reference to the reader determining cost of care. It is reasonable to update references to provide clarity for the reader.

PART 9050.0510 MAINTENANCE CHARGE; ADDITIONAL SERVICES.

Subpart 1. Additional services at resident's own expense. Subpart 1 establishes that a resident may use additional health care services, beyond the services in the resident’s admissions agreement, at their own expense. This subpart is revised to delete rule language that references use of the additional health care services if the services do not exceed the level of care the facility is licensed for and the service provider complies with the facility documentation requirements. This rule revision clarifies for an applicant or resident what is and is not incorporated in a maintenance charge under part 9050.0560, and also clarifies that a resident retains his or her right to use private services or resources to meet his or her medical needs, basic needs or additional needs, should he or she so desire. For example, the relationship between the USDVA and the state veteran’s homes is such that some services provided by or through the

USDVA are not available to residents of the state veteran's homes. This "gap" results from the fact that federal benefit eligibility requirements or standards are more restrictive than the eligibility standards for state veteran's benefits (particularly entrance into the state veteran's homes). This change is reasonable because it provides resident's greater flexibility if they choose to use private services or resources to meet their medical needs, basic needs or additional needs.

Subp. 2. **Veteran exclusive services.** Subpart 2 is proposed for repeal. This rule is not needed because veteran exclusive services are seen and relied upon similar to additional services from other providers as identified in subpart 1 of this part. It is reasonable to repeal redundant rule language.

PART 9050.0520 MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.

Subp. 2. **Discharge for nonpayment.** Subpart 2 aligns with Minn. Stat. § 198.03, subd. 3 and Minn. Stat. § 334.01 regarding overdue maintenance charges and imposition of or assessment of interest. Subpart 2 establishes the requirements for discharge proceedings, what is a delinquent account, and that a resident may be discharged from the facility for a delinquent account. This subpart is revised to update rule references. This change is needed to keep references consistent with the proposed amendments regarding discharge under part 9050.0200. It is reasonable to provide correct rule references to decrease confusion and misunderstanding.

9050.0530 RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.

Part 9050.0530 establishes the requirement for a written admission agreement between the commissioner and the resident regarding charges for care and service, payment of the resident's maintenance charge, and refund policy. The Minnesota Veterans Homes admits veterans, as defined under Minn. Stat. § 197.447, and their spouse. This part is revised to delete the rule language "If a person is admitted, and to replace it with "For a person admitted." This revision is needed to identify that all individuals that are admitted to a Minnesota Veterans Home must enter into and comply with the terms of an admission agreement and the cost of care as identified in Minn. Stat. § 198.03. It is reasonable to provide direct references to assure the rule is clear on who it applies to, and to inform the applicant of the admission agreement requirements prior to admission.

PART 9050.0550 MAINTENANCE CHARGE; RESOURCES CONSIDERED.

Part 9050.0550 identifies the general nature of property or resources considered in determining an applicant's or resident's ability to pay the maintenance charge. This rule is needed to provide notice to applicants and residents of what is considered available for payment of the maintenance charge and allows them to plan accordingly. It also establishes a priority of resources to be used for payment. To assure MDVA and its Veterans Homes maximize the benefits and resources available to its resident's, the MDVA is clarifying what type of assets the applicant or resident will be required to make available. This rule is reasonable because it gives a person advance

notice of what is considered available to the state for payment of a resident's maintenance charge and allows each person to plan for his or her needs.

Subpart 1. **In general.** Subpart 1 is revised to add rule language that clarifies "any applicable" insurance will be considered to assist with payment of the maintenance charge. Next, the subpart is revised to add rule language that assets will also be considered in determining ability to pay, but does not limit the types of assets to those listed. Identifying the assets and the standard in which they will be reviewed is necessary to provide notice to applicants and residents of what is considered available for payment towards their care. A proper notice allows the applicant or resident to plan accordingly and make educated decisions regarding the cost of their healthcare. The change is reasonable because it provides advance notice of what assets can be considered.

Subp. 2. **Long-term care insurance benefits.** Subpart 2 establishes that insurance benefits are treated separately from other resources as they are not completely within the control of the applicant or resident. This subpart is revised to add rule language that specifies insurance benefits refers to "long-term care" insurance benefits. The change is necessary as it informs the applicant or resident that such funds from insurance will be appropriated to defray the cost. It is reasonable that where an applicant or resident is eligible for long-term care insurance benefits, the whole of those benefits will be considered available for payment.

Subp. 3. **Property.** Subpart 3 limits not excluded property to \$3,000 and further provides that excess "property" must be spent down to the \$3,000 limit by full payment of the cost of care. Subpart 3 is revised to add rule language that clarifies the property requirements of this subpart apply to an applicant or resident "of a skilled nursing facility." This change is needed to clarify the difference between the review of assets as it pertains to the skilled nursing facilities (Minneapolis, Fergus Falls, Luverne, and Silver Bay), and the boarding care facilities (Minneapolis and Hastings). The additional funding exception allowed to residents of a boarding care facility is reasonable as it allows the transitioning residents to prepare themselves to living outside the facility and provides additional assets to secure a smooth transition.

PART 9050.0560 MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.

Part 9050.0560 establishes the requirements for the timing of when the amount of the maintenance charge is determined, and the method for calculating the maintenance charge. The events which trigger a determination are those, in the experience of the facility financial staff, which are most likely to create a significant change in financial circumstances – either a change in costs or a change in resources. It is reasonable to identify the conditions or occurrences which will result in a redetermination of the maintenance charge to inform the applicant or resident of the reasons for possible fluctuation in the maintenance charge amount.

Subpart 1. **Time of determination.** Subpart 1 is revised to delete "if" and add "when" the maintenance charge must be determined; items A to E list the conditions that trigger when the charge is to be determined. Item A is revised to clarify that the maintenance charge will be

determined upon admission to a facility and “thereafter” at least annually “while a resident.” This change is needed to make clear that one of the conditions for determining the maintenance charge is residency at a facility.

Subpart 1 is next revised to add the rule language “Failure of the applicant or resident to report the substantial change accurately and timely to the facility may result in a discharge.” This change is needed to clarify that if there is a failure to identify the triggering event as required, discharge could be sought by the facility as provided in part 9050.0200, subpart 2, item B, subitem (6).

Subp. 2. Method of calculation. Subpart 2 establishes the method for calculating the amount of the maintenance charge the resident must pay; items A and B specify how the charge must be determined. Subpart 2 is revised to change “A and B” to “A or B” to clarify it is one method of calculation or the other, and not both together. Item A identifies that those with resources over the "assets" limit of \$3,000 must be reduced to the appropriate level to achieve or maintain a lower cost than full cost of care. Item B deals with maintenance charge calculations on the basis of the applicant’s or resident’s income. The calculation will review all chargeable income, up to the full cost of care for the appropriate level of care, in calculating the maintenance charge. Use of all available income, after deductions for the applicant’s or resident’s needs, avoids the use of a complicated fee schedule and more readily accommodates each person's needs, as these are determined on a case by case basis. The change is reasonable because it clarifies that the maintenance charge calculation is either or, and not both.

PART 9050.0580 REVIEW OF MAINTENANCE CHARGE DETERMINATION.

Part 9050.0580 establishes the applicant’s or resident’s right to request review of a maintenance charge determination. Reconsideration of a maintenance charge determination is a necessary safeguard against incorrect calculations based on inappropriate, inaccurate or incomplete information; and provides some "checks and balances" to the financial system. This part is revised to change the existing rule language “ten days” to “ten business days” to clarify when the request must be submitted and the review conducted. This revision is needed to identify a clear timeline for a request and review. This change aligns with the new definition “business days” at part 9050.0040, subpart 17a. It is reasonable because it assures the timeframe for request and review are accurate.

PART 9050.0590 MAINTENANCE CHARGE; REFUND.

Part 9050.0590 establishes how refunds on amounts paid are to be made where an applicant or resident discharges from the facility before using "all services" for which they have made payment. Because billing is typically done in advance of time covered by the charge (e.g. payment for September is made in early September or late August for the month forthcoming) and an individual cannot anticipate what might occur during the month for which they have already made payment, it is necessary that a refund mechanism be provided for any days a bed is unused or not held. The revision to replace the number of “unused days” with the number of

“bed days assigned to the resident, not to include the day of discharge” is much clearer than “unused days.” This change is reasonable because it clarifies for both the facility and the resident when refunds are applied.

PART 9050.0600 PROPERTY LIMITATIONS.

Subpart 1. **General provisions of property ownership.** This subpart establishes the general treatment of property when determining the maintenance charge while being a resident at the Veterans Home. Only property in which the person has an actual interest and which is actually available or can be made available is considered according to this subpart. For purposes of clarity, the original drafters found it necessary to define the nature and extent of property interests which will be considered and to do so in a manner consistent with actual practice as opposed to theory. Originally when subpart 1 was drafted, the SONAR dated October 6, 1989, explained when a potentially conflicting situation of theory versus reality when it described the approach of determining joint tenancy for the purpose of determining assets available to an applicant (see SONAR page 60 of 81 at <https://www.leg.mn.gov/archive/sonar/SONAR-01569.pdf>). This is seen when it is demonstrated by the legal ownership status of "joint tenancy." Now, the theoretical definition of joint tenancy is that each of the interest holders has a right to the entire property. As a practical matter however, each "owner" cannot have or use the entire property. Therefore, subpart 1 item A establishes that, for calculation purposes, only the person's actual share (assumed to be an equal share) will be considered.

Item A is revised to add that other types of ownership, such as a life estate must be evaluated using the Department of Human Services Minnesota Health Care Programs Eligibility Policy Manual. Also added is the requirement that “Ownership of any property in joint tenancy shall be treated as ownership as tenants in common for purposes of its designation as available or excluded property.” The change is consistent with that process by placing a defined value on the interest of a life estate to be consistent with medical assistance purposes under the provisions of this subpart.

Subpart 1, item D is revised to delete “Keogh account” and to clarify that the accounts referred to are those “of the resident.” Rule language is also added that the facility financial staff shall “determine the value of” the accounts, replacing “evaluate” the accounts. It is reasonable to remove the redundant reference of retirement accounts, and clarify that facility financial staff shall determine the value of all retirement accounts of the resident.

Subp. 2. **Real property limitations.** Subpart 2, item A, subitem (1) is revised to add “dependent.” The addition of “dependent” to the elements that provide an exclusion of an applicant or resident’s homestead from consideration as a resource clarifies that the child must be a dependent. This revision is needed to specify that not all children of an applicant or resident are included in the exception and applies to the children that are living in the homestead and are “dependent” on the applicant or resident. This change reasonable as a homestead must be

protected as being counted as a resource when it is needed for a child who is defined as “dependent.”

Subpart 2, item A, subitem (4) is revised to delete “home” and replace it with “homestead.” This change is needed to accurately identify the dwelling owned and occupied by the applicant or resident, or that person's spouse, as a primary residence. The change is reasonable as it provides clarification to the exception listed for the exclusion of a homestead from consideration as a resource of the applicant or resident. The change is necessary to clearly identify the resource the part is identifying within the exception.

Subpart 2, item E identifies real property assets that are actually assets for consideration for resource calculations but for the inability to liquidate. Originally, the exclusion was for any real property owned by the applicant or resident that would be considered an asset; however, the exclusion would apply if the applicant or resident was attempting to sell the property. If the property was not sold within six months, it would be continued to be excluded and the asset would not have to be listed for sale anymore. The intent of the original rule language was to avoid the State from becoming a broker to recover cash. However, in actuality some property just needs more time to liquidate and a continued good faith effort to sell the excluded property would benefit the State, as well as to continue the efforts to consider assets owned by an applicant or resident that are available or can be made available.

Subpart 2, item E, subitem (1) is deleted, and existing subitem (2) is divided and renumbered to subitems (1) and (2). The good faith effort to sell the property identified in item E, subitems (1) and (2) is revised to include the price point for which the property must sell (consistent with the State’s standard for Medical Assistance asset determination, Minn. Ch. 256B), and to provide the identifiable actions normally taken to sell the property, to include advertisement and verification when requested. Item E is revised to openly identify what property is an available resource to an applicant or resident as well as to provide guidance to situations that may occur when the applicant or resident is making a good faith effort to sell the property. These changes are needed to identify situations that may occur while selling a property. It is reasonable to provide the applicant or resident notice of requirements by the facility when those situations during the sale of a property do occur.

Subp. 3. Other property limitations. Subpart 3 instructs the facility financial staff to exclude the value of personal property identified in items A to F. Item B is revised to add “an irrevocable” prepaid burial account. This change is needed to be consistent with the eligibility requirements for Medical Assistance, Minn. Stat. § 256B.056, subd. 3. Item B is also revised to add “established in compliance with Minnesota Statutes, section 149A.97,.” The reference to Minn. Stat. § 149A.97 is needed so the preneed arrangement that identifies the funeral goods purchased are qualified under the law. It is necessary to provide the applicant or resident requesting an asset exclusion be provided notice of the standard in which it must adhere to before the property can be excluded under the rule. These changes are reasonable because it is not

unduly burdensome to the person claiming the exclusion to confirm the trust that the individual is requesting an exclusion is consistent with the requirements within Minn. Stat. § 149A.97.

Subp. 4. **Separate account for excluded funds.** Subpart 4 establishes that funds excluded from consideration as an available resource by subpart 2 and 3 of this part must be placed in a separate account. This subpart is revised to add rule language that clarifies the funds excluded from consideration must be placed in an account separate from other funds “determined available” to retain the exclusion. This rule change provides clarity for accounting and tracking purposes. Allowing available assets to be comingled with excluded assets would create a complicated review to determine cost of care. Requiring applicants and residents to keep their available funds and excluded funds separate is reasonable so that a clear distinction can be made between available and excluded funds.

PART 9050.0650 TRANSFERS OF PROPERTY.

Subpart 1. **Generally.** Subpart 1 requires reporting from applicants and residents with respect to transfers of property owned at the time of application for admission or residency. Reporting is necessary to allow the facility ability to track disposition of property to eliminate transfers which are done to avoid payment of care. The reporting requirement is reasonable as it requires minimal actions on part of the applicant or resident, discourages transfers without appropriate consideration, and is a standard practice in medical assistance. This subpart is revised to add “For real property, the market value will be determined by the current property tax evaluation.” Requiring the determination of value shall be the tax assessed value provides a basis of the market value at the time of transfer to confirm all parties are viewing the same starting point. By using a tax evaluation, similar to what is required in medical assistance, the parties can verify the amount transferred or predict the amount that will be assessed if the real property is transferred in the future.

This subpart is next revised to add rule language that provides a timeframe of the effective date of the property transfer and requires that for the transfer to be effective it has to be recorded with the county property records office. It is reasonable to confirm the time frame of the effective date and value at the same point because the value of the property transferred or sold must be correctly documented and confirmed as an available resource for maintenance charge payment.

Subp. 3. **Incorrect transfers.** Subpart 3 establishes that a transfer for less than fair market value is fraudulent, and provides notice to affected parties of conduct which is prohibited. A resident must provide evidence they had no health or economic reasons to believe skilled nursing or boarding care would be needed to show that a transfer or sale of property for less than market value was for another purpose. This subpart is revised to delete nursing “home” and replace it with “skilled” nursing. This change aligns with the new definition “skilled nursing facility” at part 9050.0040, subpart 105a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

PART 9050.0700 INCOME.

Subp. 2. **Availability of income.** Subpart 2 establishes how income must be attributed to the person who earns it or the beneficiary of the income as specified in items A and B. This subpart establishes income as all payments received, unless specifically excluded. A general guideline based on time of receipt, is provided to determine when to "include" income. Subpart 2 covers availability of income from specific sources such as trusts and income from joint property. This rule is necessary to recognize and provide guidelines in dealing with income from sources or investments whose handling is regulated or governed by other legal standards. Subpart 2, item A is revised to clarify that trusts that are created or amended are reviewed as a transfer. However, the revision to this subpart also clarifies that an amendment to a trust within the 12 month period before admission that does not change the financial distribution aspect of the trust will not be considered a transfer. The exception allows applicants or residents to amend a trust to add necessary regulator language or assist with the administration of the trust without affecting their cost of care at the veteran's home. This change is reasonable and is consistent with how medical assistance determines the funding of trusts as specified in Minn. Stat. ch. 256B.

PART 9050.0710 CALCULATION OF GROSS INCOME.

Subp. 1a. **Earned income.** Part 9050.0710 describes in general the calculation of gross overall income on the basis of the general nature of the sources of income. These rules are operational and break down the procedure based on the type of income. Subpart 1a establishes how earned income is treated in calculating gross income. Subpart 1a is needed to clarify that income received in exchange for services is considered an available resource. The revisions to subpart 1a are needed to address situations where the applicant or resident create a situation where income is created or depleted.

Subpart 1a, new item D establishes that contractual or retroactive payment of benefits are considered an asset and income. The addition of item D is needed as it identifies an income resource that is a common part of a resident or applicants' income. It is reasonable for facility financial staff to calculate all gross income of the resident to correctly to determine the resident's maintenance charge.

Subpart 1a, new item E establishes that refunds or rebates of federal and state taxes are considered income and an asset. The addition of item E is needed as it identifies a resource that is common with residents or applicants and clearly identifies how the facility financial staff will calculate the resource. It is reasonable to calculate all gross income of the resident to correctly to determine the resident's maintenance charge.

Subp. 5. **Unearned income.** Subpart 5 establishes how the MDVA treats unearned income differently than earned income to obtain an income picture which is accurate as to actual availability of income. Subpart 5 provides a differing treatment of income on the basis of its source and is consistent with state and federal revenue rules or codes. Because annuities have become a large resource for many applicants, the need to address them in these rules for veteran's homes was necessary. Subpart 5, new item C establishes that the annuity amount

received or should be received by the applicant or resident is unearned income; and if the cash value of the annuity can be withdrawn then the amount of cash value is the unearned income amount whether it is withdrawn or not. Consistent with Medical Assistance and eligibility requirements under Minn. Stat. 256B.056, residents and applicants must capitalize using their assets and income to assist with the payment of their health care needs. Annuities are a great resource for some applicants and residents, and the use of the resource and the withdrawal or required withdrawal of the annuities' value assists with the review of the cost of care for the individual.

Subp. 6. **Lump sums.** Subpart 6 establishes how lump sums are considered as income. Lump sums are treated in a manner consistent with the nature of the source of the payment. Subpart 6 is revised to clarify when a lump sum is available income or when it is considered an asset. These revisions are needed to provide a method of dealing with such items or sums as receipt of lump sums, as receipt of lump sums are a frequent occurrence amongst the residents of and applicants for residence at the Minnesota Veterans Homes. The changes provide additional clarification of whether a lump sum is treated as completely available upon receipt or is allocated over a period of time by being more specific what payments represent, and are consistent with the changes in subpart 1a of this part. Additional clarification to subpart 6 is reasonable as such situations are common occurrences in a resident or applicant's life.

PART 9050.0720 CALCULATION OF NET INCOME; DEDUCTIONS FROM INCOME.

Subp. 2. **Deductions from income of applicant or resident.** Subpart 2 requires that the facility financial staff deduct specific expenses from gross income to determine net income. Items A to R list the offsets or deductions from income to allow continued support of the resident's or applicant's family. It is necessary to specifically identify the deductible items to provide clarification as well as to avoid abuse of discretion on the part of facility staff in allowing deductions and making calculations, and to avoid abuse on the part of applicants or residents in claiming deductions. The following revisions are made to items O and P to align with the intent of subpart 2 to specifically identify allowed deductions from income.

Item O is revised to add long-term care expense or debt incurred for "skilled nursing" as a deductible item. This change aligns with the new definition "skilled nursing facility" at part 9050.0040, subpart 105a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule. Item O is next revised to delete "similar nonacute care" which is a general term, and to add "the medical and basic needs portion of assisted living or supportive services" which is a more specific term.

Item P is revised to delete "administrator" and add "commissioner or designee" as the decision maker within the MDVA who will make the final determination if there is a dispute over whether or not an item is an educational expense. It is reasonable to correctly identify the

deciding authority who makes the final determination on issues involving expenses and deductible items. These revisions align with the intent of subpart 2 to specifically identify allowed deductions from income.

PART 9050.0750 DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

Subpart 1. **Generally.** The provisions of subpart 1 assist in preventing the State from having to assume financial responsibility for both the resident and his or her family. Subpart 1 also aids in the resident's overall treatment plan/rehabilitation and care as it eliminates concern over whether his/her family is taken care of. The proposed revision to subpart 1 continues with the overall intent of part 9050.0750 but adds the consistency between state and federal regulations by referencing 38 CFR 3.351, special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings. It is necessary to create equality in the calculation of spousal allowance while keeping consistency with the federal regulations that determine the qualification of federal Aid and Attendance for the resident. (The USDVA Aid and Attendance Program benefit is a monetary benefit that helps eligible veterans and their surviving spouses (widows/widowers) to pay for the assistance they need in everyday functioning (eating, bathing, dressing, and medication management.)) Currently, a resident can be disqualified from federal Aid and Attendance due to excessive assets, yet the spouse can draw off the remaining income of that resident to meet her/his monthly living expenses, not tapping into what the USDVA views as excessive assets. The assets that create the dis-allowance of federal Aid and Attendance could likely not be reduced for a very long time due to the fact that the spouse is using the resident's monthly income to provide for their needs instead of reducing the assets to meet the qualifications of federal Aid and Attendance. It is reasonable to be consistent with federal regulations by requiring a resident and the spouse to use the assets that the USDVA views as excessive to support the spouse until the assets are reduced to what the USDVA views as allowable Aid and Attendance.

Subp. 1b. **Commissioner of veterans affairs authority to establish, review, and revise spousal allowance basic needs and personal needs expenditures.** Subpart 1 requires the commissioner establish and annually review the items under "basic needs" and "personal needs" and allow limits on categories of expenses covered in those definitions. Subpart 1 also provides that a spouse can submit a written request for a waiver if they believe that an allowance is insufficient to meet the spouse's needs. This subpart is revised to add that the waiver is "approved and" granted "by the commissioner or designee." It is reasonable to correctly identify the deciding authority in granting a waiver under this subpart.

Subp. 1c. **Spousal benefit applications.** To be consistent with the provisions of subpart 1 to assist in preventing the State from having to assume financial responsibility for both the resident and his or her family, the proposed changes to subpart 1c clarify that when a benefit is available by a spouse requesting spousal allowance, any and up to the maximum amount must be applied for. This amount could be the full amount of the benefit, or a reduced amount but the maximum

allowed at the time of application for the benefit. It is reasonable to clearly identify the requirements when an applicant's spouse is requesting spousal allowance.

Subp. 2. Determination of spouse's or dependent's monthly expenses. Subpart 2 establishes that the deduction for the basic needs of the dependent spouse or household is the sum of the expenses prorated on a monthly basis as incurred or estimated; items A to I list the types of expenses. Identification of the type of expenses "recognized" under the rule is necessary to balance out the lack of any dollar limitation on such costs. The categories of expenses identified and fairly approximate the nature of a family's budgetary needs. The costs identified in subpart 2 are "typical" of the costs necessary to support a person and/or family in a private home/living situation. The following revisions are made to item A, subitem (2) and items F, G, and I of this subpart to align with the intent of the subpart 2 to clearly identify the types of expenses the MDVA recognizes to balance of the lack of any dollar limitation on the cost of care.

Item A, subitem (2) is revised to delete "administrator" and add "commissioner or designee" as the decision maker within the MDVA who will make the final determination if there is a dispute over whether or not an item is an educational expense. The proposed revision is consistent with previous proposed revisions to this rule part to clearly identify the decision maker for the MDVA and facilities. It is reasonable to correctly identify the deciding authority who makes the final determination on issues involving expenses and deductible items.

Item F is revised to add long-term care expense or debt incurred for "skilled nursing" as a deductible item. This change aligns with the new definition "skilled nursing facility" at part 9050.0040, subpart 105a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule. Item F is next revised to delete "similar nonacute care" which is a general term, and to add "the medical and basic needs portion of assisted living or supportive services" which is a more specific term.

Item H is revised to add that payments for documented consumer debts incurred before the resident's admission "must" be limited to the minimum monthly payment. This revision is reasonable because it clears up any possible decision making on whether to pay the minimum amount or maximize repayment, which would subtract amounts allowed to cover care.

Item I is revised to add "court ordered" support payments paid by the spouse to a former spouse or dependents. This rule is reasonable because it clarifies the amount allowed to cover this expense must be ordered and recognized by a court.

Subp. 2a. Resources excluded. Subpart 2a identifies which spouse's or household's available resources will be excluded from a consideration for the purposes of computing deductions from an applicant or resident's gross monthly income. Formal recognition and definition of resources makes application of the rule regarding use of dependent resources possible. The proposed changes in subpart 2a are reasonable because they provides a clear identification of the resources to be identified as excludable. The resources identified in subpart 2a are "typical" resources

necessary to support a person and/or family in a private home/living situation. The following revisions are made to items A, F, G, and I to align with the intent of this subpart to clearly identify the types of resources the MDVA recognizes as excluded.

Item A is revised to delete “real” property and add “homestead” property “that is actually used as the primary residence of the spouse.

Item F is revised to delete “individual” retirement accounts and “Keogh accounts,” and to add “individually owned” retirement accounts. It is reasonable to remove the redundant reference of retirement accounts, and clarify that the retirement accounts referred to are those individually owned.

Item G is revised to add the statutory reference for which burial accounts, plans, contracts or trusts must be in compliance with.

Item I is revised to add “individually owned” in reference to savings accounts or other income producing monetary investments.

Subp. 2b. **Application of dependent spouse’s or household’s available resources.** Subpart 2b, the third paragraph is revised to create a new subpart 2c and to add the subpart headnote “Waiver for undue hardship.” This change is needed to identify the existing content of the third paragraph differs in subject matter from the content of the first two paragraphs in subpart 2b. This change is reasonable because new subpart 2c establishes the requirements for requesting a waiver for undue hardship.

PART 9050.0760 ANTICIPATING INCOME.

Part 9050.0760 establishes that income must be anticipated on a semiannual basis for all applicants or residents. The method for determining anticipated income is established in items A to G. Item G of this part is revised to delete “reasonable estimate” and replace it with “financial assessment” of future income. As calculation of a person's maintenance charge is based on the assumption that the person's income situation or status will continue, relatively unchanged, into the future, this rule change is necessary to guide that estimate, which is based on "prior performance." The proposed change is reasonable because it clarifies the direction of financial staff to complete a financial review when there is a recent financial change.

PART 9050.0770 BENEFITS APPLICATION REQUIRED.

Part 9050.0770 requires an applicant or resident apply for the maximum of every benefit for which they may be eligible for. Residents of the MDVA’s facilities are frequently eligible for increased or additional benefits, either governmental or private. As an increase in the person's income in most cases results in an increase in the person's maintenance charge, there is often a reluctance on the resident’s part to apply for benefits – because the resulting increase in benefits goes towards cost of care rather than into the individual's pocket. This part is revised to add clarifying language that the maximum of every benefit the applicant or resident may be eligible that will increase the income or “eligible benefits” and “reduce the facility’s expenditures.”

These changes identify the MDVA's intent to maximize the benefits residents receive which could potentially decrease costs to the State and are not likely to result in any detriment to the resident. These changes are reasonable because they clearly identify the types of benefits available and that can offset the State's cost of operating the facility.

PART 9050.0800 FINANCIAL INFORMATION AND INTERVIEW.

Subp. 2. **Rights, duties, and consequences of interview and providing information.** Subpart 2 establishes the information the facility financial staff are to provide an applicant or resident before conducting their interview to determine financial status or ability to pay; items A to I list the information to be provided. Part 9050.0800 requires that the applicant or resident whose financial situation is being reviewed be present during such review, unless there is a medical reason the person cannot or should not be present, so that all information is accurate, current and all privacy requirements of Minn. Stat. ch. 13 are met. The proposed revisions in subpart 2, items F, G, and I further that intent by identifying all information on cost of care be in written form, identifying all benefit programs that are available to assist with cost of care and health care coverage, and requiring signatures of all required authorization forms to assist in verification or documentation of required information.

Item F is revised to require that the person to be interviewed be provided a written information pamphlet on the cost of care. It is reasonable that the information be provided in writing to decrease misunderstanding and to allow for the person to review the information more readily and easily.

Item G is revised to clarify that the person to be interviewed be provided information about veteran programs that may assist them in paying cost of care. It is reasonable that information about veteran programs be provided as a resident or applicant applying for benefits under chapter 9050 are likely a veteran or spouse of a veteran and therefore potentially eligible for assistance from a veteran program.

Item I is revised to require that the person to be interviewed complete and sign the authorization forms provided. Requiring the forms be completed and signed is reasonable because it provides documentation of the information requested on the form, and verification by the person completing the form.

PART 9050.0820 VERIFICATION OF FINANCIAL INFORMATION.

Subp. 2. **Information to be verified.** Subpart 2 establishes that financial information provided by the applicant, resident, legal representative or spouse will be verified as to accuracy; items A to I list the items that must be verified. Item B is revised to add "any and all" insurance benefits "that may reduce the facility's expenditures." The proposed change to subpart 2, item B is consistent with proposed changes to part 9050.0770 that the MDVA will need any and all benefits to be maximized to reduce the state's financial burden to operate the facilities.

9050.1000 RESIDENT CARE PLANNING.

Part 9050.1000 establishes that each resident must have an individual care plan consistent with the resident's medical treatment plan, and that residents may be involved in their care plans. It is necessary that each resident have a care plan so that the facilities are in compliance with the Minnesota Department of Health and the USDVA nursing and domiciliary standards. Part 9050.1000 is being revised to provide clarity to the already intended language. This part is first revised to delete “multidisciplinary” care plan team and replace it with “interdisciplinary” to update who the care plan must be developed by. This change aligns with the new definition “interdisciplinary staff” at part 9050.0040, subpart 58b. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Next, a revision to this part clarifies when a review of the resident’s care plan is necessary when a significant change occurs. The rule language specifying what “significant change in a resident’s condition” means is revised to delete reference to a new or existing problem. Specifically, the language “a new problem or” a measurable improvement or worsening “of an existing problem” and is replaced with a measurable improvement or worsening “in the resident’s physical or mental” condition. It is reasonable that the care plans be reviewed and updated according to the appropriate regulatory standards and when there is a significant change in the resident's condition.

PART 9050.1030 RESIDENT CARE SERVICES.

Subpart 1. **General.** This subpart explains that resident care services at the MDVA operated facilities must be in compliance with applicable state and federal regulations. Several revisions are needed to subpart 1. This subpart is first revised to add that care services are also to be provided according to “federal Centers for Medicare and Medicaid Services regulations.” It is reasonable to correctly identify the federal regulations that must be followed in order to ensure resident care services are provided in compliance with the applicable regulations.

Next, the rule language “United States Department of Veterans Affairs Code M-1, part 1, chapter 3” is deleted. It is reasonable to update the rule to delete reference to federal regulations that have been repealed.

Subpart 1 is next revised to correctly identify that staff of each facility operated by the commissioner must inform the resident, resident’s guardian, legal representative, family member or conservator, when changes in services occur. The rule language “admission” staff “or the resident’s social worker” has been deleted. This change is reasonable because facility staff other than admission staff or the resident’s social worker can provide information regarding change in services and other services available at additional charges.

Last, this subpart is revised to add that facility staff are to assist the resident in applying for benefits the resident is eligible for to help reduce facility expenditures by reducing costs and

maximizing third-party liability for resident care services. This change is consistent with proposed changes to part 9050.0770 that the MDVA will need any and all benefits to be maximized to reduce the state's financial burden to operate the facilities.

Subp. 1a. **Provided services.** Subpart 1a, item A establishes the services that must be provided at each facility; subitems (1) to (12) list the services. Revisions are needed to several of these subitems. First, item A, subitem (2) is revised to delete attending "physician" and replace it with attending "provider" as one of the personnel that services must be provided by at the facility. This change aligns with the new definition "provider" at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. This change is consistent with previous amendments to the rule as it pertains to the use of "provider" instead of "physician." The MDVA proposes to replace "attending physician" with "provider" in most of chapter 9050, though not entirely. This is because the existing definition of "attending physician" at subpart 11 is the same as the new definition of "provider" with the additional rule language "An attending physician may be a Minnesota Veterans Homes facility staff physician." and there are several parts in chapter 9050 where the use of "attending physician" rather than "provider" is more applicable.

Item A, subitem (5) is revised to add rule language clarifying that specialized rehabilitation services will be provided "when prescribed by a provider" to improve and maintain maximum functioning. This change assists with the continuity of the resident's care plan as well as assist with the cost of care and possible third party billing.

Item A, subitem (8) is revised to clarify the availability of transportation services for residents and of the facility. Rule language is added that transportation services are provided for "appointments for medical services approved by the agency's" medical providers if the appointments are located within the facility transportation service area. This change is needed to assure reimbursement of providing the service, if allowed, and that the need for travel is necessary and in connection with the residents care. Because there are situations in which the facilities may satisfactorily meet the resident's needs by providing transportation, it is reasonable that the location of the medical appointment is near the facility and in the area regularly serviced by the facility transportation staff.

Item A, subitem (10) is revised to delete the term "on-site" in reference to social work services provided. This change is reasonable because a resident may be in need of specific social work services that are not available at the facility.

Last, a new subitem (12) is added to include pharmaceutical services as a service each facility must provide. Pharmaceutical services under Subpart 1b, item F of this part as an available service is deleted and added it to subpart 1a of this part as a service required to be provided by the facility. This change is consistent with the requirements for veteran's affairs pharmaceutical services under new part 9050.1090. Pharmaceutical services will be provided by a licensed

pharmacist as defined in part 9050.0040, subpart 92. It is reasonable to amend rule language to be consistent with the services provided by the facility.

Subpart 1a, item B is first revised to delete the term “physician” and replace it with “provider” or “private attending provider” as the personnel responsible for the overall medical care of the resident. This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. Item B is next revised to add rule language that requires all care plans, treatments, or procedures ordered by the private attending provider must be approved by the department’s medical director or designee to assure the facility can provide for the services and meet the care needs of the resident. This change provides clarity to the process when a resident chooses a private attending provider and assures consistent and agreed upon care plans of the residents at the MDVA facilities.

Subp. 1b. **Services made available.** Subpart 1b establishes the services that must be made available at each facility, items A to G list the services. Revisions are needed to several of these items. First item B is revised to delete the requirement that each facility have a written agreement with a licensed dentist or dentists to provide emergency dental care. This change aligns with the USDVA requirements for services that must be made available, as provided in 38 USC 1710(c) and 1712, and 38 CFR 17.160-166. This change to dental care services is reasonable because it provides each facility the option to staff for emergency dental services or to contract for third party services.

Item C is revised to delete the requirement that podiatric care services must be available “through a podiatrist or physician, with the approval of the resident’s attending physician.” This change clarifies that podiatric care services will be made available if needed. This change is reasonable because it provides each facility the option to staff for podiatric care services or to contract for third party services.

Item E is revised to delete the requirement that diagnostic services must be available “on written order of the resident’s attending physician.” This change clarifies that diagnostic services will be made available if needed. This change is reasonable because it provides each facility the option to staff for diagnostic services or to contract for third party services.

Item F, pharmaceutical services, is deleted as a service that must be made available. This change is needed because pharmaceutical services is added to subpart 1a of this part as a service required to be provided by the facility. This change is consistent with the requirements for veteran’s affairs pharmaceutical services under new part 9050.1090. Pharmaceutical services will be provided by a licensed pharmacist as defined in part 9050.0040, subpart 92. It is reasonable to amend rule language to be consistent with the services provided by the facility.

Last, item H renumbered to item G is revised to delete “physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. This change is consistent with other changes to chapter 9050 as it pertains to use of the term “provider” in place

of the term “physician.” It is reasonable to update terminology to match the definitions used in the rule.

PART 9050.1070 RESIDENT RIGHTS AND RESPONSIBILITIES.

Subp. 2. Information about rights. Part 9050.1070 establishes the rights available to residents of the Minnesota Veterans Homes; subpart 2 requires a resident must be informed of their rights. Subpart 2 is revised to delete “Patients and Resident’s” Bill of Rights and replace it with “Health Care” Bill of Rights. This change is needed to provide the updated and proper identification of Minn. Stat. § 144.651 as the “Health Care Bill of Rights.” It is reasonable to properly identify the appropriate title and reference to the Health Care Bill of Rights within the rule to align with Minn. Stat. § 144.651.

The Minnesota Veterans Homes are health care facilities and central to their mission is the duty to provide appropriate quality care. Subpart 3 complies with Minn. Stat. § 144.651 and establishes the general duties or obligations the facility staff has towards the resident. Subpart 4 explains the rights that residents have to participate in their care planning and implementation of the care plan, unless medically contraindicated and documented by their attending physician in their charts. Subparts 3 and 4 are being revised to delete “physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. These changes to subparts 3 and 4 are consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “physician” and does not change the requirements of these subparts. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 5. Resident handbook. Subpart 5 establishes that a resident must be given a resident handbook and the information the handbook must contain. Subpart 5 is first revised to delete “nursing staff” and replace it with “designee” as the personnel identified that must review the resident handbook with the resident. The content of the resident handbook is not of such a medical or technical nature that nursing staff must review the resident handbook with the resident. This change is reasonable because it provides each facility flexibility in staffing and who can review the resident handbook with residents.

Subpart 5, item D is revised to delete “Patients and Resident’s” Bill of Rights and replace it with “Health Care” Bill of Rights. This change is needed to provide the updated and proper identification of Minn. Stat. § 144.651 as the “Health Care Bill of Rights.” It is reasonable to properly identify the appropriate title and reference to the Health Care Bill of Rights in the rule to align with Minn. Stat. § 144.651.

Last, subpart 5 is revised to clarify residents must be informed of changes to information in the resident handbook “as appropriate.” It is reasonable that if changes to the handbook should occur that directly concern residents of the facility, then the residents should be informed and made aware of the changes. However, if the changes are merely grammatical or formatting, then a signature identify notification of the change are not as pertinent. Therefore, to save time and

costs, it is not necessary to require the facility to provide a new handbook each time a minor change occurs. This amendment provides the flexibility for the facility but retains the rights of the residents.

Subp. 6. **Resident councils.** This subpart provides for a resident council at each facility in accordance with Minnesota statutes, the USDVA, and other federal guidance. Subpart 6 is revised to delete “United States Department of Veterans Affairs Code M-1, part 1, chapter 3.” It is reasonable to delete reference to federal regulations that have been repealed. The federal regulations overseeing state veterans homes are now under 38 CFR.

Subp. 9. **Resident grievances and complaints.** This subpart contains the process by which residents of the Minnesota Veterans Homes may voice grievances and complaints and may recommend changes at the facilities, without retaliation in accordance with Minnesota statutes, the USDVA, and other federal guidance. Subpart 9 is revised to delete “United States Department of Veterans Affairs Code M-1, part 1, chapter 3.” It is reasonable to delete reference to federal regulations that have been repealed. The federal regulations overseeing state veterans homes are now under 38 CFR.

Subp. 10. **Restraints.** Subpart 10 is needed to protect a resident’s right to freedom from physical and chemical restraints imposed for the purposes of discipline or convenience and not required to treat the resident's medical condition, and to specify requirements of restraint use when the reason for the use' of restraints is to protect the resident or others. This subpart is revised to delete “physician” and replace it with “medical director or designee.” As defined in part 9050.0040, subpart 73, a medical director is the individual of MDVA that provides overall direction of medical practice for the Minnesota Veterans Homes. This change is necessary to assure that the decision to restrain a resident for medical purposes is made by the individual who has overall authority in this area of medical practice. It is reasonable to assure the proper authority makes such a decision and that the resident’s rights are considered and adhered to.

Subp. 11. **Right to associate; visitors.** Subpart 11 establishes a resident’s right to associate with others in compliance with Minn. Stat. § 144.651 which provides a resident the option of association and communication with persons of the resident's choosing as long as the resident's activities do not infringe on the rights of other residents at the facility. If the resident chooses to receive visits from an external provider then the resident shall be allowed to do so. The changes to subpart 11 clarify that visiting external personal providers, religious advisers, and attorneys are afforded this right. Additionally, this subpart is revised to delete “physician” and replace it with “provider.” This change is consistent with the same change made throughout chapter 9050, where applicable.

Subp. 12. **Identity of outside service providers.** Subpart 12 requires staff to give residents in writing, the name, business address, telephone number, and specialty of the physician who is responsible for their care, in accordance with Minn. Stat. § 144.651. This subpart is revised to delete “physician” and replace it with “provider.” This change aligns with the new definition

“provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. This change is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “physician” and does not change the intent or requirements of this subpart.

Subp. 14. **Married residents.** Subp. 16. **Resident access to records.** Subparts 14 and 16 are revised to delete “physician” and replace it with “provider.” This change aligns with the new definition “provider” at part 9050.0040, subpart 94b. This change is needed to reflect current health care industry terminology. This change is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “physician” and does not change the intent or requirements of this subpart. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 18. **Telephone access and use.** Subpart 18 establishes the requirements for resident access and use of telephones at the facility. It is necessary that all residents have access to a telephone and that a telephone be available to them in a convenient location so that ambulatory and nonambulatory residents may have telephone access. The Minnesota Veterans Homes have chosen to no longer have pay telephones and have access to a telephone without pay as well as other media services. Therefore, this subpart is revised to delete the rule language that requires there be at least one non-coin operated telephone accessible at all times in case of an emergency. This change is reasonable because pay telephones are becoming outdated and the facility will continue to provide non-pay telephone access to its residents. This subpart is also being revised to delete “physician” and replace it with “provider.” This change is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “physician” and does not change the intent or requirements of this subpart.

Subp. 19. **Resident vehicles.** This subpart describes the kinds of vehicles residents may keep on the facility grounds, the condition of the vehicles, the laws that pertain to resident ownership of vehicles, and the procedures to follow at the facility if residents have vehicles. This subpart is revised to delete Minn. Stat. § “168B.02” and replace it with “168B.011.” Minn. Stat. § 168B.02 which includes the definition of abandoned vehicle was repealed in 1995 and the definition of abandoned vehicle was added to Minn. Stat. § 168B.011. It is reasonable to update the rule to delete reference to regulations that have been repealed or replaced with other statutory references.

Subp. 20. **Pets.** Subpart 20 establishes the requirements for allowing pets in the facility. Each board-operated facility may decide whether to have pets visit and the requirements in this subpart comply with part 4638.0200 regarding pets at the veteran’s homes. This subpart is revised to add “or designee” as personnel that can preapprove pets or animals brought to the facility. This change is reasonable because it provides each facility flexibility in staffing and who can preapprove pets or animals brought to the facility.

Subp. 21. **Resident work therapy programs.** Subpart 21 establishes the requirements for resident work therapy programs and the labor or services the resident performs. This subpart is revised to delete “physician” and replace it with “provider.” This change is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “physician” and does not change the intent or requirements of this subpart. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 26. **Room cleanliness and conditions.** Subpart 26 establishes the requirements for resident room cleanliness and identifies the items that residents may have and are not permitted to keep in their rooms so that the Minnesota Veterans Homes comply with the safety, sanitary, and health regulations required by state, federal, and other regulatory agencies. This subpart is revised to add “and internal facility policies.” It is necessary the facility and residents follow all requirements pertaining to room cleanliness and conditions in order to keep a safe and sanitary environment to reside. This change is reasonable because it provides notice to residents that the Minnesota Veterans Homes internal policies continuously applied to the facility and its residents must be referred to when determining room cleanliness and conditions.

Subpart 26 is also being revised to delete “attending physician” and replace it with “provider.” This change is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “attending physician” and does not change the intent or requirements of this subpart.

Subp. 30. **Storage of resident's property.** This subpart establishes the requirements for residents to store personal items or valuables at the Minnesota Veterans Homes including during a resident’s emergency absence or on a personal absence. Subpart 30 is revised to delete the term “personal absence” and replace it with “therapeutic leave.” This change aligns with the new definition “therapeutic leave” at part 9050.0040, subpart 109a. This change is needed to reflect current health care industry terminology. It is reasonable to update terminology to match the definitions used in the rule.

Subp. 31. **Smoking.** Subpart 31 establishes the requirement that each facility administrator must designate smoking and nonsmoking areas and that smoking in resident rooms is prohibited. Facilities must be in compliance with Minn. Stat. § 16B.24, subdivision 9(b), Minn. Stat. §§ 144.411 to 144.417, and Minn. R. 4658.4515 and 4658.0520. This subpart is revised to add that residents may smoke “only during designated smoking times” and that “The facility will take the necessary interventions to assure the safety of the residents and staff.” The rule language that allows for a resident to smoke in their room under specific conditions is proposed for deletion. These changes are needed to continue compliance with other areas of the law that restrict smoking in state office buildings and smoking in designated licensed residential health care facilities. As the continued restrictions of smoking grow and the need to keep the Veterans Homes residents safe, it is reasonable to update the rules to continue compliance with state laws and to secure the care and safety needs of its residents.

Subp. 32. **Leaving the facility campus.** This subpart establishes the process that residents must follow when leaving the facility campus and represents a reasonable compromise between the resident's freedom to come and go or leave as the resident chooses and the facility's duty to care for the residents. Subpart 32 is revised to add “or authorized representatives” as personnel who can notify administration or direct care staff before a resident leaves the facility campus. This change provides flexibility and direction to facility staff and residents that when a leave of absence from the facility is needed, the resident or their “authorized representative” can provide the facility notice. This change is reasonable because it continues compliance with decision making power of the resident and the resident’s selected or appointed authority as well as continued safety for the resident.

Subp. 34. **Alcoholic beverages and illegal narcotics.** Subpart 34 establishes the requirement that alcoholic beverages are not to be sold, distributed, consumed or in possession on the Minnesota Veterans Homes campuses or during facility-sponsored events according to Minn. Stat. § 198.33, except when consumption is prescribed by the resident’s attending physician. This subpart is revised to add that “illegal narcotics” are not allowed on the Veterans Homes campuses. This change is needed to continue the facility’s efforts to restrict the sale and use of illegal narcotics within the facility. This subpart is also revised to add that alcohol during facility-sponsored events is managed in accordance with Minn. Stat. § 198.33, and that “alcohol consumption may be allowed” when prescribed by the resident’s attending “provider.” This change is reasonable because the use and possession of alcohol at the facilities must be monitored so that residents may not jeopardize their own health care by consuming it. The change to “provider” is consistent with other changes to chapter 9050 as they pertain to use of the term “provider” in place of the term “attending physician” and does not change the intent or requirements of this subpart.

Subp. 37. **Contraband.** Subpart 37 identifies contraband items that residents may not possess at the facility campus and establishes the general requirements for seizure of contraband under Minn. Stat. § 198.33. This subpart is revised to add “and other items identified by facility policy” to the list of items in this subpart identified as contraband. There may be circumstances where a facility has identified an item in possession of a resident that it considers to be contraband that is not listed in this subpart. Because it is not possible to identify every type of item that could be considered contraband and ultimately harmful to the resident’s and facility staff, it is necessary the facility and the residents consider all guidance and regulations regarding contraband at the facilities, including the facility’s internal policies. This change is reasonable because it provides notice to residents that the facility’s policies continuously applied to its residents is also a reference that must be referred to when determining what is contraband.

Subp. 39. **Photographs, voice recordings, or videotapes.** This subpart identifies a resident's right to privacy and to make residents aware that they have a choice whether to give consent to persons at the facility or persons coming into the facility to photograph, voice record, or videotape them. Subpart 39 is revised to add that informed written consent is required “for

nonbusiness or nonresident care purposes.” This change is needed to make a distinction between when written consent is needed. Because of additional health care uses with photography or video recordings, the addition of “non-business or nonresident care purposes” is reasonable because it provides flexibility for the facility when photography, recording or videotapes are used for the residents’ health care. Nothing in this amendment allows for the facility to avoid situations where written consent is required under the Minnesota Data Privacy Act (Minn. Stat. ch. 13) or the federal Health Insurance Portability and Accountability Act of 1996.

PART 9050.1080 ADULT DAY HEALTH CARE PROGRAM.

The MDVA currently operates an adult day program at the Minnesota Veterans Home-Minneapolis. The program was established and operated under the authority provided to the Commissioner in Minn. Stat. § 196.05; general duties, and Minn. Stat. § 198.006; supplemental programs.

New part 9050.1080 establishes the applicability and eligibility requirements for the adult day health care program. The addition of part 9050.1080 to chapter 9050 is necessary to identify that the Minnesota Veterans Homes operates a program that offers therapeutic and rehabilitation health care services to veterans and support services for caregivers of veterans. The adult day health care program is operated by the department to provide a structured environment for its participating veterans with expected outcomes of enhanced quality of life and improvement of daily functions, health, and well-being.

Subpart 1. **Scope.** New subpart 1 establishes that new part 9050.1080 applies to any adult day health program administered by the commissioner. Because part 9050.1080 establishes the rules that govern the adult day health care program, it is reasonable that the requirements in the part apply to any adult day health care program administered by the commissioner, not just the adult day program the MDVA operates at the Veterans Home-Minneapolis.

Subp. 2. **Applicability.** New subpart 2 establishes that facility and staff must comply with all applicable state laws and rules, and all applicable health, safety, sanitation, building, zoning, and operations codes pertaining to an adult day health care program. The current adult day program has operated in compliance with applicable federal and state laws regarding adult day health care programs. Subpart 2 provides for such guidance to the facility and requires the facility to operate in compliance with all applicable state laws and rules, and applicable codes. It is reasonable to require that all laws and rules that regulate an adult day health care program are followed in order to ensure a safe and regulated environment for program participants and facility staff.

Subp. 3. **Eligibility.** New subpart 3, items A to C establish the requirements for applicant eligibility, determining the daily charge for program cost of service, and providing notice of change in cost of service. New item A establishes the requirement that an applicant meet the criteria in part 9050.0050 to participate in an adult day health care program. Part 9050.0050 contains the eligibility requirements for admission to a facility operated by the commissioner. It is reasonable that to be a participant that can benefit from the adult day health care program at a

Veterans Home, the participant has met the eligibility requirements for admission and is a resident of the facility.

New item B requires that the program have policies and procedures that establish co-payments and private pay charges, how the daily charge for program cost of service is determined, and when a change in the daily charge becomes effective. It is necessary that the daily charge be determined annually and that a change in the daily charge become effective July 1 because costs of running the program are likely to change over time, and July 1 is the start of the state budget fiscal year. This rule is reasonable because it acknowledges that the circumstances of a participant's financial status are unique to each participant and should be considered in determining program payments and charges. It is also reasonable that participant's be informed that the daily charge is subject to change and when the change becomes effective so that participants can plan accordingly.

New item C requires that policy and procedures regarding financial implications and any change in those policies and procedures be made available to participants. Item C also requires participants be provided notice of any change in cost of services 30 days before the effective date of the change. It is also reasonable that participant's be informed of a change in the cost of services and when the change becomes effective so that participants can plan accordingly to meet their cost obligations.

PART 9050.1090 VETERANS AFFAIRS PHARMACEUTICAL SERVICES.

Rather than contracting for pharmaceutical services, the MDVA has created a centralized pharmacy program that provides services to all Minnesota Veterans Homes. Providing centralized pharmaceutical services helps to ensure that facility resident's medication needs are met in a timely and more cost effective manner.

New part 9050.1090 establishes the applicability and eligibility requirements for operation of the pharmacy program for facility residents. This new part aligns with the revision to part 9050.1030, subpart 1a, item A, subitem (12) that added the requirement to provide pharmaceutical services to facility residents. The addition of part 9050.1090 is needed to establish the rules governing the operation of the pharmaceutical services provided by the Veterans Homes, as a health care facility.

Subpart 1. Scope and applicability. New subpart 1 establishes that part 9050.1090 governs the operation of a centralized pharmacy by the MDVA for the benefit of the residents of the Veterans Homes. Subpart 1 is necessary to clearly identify the type of service provided and the applicability of the centralized pharmacy program. Because part 9050.1090 establishes the rules that govern the pharmacy program operated by the commissioner, it is reasonable that the requirements in the part apply to the pharmacy program for residents of the Veterans Homes.

Subp. 2. Eligibility. New subpart 2, items A and B establish the requirements that facility residents in need of pharmaceutical services must comply with. Item A establishes the

requirement that a resident meet the criteria in part 9050.0050. Part 9050.0050 contains the eligibility requirements for admission to a facility operated by the commissioner. It is reasonable that for a resident to use the centralized pharmaceutical services that the individual meet the eligibility requirements for admission and is a facility resident.

New item B requires a resident meet their financial obligation in accordance with part 9050.0550 and Minn. Stat. § 198.003, subd. 7, and MDVA financial, insurance, and billing policies and procedures. Part 9050.0550 contains the requirements for a resident's maintenance charge and resources to be considered in determining the maintenance charge; Minn. Stat. § 198.003, subd. 7 establishes the use of Medicare Part D for pharmacy costs. This rule is needed to identify that a resident has financial responsibilities that must be met when using the centralized pharmacy program. It is reasonable that residents be informed of their financial obligations for pharmaceutical services so that they can plan accordingly to meet those obligations.

Subp. 3. **Compliance.** New subpart 3, items A and B establish the requirement that all facilities comply with all applicable laws and rules of the Department of Health and Department of Human Services as they pertain to pharmaceutical services and the operation of a pharmacy in Minnesota, and Minn. Stat. ch. 151, as applicable. This subpart is needed to identify that there are specific laws, rules, and statutes that the MDVA must comply with in operating a centralized pharmacy program. It is reasonable that the pharmaceutical services provided be in compliance with all applicable laws, rules, and statutes in order to ensure the safety and well-being of the Veterans Homes residents.

7. Regulatory and additional analysis

A. Minn. Stat. § 14.131, SONAR requirements

Minn. Stat. § 14.131 requires this SONAR to include the following information, to the extent the Agency can, through reasonable effort, ascertain this information.

- i. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

Who is affected?

The proposed amendments will affect any resident and potential resident of the Minnesota Veterans Homes, including the resident's spouses and dependent children, other family members, veteran service organizations, and individuals and groups that advise veterans and their families regarding their benefits.

Who bears the cost of complying with these rules?

The proposed rules include significant rule changes throughout the entire rule chapter, including those specifically related to financial and clinical operations. Depending on the proposed change there are costs and benefits to the affected parties.

The primary bearer of the costs of the proposed rule is the MDVA and the veterans served by the Minnesota Veterans Homes. To a lesser degree, veteran family members, veteran service organizations, and other government entities and agencies that assist individuals with accessing their benefits and overseeing the operations and regulatory oversight for the Minnesota Veterans Homes would be affected.

Who benefits?

The MDVA and current and potential residents of the Minnesota Veterans Homes will benefit from these proposed rules. To a lesser degree, veteran family members, veteran service organizations, and other government entities and agencies that assist individuals with accessing their benefits and overseeing the operations and regulatory oversight for the Minnesota Veterans Homes would be affected.

ii. The probable costs to the department and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues.

What are the costs to the MDVA of implementation and enforcement?

The costs to MDVA are nominal and will have no impact on the current operational budget.

What are the costs to the other agencies of implementation and enforcement?

The costs to other agencies are nominal and should have no impact.

What is the anticipated effect on State revenue?

The breadth of change regarding State revenue is unknown; however, the MDVA anticipates the effect on State revenue to be minimal based on the proposed rule changes in part 9050.0560, regarding the maintenance charge determination.

iii. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The MDVA is required to follow various federal and state regulations relating to the licensure for health care facility operations; Minnesota Administrative Rules, chapter 9050 are part of these requirements. Chapter 9050 has not been reviewed and amended since 1995 and in developing these rule amendments, efforts were made to align these rules with other applicable federal and state regulations, while also providing opportunities for agency and facility level policies and procedures to address specific details and interpretation of the rule. Revising and updating chapter 9050 to align with current health care industry standards is necessary and reflects the least intrusive option, as well as the necessary requirements based on the MDVA's interpretation of Minn. Stat. § 196.04, subd. 1.

Minn. Stat. § 196.04, subd. 1. states:

“The commissioner shall adopt reasonable and proper rules to govern the procedure of the divisions of the department and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same, in order to establish the right to benefits provided for by the law. Such rules shall become effective when approved by the attorney general and then be filed in the Office of the Secretary of State.”

If the intent of item iii is to determine if there are less costly or intrusive methods, other than the adoption of administrative rules, *to govern the procedure of the divisions of the department and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same, in order to establish the right to benefits provided for by the law*, the MDVA believes there is not. Furthermore it is MDVA’s position that this is an irrelevant point given that Minn. Stat. § 196.04, subd. 1 leaves no other alternative but to adopt administrative rules.

If the intent of paragraph iii is to determine if there are less costly or less intrusive eligibility and evidentiary requirements to establish an individual’s right to benefits provided by law; or if the intent is to determine if there are less costly or less intrusive policies, procedures, and processes to be adopted for managing the Minnesota Veterans Homes, it is the opinion of MDVA that the proposed rule is appropriate on all fronts.

As stated in the paragraphs above, it is the position of the MDVA that there are no alternatives to adopting administrative rules. It is also the MDVA’s position that once staff are familiar with the new rules, the cost of implementing and enforcing the rules will be nominal as the proposed rules are based on best practices and align with federal and state regulations that govern the operations of the state Veterans Homes.

Existing chapter 9050 is outdated for determining individuals’ eligibility for benefits; and the policies, procedures, and processes for administration and operation of the state Veterans Homes. In terms of the scope and detail of the proposed rules, the proposed rules ensure alignment with current federal and state rules for operating a skilled nursing facility and Boarding Care Home, and allow department level policies and procedures to be created to communicate details of the rule interpretation.

At a minimum the policies, procedures, and processes in the proposed rules are what is necessary to ensure only those eligible individuals receive the benefits provided by law; and to achieve a level of consistency and transparency in the administration of the state Veterans Homes that ensures access and care provided is in the most efficient, effective, and high quality way possible.

- iv. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.**

The MDVA has limited alternatives for achieving the purpose of the proposed rules. As stated in paragraph iii, the MDVA believes that no alternative methods for achieving the purpose of the proposed rule are authorized due to Minn. Stat. § 196.04 specifically stating that administrative rules must be adopted.

The MDVA completed a full analysis of the federal and state regulations that govern our state Veterans Homes in preparation for amending the chapter 9050 rules. It is necessary that these administrative rules are in alignment with federal and state regulations that govern the operations of the state Veterans Homes, as well as current health care industry practices that apply to community long-term care facilities and other congregate care residential programs.

v. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The analysis of the probable costs of complying with the proposed rules are discussed in Section 9 of this SONAR. For the MDVA, other government and nongovernmental entities, the costs of complying with the proposed rules are synonymous with the costs of implementing and enforcing the proposed rules. The costs of complying with the proposed rules are not more than the programmatic costs associated with meeting the rule requirements. The costs of complying with the proposed rules will be no more than the costs of meeting the requirements of the existing rule.

vi. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

A significant consequence in not moving forward with the proposed rule amendments would be that the existing rule is outdated and does not accurately reflect the current federal and state requirements the Minnesota Veterans Homes operate under. For example, in 2012, the Minnesota Veterans Homes skilled facilities began the process of obtaining federal Center for Medicare and Medicaid Services certification. This was a rigorous process of policy and procedure review by this federal regulatory agency. The proposed rules ensure alignment with the Center for Medicare and Medicaid Services certification rules by ensuring definitions and terminology are synonymous with and do not contradict federal rules.

vii. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no federal regulations that govern rulemaking procedures for Minnesota state agencies that are adopting, amending, or repealing its rules through Minn. Stat. ch. 14. The purpose of this rulemaking is to update and clarify the existing Minnesota Veterans Homes rules.

The MDVA believes that the proposed rule amendments do not differ greatly from federal and state rules that govern the operation of the state Veterans Homes due to licensure and certification. Many of the rule revisions are to align state rule with federal rules and requirements.

viii. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

Updating the rules for these reasons achieves the policy outlined in Minn. Stat. § 14.002 because it attempts to clarify the purpose of the rules and any applicable procedures outlined in the rules. The proposed rules will not add a level of regulation; updating the rules will remove outdated language and discrepancies in the existing rules, thereby increasing the effectiveness of the Minnesota Veterans Homes facilities requirements and the ease of following its requirements. In developing the proposed rule amendments, the MDVA tried to be very conscientious about including in the rule revisions only that information needed to enable the MDVA and Minnesota Veterans Homes facilities to carry out their responsibilities in an effective and efficient manner.

ix. The statement must also describe how the department, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002, which requires state agencies, whenever feasible, to develop rules and regulatory programs that emphasize superior achievement in meeting the Agency’s regulatory objectives and maximum flexibility for the regulated party and the Agency in meeting those goals.

The Minnesota Veterans Homes have regulatory oversight that requires the Veterans Homes to participate in quality improvement assessment and planning on a frequent and regular basis. This is done by closely reviewing any and all adverse or sentinel events through a root cause analysis process, facilitate a Quality Assurance and Performance Improvement program, and engaging in high quality delivery of care to all residents served in the Minnesota Veterans Homes.

x. The SONAR must also describe the department’s efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

A description of the MDVA's efforts to provide this additional notification is provided below, in Section 8.

- xi. The department must consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.**

The MDVA will consult with Minnesota Management and Budget as required, Minn. Stat. § 14.131. The MDVA will do this by sending Management and Budget copies of the documents sent to the Office of the Governor for review and approval on, or near, the same day the MDVA sends them to the Governor's Office. The MDVA will do this before publishing the Notice of Intent to Adopt Rules in the in the *State Register*. The documents will include the Governor's Office Proposed Rule and SONAR Form, the proposed rule amendments, and the SONAR. The MDVA will include a copy of the cover correspondence and any response received from Management and Budget in the rulemaking record the MDVA submits to the Office of Administrative Hearings for the required review by the Administrative Law Judge.

- xii. The department must send a copy of the SONAR to the Legislative Reference Library when the notice of hearing is mailed under section 14.14, subdivision 1a.**

As identified in Section 8 below, the MDVA will satisfy this requirement and provide appropriate documentation in its submittal of the rulemaking record to the Office of Administrative Hearings.

B. Minn. Stat. 14.127, subs. 1 and 2, cost of complying for small business or city

Minn. Stat. § 14.127, subs. 1 and 2, require an agency to:

“determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.”

The MDVA finds that the proposed amendments will not cause any small business or small city to incur an expense of more than \$25,000 in the first year after the rules take effect and has considered the following factors in making this determination.

There is no circumstance or situations in which a small business or city would ever be involved in the operations of the Minnesota Veterans Homes under the provisions of Minn. R. ch. 9050 and the proposed rules. For this reason, MDVA concludes there is no compliance cost to small business or small cities.

C. Minn. Stat. § 14.128, subd. 1, impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule.

As stated in item B above, there is no relationship between the operations of the Minnesota Veterans Homes and local government. For these reasons MDVA finds that the proposed rules will not require any local government to adopt or amend any ordinances or other regulations in order to comply with the proposed rule.

8. Notice plan

The Minnesota Administrative Procedures Act (Minn. Stat. ch. 14) and the Office of Administrative Hearings rules (Minn. R. ch. 1400) govern how state agencies must adopt administrative rules. This includes providing required notifications to the general public and affected stakeholders, various state agencies and departments, the legislature, and Office of the Governor. Minn. Stat. § 14.131 also requires that the SONAR describe how the MDVA provided additional notification of the rulemaking to potentially affected parties, if applicable.

Specifically, Minn. Stat. § 14.131 states that the SONAR:

“describe the agency's efforts to provide additional notification under section 14.14, subd. 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.”

This section addresses how the MDVA will provide the required notifications and additional notification. It also identifies how the MDVA will comply with providing notice as required by Minn. Stat. ch. § 115.44, subd. 7.

A. Required notice

i. Request for Comments

For this rulemaking, the first notice, required by Minn. Stat. § 14.101, is the Request for Comments. The MDVA published the Request for Comments on Possible Amendment to Rules Governing the Minnesota Veterans Homes, Minnesota Rules, Chapter 9050, in the *State Register* on January 4, 2016 (40SR768). At the time the notice of Request for Comments was published in the *State Register* and posted on the MDVA rulemaking docket webpage, the MDVA did not know the extent of the amendments to chapter 9050. Therefore a list of interested parties had not yet been established for this rulemaking.

ii. Remaining Required Notifications

The remaining required notifications are listed below with a description of how the MDVA will comply with each.

1. Minn. Stat. § 14.14, subd. 1a. On the day the proposed rules are published in the *State Register*, the MDVA will send via email or U.S. mail a copy of the Dual Notice, the proposed rule amendments, and the SONAR to the Minnesota Elder Bar, the Minnesota Veterans Home Family Council, and the Minnesota Department of Human Services, The Office of Ombudsman for Long-Term Care with instructions for submitting comments to the ALJ, as these specific groups requested the draft rules.
2. Minn. Stat. § 14.116. The MDVA will send a cover letter via email or U.S. mail to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule, and to the Legislative Coordinating Commission, as required by Minn. Stat. § 14.116. The letter will include a copy of the Dual Notice, the proposed rule amendments, and the SONAR. This Dual Notice will be sent at least 33 days before the end of the comment period.
3. Minn. Stat. § 14.131. The MDVA will send a copy of the SONAR to the Legislative Reference Library in accordance with Minn. Stat. § 14.131 when the Dual Notice required under Minn. Stat. § 14.14, subd. 1a, is sent. This Dual Notice will be sent at least 33 days before the end of the comment period.

The following notices are required under certain circumstances; however, they do not apply to this rulemaking and will not be sent:

1. Minn. Stat. § 14.116. In addition to requiring notice to affected/interested legislators, this statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. This requirement does not apply because the MDVA is using its general rulemaking authority for these rules, and no bill was authored within the past two years granting special authority for this rulemaking.
2. Minn. Stat. § 14.111. If the rule affects farming operations, Minn. Stat. § 14.111 requires an agency to provide a copy of a proposed rule that will affect farming operations to the Commissioner of the Minnesota Department of Agriculture no later than 30 days before publication of the proposed rule amendments in the *State Register*. The MDVA does not believe the proposed rule will affect agricultural land or farming operations, and therefore does not intend to provide a copy of the proposed rule to the Commissioner of the Minnesota Department of Agriculture.
3. Minn. Stat. § 116.07, subd. 7i. This statute requires notification of specific legislators of the adoption of rules applying to feedlots and fees. The proposed amendments do not relate to feedlots or fees so this requirement does not apply.

B. Additional notice plan

Minn. Stat. § 14.14 requires that in addition to its required notices:

“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”

The MDVA considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with the requirements.

The MDVA intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The MDVA’s plan to notify additional parties includes the following:

1. Publish its Dual Notice, the proposed rule amendments, and the SONAR on the MDVA’s Rulemaking Docket webpage at <https://mn.gov/mdva/about/reports.jsp>
2. Provide specific notice to agencies and organizations. The Dual Notice will be sent via email or U.S. mail to the following agencies and organizations on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Dual Notice, proposed rules, and SONAR can be viewed.
 - Minnesota Association of County Veterans Service Officers (includes the Tribal Veteran Service Officers)
 - Minnesota Assistance Council for Veterans
 - Minnesota Commanders Task Force
 - The American Legion Department of Minnesota
 - Department of Minnesota AMVETS
 - Vietnam Veterans of America MN State Council
 - Disabled American Veterans Department of Minnesota
 - Jewish War Veterans
 - Marine Corps League - Department of Minnesota
 - Military Order of the Purple Heart – Department of Minnesota
 - Minnesota Paralyzed Veterans of America
 - Department of Minnesota Veterans of Foreign Wars

9. Consideration of economic factors

In exercising its powers, the MDVA is required by identical provisions in Minn. Stat. § 116.07, subd. 6 and Minn. Stat. § 115.43, subd. 1 to give due consideration to:

...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances...

Minn. R. ch. 9050 provides the procedures followed by the MDVA Healthcare Division and sets forth the rules for operating the Minnesota Veterans Homes. The commissioner must interpret this chapter to give meaning to Minn. Stat. ch. 198.

Through due consideration, the MDVA has concluded that the, “establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters” have no effect on the, “feasibility or practicability” of adopting and implementing the proposed rules. None of the above activities have any bearing on the process of establishing an individual’s right to benefits and services and any subsequent providing of such benefits and services. Therefore, the MDVA’s provision of benefits and services to eligible individuals will have a positive effect on business and commerce as individuals access the Minnesota Veterans Homes for care and resources are disbursed into the state’s economy.

In regard to municipalities, the adoption and implementation of the proposed rules results in no tax of any sort; hence, there is no burden whatsoever on municipalities.

10. Authors, witnesses

A. Authors

The primary authors of this SONAR are Simon Hogan, MDVA Healthcare Service Director, and Dale Klitzke, MDVA Deputy General Counsel.

B. Witnesses

The MDVA anticipates that if a hearing is held on the proposed rules the following individuals will testify as witnesses in support of the need for and reasonableness of the rules.

1. MDVA Healthcare Service Director, Simone Hogan, is one of the primary authors of the SONAR and edits to Minn. R. ch. 9050. Mrs. Hogan will testify on the rule amendments and SONAR.

2. MDVA Deputy General Counsel, Dale Klitzke, is one of the primary authors of the SONAR and lead in the rule amendment development. Mr. Klitzke will testify on the rule amendments, SONAR, and the required jurisdictional documents into the record.
3. MDVA Veterans Healthcare Administration, Nancy Curtis, is the agency subject matter expert regarding regulations and compliance of healthcare standards. Ms. Curtis will testify on the rule amendments and SONAR.

11. Conclusion

The MDVA has established the need for and the reasonableness of the proposed amendments to Minn. R. ch. 9050 in this SONAR. The MDVA has also in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statutes and rules.

Based on the foregoing, the proposed amendments are both needed and reasonable.

June 8, 2021

Date



Larry Herke, Commissioner
Minnesota Department of Veterans Affairs