STATE OF MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

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20 West 12th Street • St. Paul, Minnesota 55155 • (651) 296-2562
Fax (651) 296-3954 • MinnesotaVeteran.org • 1-888-LinkVet

August 5, 2022

Chief Administrative Law Judge Jenny Starr
Office of Administrative Hearings
P.O. Box 64620
600 Robert Street North
St. Paul, MN 55101

Re: ***In the Matter of the Proposed Rule Amendments Governing Minnesota Veterans Homes, Minnesota Rules, Chapter 9050***
OAH 71-9054-37629; Revisor R-4384

Judge Starr:

The Minnesota Department of Veterans Affairs (MDVA) submits this letter in response to the Report of the Chief Administrative Law Judge dated April 15, 2022, In the Matter of the Proposed Rules of Amendments Governing the Minnesota Veterans Homes, Minnesota Rule, Chapter 9050 (Report) (OAH 71-9054-37629) and request a reconsideration of the original determination by OAH. Below, the MDVA addresses OAH's specific grounds for disapproval of the proposed rule amendment and the proposed changes or actions noted by the Chief Administrative Law Judge (CALJ) as necessary for approval of the rules.

1. **The MDVA's Additional Notice complied with Minn. Stat. 14.22 and Minn. R. 1400.2080, as well as its Notice of Hearing under Minn. Stat. 14.14.**

Per Minn. Stat. §14.101, the MDVA published the Request for Comments on Possible Amendments to Rules Governing the Minnesota Veterans Homes on January 4, 2016.[1] After waiting the initial 60 days for comments, the agency moved forward with its method to provide notice of its intent to adopt rules. In accordance with Minn. Stat. §14.22, an agency has three choices to provide its notice of intent to adopt rules. The agency can give a Notice of Hearing, a Notice of Intent to Adopt Rules Without a Public Hearing, or it can

[1] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit A: The Request for Comments published in the January 4, 2016, State Register

give a Dual Notice.[2] Because of the current status of Minn. R. 9050 and the lack of public comments during the Request for Comments under Minn. Stat. §14.101, the MDVA filed its notice with the intent to adopt rules through a Dual Notice process.[3] Because the agency's official rule making mailing list was minimal (only one individual - Peter Nickitas - officially requested to be placed on the list), the MDVA made reasonable efforts to notify persons or classes of persons who it thought may be affected by the proposed rule. The additional mailing list was created by discussion with the Elder Bar[4] and working with MDVA staff to identify organizations that have an interest in veterans and veterans' healthcare. Additionally, MDVA continuously updated its website to provide contact information for any interested party to contact the agency to be listed as an interested entity or individual.

The Additional Notice Plan for the proposed rule was approved by Judge Jessica A. Palmer-Denig on September 29, 2021.[5] On October 18, 2021, MDVA sent its approved SONAR, Dual Notice, and the proposed Rules to the following entities or individuals:

Minnesota Elder Bar
The Minnesota Veterans Home Family Council
Minnesota Department of Human Services, The Office of Ombudsman for Long-Term Care
Chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule
Legislative Coordinating Commission
Legislative Reference Library
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

Lori Grotz
Peter Nickitas

Simultaneously, upon mailing the required Dual Notice to the above referenced individuals or entities, the MDVA posted on the eComments webpage the Dual Notice, Proposed Amendments to the Rule, and SONAR.

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[2] Minn. Stat. § 14.22

[3] Exhibit F and F1 Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit F Dual Notice of Intent to Adopt Rules without a public hearing unless 25 or more persons request a hearing (Dual Notice), and Notice of Rescheduled Hearing and Exhibit F1 the Dual Notice as mailed and posted on the MDVA website; and the Dual Notice as published in the October 18, 2021, State Register

[4] Attachments 1: E-mail between Dale Klitzke and Cathryn Reher, October 26, 2018

[5] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit K3 The Order on Request for Review and Approval of Additional Notice Plan and Notice of Intent to Adopt Rules Without A Hearing from ALJ Jessica Palmer-Denig dated Sept. 29, 2021

The MDVA also updated its webpage to identify the proposed hearing date, as well as attaching the Proposed Amendments to the Rule, and the Dual Notice.

The request for hearing and comment period for the proposed rule by the MDVA closed on November 23, 2021, with a total of 47 participants to the comment page and at least 25 requests for a hearing[6]. Due to scheduling issues and prior to the close of public comments, MDVA requested to reschedule the original hearing date of December 7, 2021.[7] Judge Palmer-Denig ordered the rescheduling of the hearing to January 31, 2022.[8] The Notice of rescheduled hearing was sent to all commenters, as well as all entities or individuals identified under the Additional Notice Plan.[9]

On January 31, 2022, the MDVA entered into the hearing record the exhibits in accordance with Minn. R. § 1400.2220, subpart 1. In submission of its exhibits, the MDVA filed with OAH a Rule Hearing Exhibit List, dated January 31, 2022.[10] The Rule Hearing Exhibit List identified each exhibit along with a short explanation of each exhibit.[11] Under Exhibit H, listed as Exhibit H1, the MDVA submitted the Certificates of Giving Additional Notice and explained that all notices included the mailing (either U.S. mail or e-mail) had been accomplished.[12] Within Exhibit H1, the MDVA did not provide the actual e-mail to each of the entities or individuals merely for the purpose of simplifying the exhibit list for OAH. Instead, the MDVA provided a list of the e-mail contacts. The agency does not agree that it did not comply with the notice requirement previously approved by Judge Palmer-Denig. The agency actually sent an e-mail to each person/entity listed within the Additional Notice Plan, which included the required attachments of the Dual Notice, the Proposed Amendments to the Rule, and the SONAR.

To provide further clarification of this point, the MDVA is attaching in this Request for Reconsideration each e-mail that was sent in compliance with its Additional Notice Plan, along with an updated certification specifically identifying who received the notification, how it was delivered, and what attachments were included.[13]

The MDVA requests that OAH accept this clarification and reconsider its decision that MDVA did not comply with its Additional Notice Plan requirements and that the original certificate created a harmless error as it did not deprive any person or entity who was required to receive proper notification (see Minn. R. 14.15, subd. 5).

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[6] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit I1 OAH eComments Report; 47 eComments with attachments and Exhibit I2 Public Comments Received by U.S. Mail; Seven (7) letters

[7] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit K4 The letter from the MDVA dated November 17, 2021, to ALJ Jessica Palmer-Denig with a request to reschedule the hearing date of December 7, 2021, as identified in the Dual Notice

[8] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit K5 The Order on Request for Review and Approval of Notice of Rescheduled Hearing from ALJ Jessica Palmer-Denig dated November 24, 2021

[9] Attachment 2: Letters and E-mails providing notice of rescheduled hearing to parties listed in the Additional Notice Plan, dated December 1, 2021

[10] Rule Making Hearing, OAH Docket No.71-9054-37629, Rule Hearing Exhibit List dated January 31, 2022

[11] Id.

[12] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit H1 The Certificate of giving Additional Notice pursuant to the Additional Notice Plan

[13] Attachment 3: E-mails dated October 18, 2021, sent in compliance with the Additional Notice Plan, along with an Amended Certificate of Mailing of Dual Notice dated August 5, 2022

2. MDVA did not misrepresented itself in its Public Notification and Stakeholder involvement.

The MDVA initiated the rulemaking process by publishing the Request for Comments on possible amendments to the Rules Governing the Minnesota Veterans Homes on January 4, 2016 in the State Register.[14] Within the Request for Comments, the public was instructed to submit comments or information regarding Rule 9050 in writing to Kristen Root at the address provided.[15] Additionally, the Request for Comments stated that the MDVA did not plan on appointing an advisory committee to comment on the rules, nor did the MDVA anticipate that a draft of the rule amendments would be available before the publication of the proposed rules.[16]

Upon the initial publication within the State Register on January 4, 2016, MDVA received zero comments within the 60-day comment period. However, subsequent to the expiration of the 60-day comment period, the MDVA did have informal communications about the rule amendments with outside entities such as the Minnesota Elder Bar and the Office of Ombudsman for Long Term Care. Those discussions were general in nature as the final draft of the proposed rule amendments was not completed by the MDVA until it was ready for publication. Due to changes in senior leadership and extensive internal discussion regarding the changes to the rule, the draft of the rule amendments was not published until October of 2021.

When proposing changes to rules, an agency has several options on how it would like to provide notice.[17] The decision by an agency on how to proceed can be based on several factors including: the degree of controversary surrounding the rule, the number of responses or comments received during its Request for Comments period, or the amount of public partners that request to be listed on the agency's official rule making mailing list. If an agency is uncertain and is unable to predict whether there will be a large amount of input by the public, then a better option to verify public interest is to proceed with a Dual Notice. A Dual Notice allows an agency to provide notice of hearing, but permits the agency to cancel the hearing and adopt the rules without a hearing if fewer than 25 persons request a hearing.[18] Because of the uncertainty of any controversy surrounding the proposed rule amendments, the lack of comments received by the MDVA from its Request for Comments published in January 2016, and the lack of public interest in partners requesting to be listed on the agency's rulemaking mailing list, the MDVA went forward with notice by publishing a Dual Notice, which enabled the public to review the draft of the proposed rule amendments and provide comments in a manner that allowed for agency to address the identified uncertainties and determine the accuracy of its draft. The MDVA did not decide on its Dual Notice plan until August 2021.

The MDVA did not mislead any entity or individual that it would provide drafted specifics of the proposed rule amendments prior to publication. In fact, the MDVA specifically stated in its original Request for Comments (in January 2016) that a draft of the rule would not be available before the publication of the proposed rules. The MDVA confirmed this statement and followed its original course of action by providing a draft to interested parties, such as the Elder Bar and the Office of Ombudsman for Long Term Care, through the Dual Notice process and publication in October 2021.

[14] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit A: The Request for Comments published in the January 4, 2016, State Register
[15] Id.
[16] Id.
[17] Minn. R. 1400.2060
[18] Minn. R. 1400.2080

As identified in its SONAR, under Public Participation and stakeholder involvement, the MDVA identified it had filed the Request for Comments in the State Registrar in January 2016.[19] The MDVA also provided updates on its MDVA rulemaking page at https://mn.gov/mdva/about/reports.jsp, and has continued to maintain that page throughout the rulemaking process.[20] The MDVA did communicate with some stakeholders throughout the years, but did not share a draft until it was published. The notification section under part 3 of the SONAR identified the parties that MDVA communicated with, but the listed parties had only received confirmation that the MDVA was working on a draft of the rule changes and that they would receive a draft when it became publicly available through publication.[21] The SONAR does not represent or state that the MDVA shared with any individual or entity a draft before the Dual Notice publication. Each individual and entity identified in the SONAR did receive a draft of the proposed rule amendments through the Dual Notice process.[22]

Furthermore, after the Dual Notice was sent to identified individuals and entities, public comments regarding the proposed rule amendments were received highlighting concerns about the proposed rule amendments and in some cases, suggested edits.[23] The MDVA addressed those comments in a letter to Judge Palmer-Denig dated February 22, 2022, and March 1, 2022, and in some cases agreed to amend the proposed rule amendments based on those comments.[24]

The Dual Notice process worked the way it was intended, as it (1) allowed known and unknown interest groups to identify their concerns with the proposed rule amendments, (2) provided a public forum to list those concerns, and (3) provided a venue to attend and address those concerns live via a virtual hearing.

In the Report of the Administrative Law Judge (ALJ), it was identified that the MDVA is not required to undertake any particular form of outreach.[25] However, the report goes onto to say that because the MDVA made statements regarding its efforts to engage stakeholders, the statement needed to be true.[26] In no section of the SONAR, the MDVA's presentation at the virtual hearing, or the MDVA's response to comments or rebuttals did the MDVA state it engaged stakeholders about the specifics of the drafted proposed rule amendments or represented that the language that was drafted was a joint effort of the public. The MDVA stance on public involvement has never changed, it stood by its statement in the Request for Comments, it provided all the parties it could identify with a draft of the proposed rule amendments during the Dual Notice notification process and responded to each comment.

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[19] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit D The Statement of Need and Reasonableness (SONAR) at p.7

[20] Id.

[21] Id.

[22] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit H1 The Certificate of giving Additional Notice pursuant to the Additional Notice Plan. And Exhibit H2 The Certificate of Giving Additional Notice pursuant to the Additional Notice Plan. Notice includes mailing the Notice of Rescheduled Hearing via email and U.S. mail to all persons registered with the MDVA to receive notice of the rules

[23] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit I1 OAH eComments Report; 47 eComments with attachments and Exhibit I2 Public Comments Received by U.S. Mail; Seven (7) letters

[24] OAH Docket No.71-9054-37629, MDVA Response to Comments-Minn. R. 9050 February 22, 2022 and MDVA Rebuttal Response to Public Comments - Minn. R. 9050, March 1, 2022

[25] In the Matter of the Proposed Rules of the Minnesota Dep't of Veterans Affairs Governing Minnesota Veterans Homes, Minnesota Rules, Chapter 9050, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at p.35, section 147 (Apr. 15, 2022)

[26] Id.

The MDVA was truthful in its representations to OAH having identified its plan for the proposed rule amendments in the initial Request for Comments and complied with the public participation and involvement as identified within the SONAR. To conclude that the MDVA's presentation of the proposed rule amendments was not true is a weighted decision that is based on assumptions and not on facts and has attacked the reputation of the agency and its employees. The MDVA stands by its process and requests that OAH CALJ reconsider the decision to deny the approval of MDVA's additional Notice Plan based on the assumption that MDVA was not truthful about stakeholder involvement.

3. **The MDVA Statement of Need and Reasonableness (SONAR) is adequate, and it provided, to the extent the agency could ascertain, through reasonable efforts, the information required in Minn. Stat. §14.131 (2), (5), and (7).**

    a. **The MDVA's cost analysis under Minn. Stat. §14.131 (2) and (5) is accurate and the cost basis for the proposed rule amendments are nominal and have no impact on the current operational budget.**

Minn. Stat. §14.131 sets out eight factors for a regulatory analysis that must be included in the SONAR. Of the eight factors, paragraph (2) and paragraph (5) request that the agency identify probable costs to the agency or other agencies in the implementation of the rules, as well as the probable costs of complying with the proposed rule amendments. The agency, must include the following, to the extent it can through reasonable effort, ascertain the information:

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues
[Estimate:
- the probable costs to the agency of implementation and enforcement;
- the probable costs to any other agency of implementation and enforcement; and
- any anticipated effect on state revenues.]

(5) 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 governmental units, businesses, or individuals
[Estimate:
- the probable costs of complying with the proposed rule; and
- the portion of costs to be borne by identifiable categories of affected parties.]

According to the Report of the ALJ, the MDVA did not address the probable costs for itself, other governmental agencies, and regulated parties as required by Minn. Stat. § 14.131(2) and (5).[27] The SONAR acknowledges that some costs will exist in connection with implementation and enforcement of the rules, but the SONAR states only that the costs are "nominal" and "have no impact."[28] Additionally, the Report provides

[27] Id. at 16

[28] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit D The Statement of Need and Reasonableness (SONAR) at p.61

that the MDVA's analysis regarding the costs of compliance also does not provide sufficient information.[29] The Report specifically states:

> *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.*[30]

The MDVA contends that during its creation of the proposed rule amendments, as well as within its rule-by-rule analysis, the majority of the rule amendments do not result in cost fluctuation or additional costs to the agency, other agencies, or other parties. The MDVA provided a brief response to its cost base analysis because a majority of the rule amendments are the reorganization of rule parts or subparts, or clarifies functions already present at the Veteran Homes.

Chapter 9050, in general, governs the internal functioning and operation of the Minnesota veterans homes. In its analysis, the MDVA reviewed the cost of each proposed rule amendment in its broad terms, as it pertains to the cost of operating and administering the veterans homes. Specifically, MDVA took into consideration the costs of executing admissions, billing, repayment, bed hold, and discharge processes, as well as the costs of calculating maintenance charges and spousal allowances. MDVA also analyzed the new proposed rules with regards to operating the adult day health care program and pharmaceutical services. Only after this detailed internal review did the MDVA conclude that the proposed rule amendments do not give rise to significant changes to the operational functions of the Minnesota veterans homes. Therefore, any identified costs associated with proposed rule amendments are nominal to the MDVA, other agencies/entities, and will not have impact on the current operational budget of the MDVA.

i. The MDVA requested proposal of the mandatory involuntary discharge reconsideration hearing does not create additional expenses for the MDVA, any individual resident, or the Office of Ombudsman for Long-Term Care.

The proposed amendment to Minn. R. 9050.0220, subpart 3 includes the requirement for the facility to conduct an internal reconsideration hearing subsequent to the resident receiving notice of an involuntary discharge. The intent of the amendment was to create an internal check and balance by ensuring review of the notice of discharge by a neutral administrator (a different MDVA staff than the one who issued the discharge notice)[31]. This amendment created much concern by the public through their submitted comments, as well as by OAH through its OAH Report by stating that additional cost will be created by requiring this "additional" procedural review.

Although the proposed amendment to require a reconsideration hearing appears to add supplemental processes, the fact is that it does not. First, the proposed language to the reconsideration section of the

[29] In the Matter of the Proposed Rules of the Minnesota Dep't of Veterans Affairs Governing Minnesota Veterans Homes, Minnesota Rules, Chapter 9050, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at p. 22 (Apr. 15, 2022)

[30] Id.

[31] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit C The proposed rules, including Revisor's approval, p.34

involuntary discharge part does not require the resident to attend the reconsideration hearing[32] The resident has the ability to attend and participate in the reconsideration hearing to challenge any aspect of the notice of involuntary discharge. However, the lack of resident involvement will not change the requirement because the intent is to have an internal neutral review of the Notice of Involuntary Discharge. Second, through the years, the MDVA has consistently overseen these types of hearings, but only upon the request of the resident. The proposed rule amendment requires a review of the decision to involuntarily discharge a resident and saves everyone time by establishing the next step of the process. The reconsideration hearing is an internal process that consistently happens under the current practice. Since 2018, the MDVA has conducted six involuntary discharges in its domiciliary program and of those, five residents requested a reconsideration hearing.[33] Therefore, the requirement of the reconsideration hearing of an involuntary discharge notice provided to a resident does not materially alter the current practice, and therefore does not raise the cost to the agency or an individual resident.

Furthermore, although all notices of involuntary discharges provided by the MDVA states the Office of Ombudsman for Long-Term Care (OOLTC) contact information and identify the option for the resident to include the OOLTC in the process, it does not require the resident to include the OOLTC. It is the decision of the resident whether to include the OOLTC or any other outside entity for representation. The MDVA's proposed language to 9050.0220 is very similar to the Matter of the Proposed Rules of the Minnesota Dep't of Health Governing Assisted Living Facilities, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at 17 (Mar. 29, 2021). In that review, OAH concluded that proposed language that requires an entity like OOLTC to receive notice of an action or allows another entity to be present at a hearing does not necessarily obligate the entity to act and does not necessarily impose additional costs.[34] The current practice of the MDVA to implement notification of the resident's rights to have OOLTC present in all its Notices of Involuntary Discharges does not obligate OOLTC, it merely provides options for the resident. Furthermore, the number of attendances by OOLTC at reconsideration hearings held by MDVA since 2018 has been zero. Making the reconsideration hearing a requirement (rather than by resident request) does not increase the likelihood of OOLTC involvement. Therefore, it is the position of the MDVA that the proposed amendment under Minn. R. 9050.0220, subp. 3 will not create a higher obligation of OOLTC, nor will it create additional cost for that entity.

ii. The clarifying of terminology or the reorganization of the rule assists public understanding but does not create additional expenses.

Many of the proposed amendments to Chapter 9050 do not create additional costs or the cost has been identified as nominal because the amendment is simply clarifying terminology or reorganizing the rule for common sense flow of sequential processes and to assist with understanding by the public.

One such example of reorganization of a part is found in the prosed amendments under Minn. R. 9050.0200 and 9050.0220. Minn. R. 9050.0200, subpart 4, Notice of Involuntary Discharge, is proposed for repeal and the language is reorganized in Minn. R. 9050.0220, subpart 2B, which establishes 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 subpart 2 under Minn. R. 9050.0220 align with the requirements of Minn. R. 9050.0200, subpart 4 proposed

[32] Id.

[33] Attachment 4: Affidavit of Michael Anderson, August 5, 2022

[34] In the Matter of the Proposed Rules of the Minnesota Dep't of Health Governing Assisted Living Facilities, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at p.17 (Mar. 29, 2021)

for repeal.

This type of proposed language can be viewed in other areas, such as:

- The existing Minn. R. 9050.0200, subpart 3 which identifies the circumstances under which discharge procedures must begin. Minn. R. 9050.0200, subpart 3 is being proposed to be repealed because Minn. R 9050.0200, subpart 2, types of discharge and grounds for discharge, is being revised to include the text currently existing in subpart 3.

- The 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.

Additionally, the changes to terminology can be found in many subparts under Minn. R. 9050.0040. Examples include:

- Replacing the common phrase of "attending physician" with the more commonly industry term "provider" under Minn. R. 9050.0040, subp. 94b.

- Adding a definition of the common term of "skilled nursing facility" under Minn. R. 9050.0040, subp. 105a.

- Adding of the common industry term of "therapeutic leave" under Minn. R. 9050.0040, subp. 110.

In the proposed amendment to the rule where the SONAR identifies the clarification of terminology or the reorganization of certain text to other subparts or parts within the rule, the cost of those changes create nominal or no cost the agency, others agencies, or individuals.

iii. Costs associated to the current rule and the proposed amendments come from required compliance statues, laws, and regulations.

The compliance costs associated with the current rule and the proposed amendments originate in state and federal statutes, the Codes of Federal Regulations, and other Minnesota administrative rules. Other agencies oversee and regulate the MDVA's operations of the veterans homes. These agencies include the federal Veterans Administration, federal Centers for Medicare and Medicaid Services (CMS), the Minnesota Department of Health, and the Minnesota Department of Human Services, along with other applicable health, safety, sanitation, building, zoning, and operations codes that govern the administration and operation of the veterans homes.

Some of the specific laws, rules, and regulations that the MDVA must comply with include: Minnesota Statutes sections 144.50 to 144.56, 144A.02 to 144A.10, 144A.51 to 144A.53, 144.651, and 144A.13; Minnesota Administrative Rules chapters 4605, 4620, 4638, 4642, 4655, 4658, 4660, 7511, 5205, 1300-1365, 4714, 9555.7100 to 9555.7600; Minnesota Statutes sections 299F.011, 326B.101 to 326B.151, 326B.43 to 326B.49 and 626.557; Title 38 Code of Federal Regulations, chapter 1, part 51; the United States Department of Veterans Affairs Guide to Inspection of State Veterans Homes: Domiciliary Care Standards and Guide to Inspection of State Veterans Homes Nursing Home Care Standards; and Title 42 Code of Federal Regulations, chapter 4, subchapter G, part 483 and part 489, subpart I.

The proposed amendments provide clarifying language to already imposed requirements through the

aforementioned statutes, administrative rules, and federal regulations thereby adding detail and establishing the processes and procedures used by the MDVA to comply with the mandatory requirements. Making the veterans homes' processes and procedures current and up to date is anticipated to reduce the administrative costs that the veterans homes would otherwise incur by having to interpret and apply the diffused regulatory framework that governs every aspect of the administration and operation of the veterans homes.

b. The MDVA conducted a part-by-part analysis to identify compliance with Minn. Stat. § 14.131(5).

To review the probable costs of complying with the proposed rule under Minn. R. 9050, the MDVA conducted a part-by-part analysis of its proposed rule amendments to confirm its original statement that the costs of complying with the proposed rule amendments will be nominal and have no financial impact on the MDVA, other agencies/entities, or individuals such as residents or applicants.

9050.0030 COMPLIANCE WITH STATUTES, RULES, AND CODES.

The only changes to part 9050.0030 effected by the proposed rule amendments are changes in terminology and the removal of a reference to a United States Department of Veterans Affairs (USDVA) code that is no longer in effect. There are no requirements or provisions contained in the proposed amendments to this part that would require any party impacted by the rule to incur any additional costs to comply with this part. The costs of compliance with this rule part are incorporated in the costs of operating and administering the veterans homes.

9050.0040 DEFINITIONS.

Proposed amendments to subparts 6, 8, 14, 16, 18, 28, 30, 36, 38, 41, 44, 50, 56, 58, 58a, 62, 63, 96a, 71, 73, 74, 100, 107, 108, 109, 110, 112, and 115 are changes in terminology that are required due to industry standards. The cost associated with the proposed amendment is nominal, if anything, as the act of compliance of using these proposed definitions remains unchanged to the current status.

The proposed amendment to subpart 5 requires that the admissions agreement must also identify the resident's responsibilities with respect to a facility's policies and safety practices. The MDVA already identifies the resident's responsibilities with respect to the facility and other residents, so the department has determined there is no additional administrative cost to include in the admissions agreement a resident's responsibilities pertaining to facility policies and safety practices.

Proposed changes to subpart 21 include terminology and vocabulary changes for a clearer understanding of the subjects of assessments, but does not add or delete actions needed under a care plan review. Item E of Subpart 21 again clarifies an action already required under current healthcare standards to include the inclusion of the resident and/or the resident's family or representative. Because the rule already includes the personnel and action required when reviewing care plans, the department has determined that there are no additional administrative costs associated with the proposed amendment.

The amendments to subparts 23, 24, 26, 27, 43, 53, 59, 64, 72, 95a, 106, and 114 all remove cross-references to other Minnesota statutes and administrative rules that have been repealed and removed references to the ICD-9-CM and replace them with references to the ICD-10-CM.

New subparts 17a (business days), 26b (commissioner), 30a (delinquent account), 30b (department), 58b (interdisciplinary staff), 88b (patient classification system), 94b (provider), 105a (skilled nursing facility), and 109a (therapeutic leave) each create a new definition of a term used in the proposed rule amendments. These definitions are needed to bring the terminology of the rules in line with other regulatory requirements

that the department is currently complying with. The cost internally or externally is nominal, if any.

Overall, there are no anticipated costs associated with complying with the definitions as amended. The amended definitions, as well as the new definitions, serve only to update and clarify the terminology found in the proposed rule amendments. The amendments do not broaden the responsibilities or obligations of the department, other individuals, or entities.

9050.0050 PERSONS ELIGIBLE FOR ADMISSION.

Because the main intent of the proposed amendments to this part is to clarify the already practiced requirement for admission of a veteran and nonveteran to the Minnesota Veterans Homes, the MDVA does not anticipate additional costs of complying with the proposed amendments to this rule.

Subpart 1 is slated for repeal to eliminate language that is no longer applicable. The provisions and requirements of subpart 1 that are still necessary have been incorporated in subparts 2 and 3. Subparts 2 and 3 have been rewritten to remove confusing language and to improve the distinction between veteran and nonveteran requirements. Subpart 4 is marked for repeal to again eliminate language that is no longer necessary and is confusing and unclear. The provisions and requirements of subpart 4 that are still necessary have been incorporated in new subpart 5.

If allowed to move forward with the implementation of the proposed rule, the MDVA is removing the residency requirement under subpart 3a. The changes to this part will be further clarified in Section 4 of this request for reconsideration.

9050.0055 ADMISSIONS PROCESS, WAITING LIST, PRIORITY.

After additional consideration, the MDVA has determined that there will be no anticipated additional costs of complying with the proposed amendments to this rule part because the proposed rule amendments do not increase the responsibilities or obligations of the department or those persons who apply for admission to a veterans home and are placed on the waiting list for admission. In fact, the proposed amendments will, in the department's estimation, reduce the overall costs associated with administering the waiting list process by allowing for just one waiting list (rather than two lists), thereby reducing current procedural redundancy and inefficiency.

9050.0060 ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.

The proposed rule amendments to part 9050.0060 are limited to subpart 2 and consist of only terminology changes that do not change the substance of the rule itself. No additional responsibilities or obligations are created that would result in additional costs to the department or applicants than what are incurred under the rule as currently written.

9050.0070 TYPES OF ADMISSIONS.

The proposed rule amendments to part 9050.0070 consist primarily of terminology changes and some targeted procedural changes required to meet federal and state standards. The proposed amendments to subpart 2 propose changes to terminology, as well as remove cross-references to statutes that are confusing and no longer necessary. No additional responsibilities or obligations are created under this subpart that would result in additional costs to the department or applicants than what are incurred under the rule as currently written.

The proposed rule amendments to the first paragraph of subpart 3 are changes in terminology that do not

change the substance of the rule. There are no changes to items A, F-H, J and M. The amendments to items B, C, K, L, and N contain proposed changes in terminology that do not change the substance of the rule. No additional responsibilities or obligations are created in the amendments to these items that would result in additional costs to the department or applicants than what are incurred under the rule as currently written.

The proposed rule amendments to subpart 3, items D and E add requirements for additional assessments of people with mental health diagnoses. These requirements are already within the scope of the duties of MDVA staff psychologist or staff psychiatrist. Any additional costs associated with these assessments would be nominal and already accounted for in the MDVA's operational budget.

The proposed rule amendments to item I remove the limitation of "up to five days" for face-to-face monitoring that exceeds twice per day and extends to a "designee" of the director of nursing (as opposed to just the assistant director of nursing) the authority to approve additional face-to-face monitoring. The costs of allowing for more than twice per day monitoring for greater than five days will be minimal, as the continued monitoring remains within the scope of the duties of those staff members that do the monitoring and there are not new or additional responsibilities.

The proposed rule amendments to the first paragraph of subpart 4 and items B-G are changes in terminology that do not change the substance of the rule. No additional responsibilities or obligations are created that would result in additional costs to the department or applicants than what are incurred under the rule as currently written. The proposed rule amendment to item A of subpart 4 provides for the clarification of the state or federal system that is used to classify residents in a covered Medicare Part A stay into payment groups. This rule amendment will help reduce costs because it helps the admission team to match the proper level of care and payment coverage more efficiently.

9050.0080 ADMISSION DECISION; NOTICE AND REVIEW.

The proposed rule amendment to subpart 1 is a terminology change that does not change the substance of the rule, nor does it add any additional responsibilities or obligations that would result in additional costs to the department or applicants than what is currently incurred under the rule.

The proposed rule amendments to subpart 2 reorganizes the subpart from one paragraph to items A and B. Item A proposes the word "calendar" to clarify the type of days that are counted. Specifying the requirement of 30 "calendar" days does not add any additional costs because the process currently uses 30 calendar days to distinguish the time frame of 30 business days.

Item B proposed rule amendments will reduce costs to the department by streamlining the process for requesting and conducting a reconsideration of the admissions committee's decision to deny admission. The proposed rule amendments remove the burden to request that the admissions committee reconsider its own decision and the administrator's burden to review the admission committee meeting minutes to determine the reasons for denial of admission. The responsibility for initiating a reconsideration of an admissions committee's review continues to lie with the applicant or applicant's representative, but the timeline to do so is provided to make the process efficient and transparent for all parties. The proposed rule amendments establish the time requirements for submitting a request for reconsideration of a review, as well as the time requirements for the administrator's final decision. Because the overall process to request reconsideration is similar to the current practice, the agency does not believe there will be added costs to the agency or the resident.

9050.0100 TRANSFER.

The majority of the proposed rule amendments in this part focus on terminology that do not change the substance of the rule, nor do they create additional responsibilities or obligations of the department or others, specifically residents, that could lead to additional costs.

The proposed rule amendments to subpart 2 remove a long list of hypothetical situations, leaving the core function of the rule to provide notice to the resident of any pending transfer. The proposed rule amendments in subpart 2 have not added to the responsibilities and obligations of the department or residents, therefore no additional costs are projected.

9050.0150 BED HOLD.

The proposed rule amendments in subpart 1 eliminate a cross-reference to part 9050.0540 which is not necessary and does not change the substance of the rule or add any additional responsibilities or obligations. Proposed rule amendments to subparts 2, 3, and 5 are changes in terminology that do not change the substance of the rules, nor do they create additional responsibilities or obligations that could result in costs for the department or others. There are no amendments to subpart 6.

The proposed rule amendments to subpart 4 are changes in terminology and limit therapeutic leave to a cumulative total of 12 calendar days per calendar year. This proposed rule amendment aligns the therapeutic leave limit with the federal per diem rates in 38 CFR chapter 1, part 51. Any costs are the result of compliance with the federal regulation and not the proposed rule amendment.

The proposed rule amendments in subpart 7 contain terminology changes, the shortening of the time between bed hold reviews (from once every 30 days to once every 7 days) and eliminates therapeutic leave that exceeds 36 days per year. Although the proposed rule amendments increase the number of reviews required to be completed by the MDVA, the department believes the cost of additional reviews to be nominal, as the review is an internal process and does not create obligations for any other parties.

9050.0200 DISCHARGE.

The proposed rule amendments to subpart 1 consist of changes in terminology and the addition of the statement, “As allowed in this part, a resident may be discharged from any veterans home facility.” This proposed rule amendment plainly states what has always been true and expounds upon the MDVA’s authority to discharge a resident under certain circumstances as set forth in this rule part. Overall, the proposed rule amendments to subpart 1 do not change the substance of the rule, nor do they create responsibilities or obligations that may result in additional costs for the department or others, including Veterans Home residents.

The proposed rule amendments to subpart 2 contain provisions already present in the current rule, under subpart 3, which is slated for repeal. The proposed change provide clarity to the rule part and do not provide duties or obligations to the residents or the agency that do not already exist in the rule. Because of this, the department does not foresee significant changes in costs to the department or others (including Veterans Home residents).

The proposed rule amendments establish an “immediate” discharge as well as the process that governs the immediate discharge procedures. The agency must react quickly in an instance where a resident creates an immediate threat to themself, or to other residents or staff, but this provision does not inherently create additional obligations or responsibilities vastly different from the involuntary discharge process. An immediate discharge is a very unique situation, and the agency does not foresee this to be a frequently used process (the agency has only processed one immediate discharge since 2016). Therefore, the MDVA believes

any costs for an immediate discharge to be nominal for all involved parties.

The Report referenced the added provisions under Minn. R. 9050.0200, subpart 2, item B, subitem (4) as being an issue for application due to the lack of reference to Federal law. The agency proposes to remove that provision if the reconsideration is granted. The proposed change to that item will be provided in Section 4 of this request for reconsideration.

Subparts 3, 4, and 5 of the current rules are marked for repeal. The provisions of subpart 3 have been incorporated in subpart 2 as stated above and the provisions of subparts 4 and 5 are incorporated in rule part 9050.0220. The repeal of these proposed rule amendments do not add responsibilities or obligations to the department or residents, therefore no additional costs are projected.

Most of the proposed rule amendments to Minn. R. 9050.0200 provide clarity by reorganizing the subparts and the addition of the immediate discharge process, the MDVA believes any costs would be rare and nominal to the agency, other entities, or individuals that would be involved.

9050.0210 VOLUNTARY DISCHARGE PROCEDURES.

The proposed rule amendments to subparts 1 and 2 consist of terminology changes. The proposed rule amendments do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, applicants or residents; therefore, no additional costs are created.

9050.0220 INVOLUNTARY DISCHARGE PROCEDURES.

The proposed rule amendments to subpart 1 of Minn. R. 9050.0220, add facility financial staff and facility social services staff to those who can recommend involuntary discharge. However, if this reconsideration is granted, the agency is proposing to strike out "social services staff" from the proposed changes. Although the proposed rule amendments appear to give additional responsibilities to financial and social services staff, these responsibilities currently fall within the staff's current responsibilities and is within their knowledge, skills, and abilities. Because the process will not change, and the no additional training is required, the department has determined that no additional costs are projected.

The proposed rule amendment creating new subpart 1a, which establishes the roles of "neutral administrator" and "neutral designee," delineates the objective internal staff member review for an involuntary discharge proceeding. This review creates additional responsibilities for current administrators, the senior director of health care, deputy commissioners, or the senior administrative officer, however, the department feels that these responsibilities fall within the realm of these staff members' knowledge, skills, and abilities and are similar to their currently existing duties and would require no additional training. Therefore, no additional costs are projected for the department. Furthermore, because the proposed amendment is specific to internal agency staff, there is no additional cost projected for external agencies or individuals.

The proposed rule amendments to subpart 2 item A are the same as in the current rule, only stated more clearly, and as such the department believes there are no additional costs. Moreover, as was stated in the proposed rule amendment for Minn. R. 9050.0200, the agency is willing to remove "social service staff" from the proposed rule, if reconsideration is granted.

The rule amendments to subpart 2, new item B, contains the same text and requirements found in part 9050.0200, subpart 4 which is marked for repeal. Because the requirements in new item B are already the same as in part 9050.0200, subpart 4 of the current rule, the department believes there are no additional costs projected for the department. A new provision for the immediate discharge process under subpart 7 is

also added. As previously stated in this memo, the MDVA believes any costs for an immediate discharge to be nominal for all involved parties.

The proposed rule amendments to subpart 2, new item C, contains the same text and requirements found in part 9050.0200, subpart 5, items A-D which are marked for repeal. Because the requirements in new item C are already the same as in part 9050.0200, subpart 5 of the current rule, the department believes there are no additional costs projected for the department.

The proposed rule amendments to subpart 2, new item D, contains the same text and requirements found in part 9050.0200, subpart 5, the second paragraph after item D, which is marked for repeal. Because the requirements of new item D are already the same as in part 9050.0200, subpart 5 of the current rule, the department believes there are no additional costs. As previously stated in this memo, the MDVA believes any costs associated with an immediate discharge to be nominal for all involved parties.

The proposed rule amendments to subpart 3 of Minn. R. 9050.0220 delineates an internal review of the facts through a mandatory reconsideration hearing before an involuntary discharge proceeds. The reconsideration hearing is an action the department consistently participates in when a notice of involuntary discharge is presented to a resident. The hearing creates a nominal change in cost for the MDVA because it is an internal process. Since 2018, the MDVA conducted six involuntary discharges in its domiciliary program and of those, five residents requested a reconsideration hearing. The internal reconsideration review hearing of the involuntary discharge notice does not, and will not, change the current practice, nor raise the cost to the agency or an individual. Moreover, the proposed amendment removes the burden from the resident to request and puts the requirement on the agency to organize its documentation in support of the involuntary discharge and facilitate the reconsideration hearing. As for the OOLTC participation, that is still left up to the resident to request. However, since 2018, the five reconsideration hearings that were held by the department none were attended by the OOLTC.[35] Because of this research and understanding of past practice, the department has determined that the cost to the agency, external entities, and individuals will be nominal.

The proposed language in subpart 4 provides for updated language to an already established procedure. The proposed amendment text is the reorganization of the current language, with the addition of clarifying terminology to the actual procedure. Because the proposed language is not creating additional duties, but clarifying the actual ones already in place, the cost of such a proposal is limited to nominal, if any at all.

The proposed rule amendments to subpart 5 do not create any new responsibilities or obligations for department personnel. The subpart requires notification to a resident of their right to appeal pursuant to subpart 6. The proposed rule amendments shift the responsibility for issuing a decision and order from the administrator to a neutral administrator or neutral designee (who is also an MDVA employee). The decision and order must still identify the basis for the decision. Because the responsibilities in subpart 5 are the same as in the current rule (with the only change being who is responsible for fulfilling them and there is no cost to notify a resident of the right to appeal), the department believes there are no additional costs.

The proposed rule amendments to subpart 6 consist of terminology changes and language changes that reflect the role of the “neutral administrator” or “neutral designee” as opposed to the Veterans Home administrator. No new responsibilities or obligations are created for the department. The second paragraph of subpart 6 and items A-B are removed and moved word-for-word to new subpart 8. The proposed rule amendments to the third paragraph of subpart 6 remove cross-references to statutes and other rule parts that are no longer necessary. Because the rule amendments in subpart 6 do not create any new responsibilities or obligations

[35] Attachment 4: Affidavit of Michael Anderson dated August 5, 2022

for the department or others (entities or individuals), the department's position is that there are no additional costs.

The proposed rule amendments creating a new subpart 7 was an option that was already available under the current rules within Minn. R. 9050.0200, subpart 3, item E. However, the proposed subpart 7t provides a more detailed procedural format to follow when implementing this type of discharge. Because of the infrequent application of this part of the proposed rule, the department does not believe the cost associated with the proposed text is more than nominal.

The proposed rule amendment that creates a new subpart 8 contains the same provisions as in the current Minn. R. 9050.0200, subpart 3, and Minn. R. 9050.0220, subpart 6. The proposed rule amendment does not create any new responsibilities or obligations that give rise to additional costs for the department, external agencies/entities, or other individuals.

9050.0230 ENFORCEMENT OF FINAL DISCHARGE ORDER.

The proposed rule amendments to part 9050.0230 consist only of terminology changes. The proposed text does not modify the substance of the current rule, nor create any additional responsibilities or obligations of the department, other agencies, applicants or residents that would create additional costs.

9050.0300 CARE PLANNING.

The proposed rule amendments to subpart 1 consist of terminology changes and the addition of language clarifying the interdisciplinary team. The proposed rule amendments do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

In subpart 2 of the proposed rule amendments there are no changes to Items A-D and item F. The proposed rule amendments in items E and G consist of terminology changes that do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

There are no changes to subpart 3.

9050.0400 UTILIZATION REVIEW COMMITTEE.

Subpart 1 of the proposed rule amendments consists of a terminology change that does not change the substance of the rule, nor does it create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

The proposed rule amendments to subpart 2 contain language that clarifies the composition and functioning of the utilization review committee. The proposed rule amendments do not add to the responsibilities or obligations of the committee and do not change the substance of the rule; therefore, the department has concluded that no costs are created by this amendment.

In subpart 3, there are no changes in items A, E, and F. The rule amendments to items B and D consists of terminology changes that do not change the substance of the rule, nor does it create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

The proposed rule amendments in item C consist of a change in terminology when referring to the care

evaluation study that is conducted by the utilization review committee and the addition of text that clarifies the committee's duty to review the care needs of residents based on the state licensure of the facility. Licensure requirements for the facility are established by the Minnesota Department of Health. Costs incurred by the department resulting from the proposed rule amendment are traceable directly to Minnesota Department of Health requirements and not the proposed amendment itself. The proposed rule amendments under this item do not create any additional responsibilities or obligations of other entities, applicants or residents, and therefore, no costs are created for these parties.

There are no changes in subitems (1) to (4) of item G. The proposed rule amendment to item G is a change in terminology that provides consistency with the federally mandated process for clinical assessment of all residents in Medicare or Medicaid certified nursing homes. Any cost incurred by the MDVA resulting from the expanded terminology contained in the proposed rule amendment text is traceable to the clinical assessment requirements in the CMS certified nursing homes and not the proposed amendment itself. The proposed rule amendment does not create any responsibilities or obligations of other entities, applicants or residents; therefore, no costs are created for these parties.

There are no changes to subpart 4.

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

There are no changes to subparts 1, 5, or 6. The proposed rule amendment to subpart 2 removes text that is no longer necessary and does not change the substance of the rule, nor does it create any additional responsibilities or obligations of the department, other entities, applicants, or residents. The proposed rule amendments to subpart 2, items A and B change how direct costs and indirect costs are defined, as provided by the federal CMS manual system. The proposed rule amendment to item A clarifies 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. The rule amendment in item B clarifies that indirect costs must be reduced by the amount of receipts received, not to include reimbursement (which is the current practice). All costs incurred by the department resulting from the proposed rule amendment text are traceable to the federal CMS manual system and not the proposed amendments. The proposed rule amendments do not create any responsibilities or obligations of other entities, applicants or residents; therefore, no costs are created.

The proposed rule amendment to item C consists of a terminology change that does not change the substance of the rule, nor does it create any responsibilities or obligations of the department, other entities, applicants, or residents. Therefore, under the department's cost analysis of the changes, no additional costs are incurred by the department, other entities, or individuals.

There are no changes to subpart 3 items B and E. The proposed rule amendments to subpart 3 and items A, C, D, F, and G consist of terminology changes that do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, applicants or residents; therefore, no costs are created.

The amendment to subpart 4 replaces the term "ability to pay" with cross-references to rule parts 9050.0700, 9050.0710, and 9050.0720. Any cost implications are the result of the provisions and requirements contained in these rule parts and are not the result of this proposed amendment.

9050.0510 MAINTENANCE CHARGE; ADDITIONAL SERVICES ~~VETERAN EXCLUSIVE SERVICES~~.

The proposed rule amendment to subpart 1 removes language that limits the scope of additional health care services a resident may use at their own expense. This proposed rule amendment does not increase or

decrease the costs for a resident because any additional care is strictly the choice of the resident and at the resident's own expense. The proposed rule amendment does not create any additional costs for the department and it relieves the department of the burden of having to monitor the scope of the additional health care services residents are receiving.

The proposed repeal of subpart 2 removes text for "Veteran exclusive services," which are services exclusively for veterans that nonveteran residents are not entitled. This subpart is no longer necessary because veteran exclusive care is treated as additional services in subpart 1. The repeal of subpart 2 creates no additional costs for veteran residents, nonveteran residents, the department, or other entities.

9050.0520 MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.

There are no changes to subpart 1.

The proposed rule amendments in subpart 2 update cross-references that coincide with proposed amendments in part 9050.0200, subpart 2, item B, subitem (1). Any cost implications for the department, other entities, or an individual (resident) are result of the provisions of part 9050.0200, subpart 2, item B, subitem (1) and not the result of this proposed rule amendment.

9050.0530 RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.

The proposed rule amendments to this part consist of terminology and grammar changes that do not change the substance of the rule, nor do they create any new responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

9050.0550 MAINTENANCE CHARGE; RESOURCES CONSIDERED.

The proposed rule amendments in subpart 1 clarify the type of insurance ("applicable") that is considered by the MDVA when determining what an applicant or resident is able to pay. The proposed rule amendments also clarify that the department reviews benefits and assets as resources when determining maintenance charge. These clarifications do not create any additional cost to the applicant or resident. This is merely clarifying part of the department's process when reviewing the applicant's or resident's assets as resources when determining their ability to pay for their care received at the facility. Because the proposed amendment is a clarification and not a change in practice, the cost of the amendment is considered by the department as nominal.

The proposed rule amendments to subpart 2 add the term "long-term care" to identify the type of insurance governed by the rule. Identifying the type of insurance that is the subject of the rule does not create any additional costs for the department, other entities, or an applicant or resident, although it does eliminate the need for evaluating other types of insurance that have no relevance to an applicant's or resident's ability to pay for the care they receive at the Veterans Home. Because the proposed amendment is a clarification and not a change in practice, the cost of the amendment is considered by the department as nonexistent.

The proposed rule amendments in subpart 3 adds language that makes clear the provisions of the rule governing applicants or residents of a skilled nursing facility and provisions of the rule that govern applicants or residents of a boarding care facility. The proposed rule amendments add provisions that clarify that a boarding care resident in transition from the boarding care facility to the community is allowed to own property in excess of $3,000 up to six months prior to discharge from the boarding care facility. Adding this language does not add additional costs for either the department or the resident because clarification of an already set rule along with identifying the difference between the two types of residents the department

provides care for helps with the rule's application and adherence to it by the department and the resident.

The rule amendments to subpart 4 consist only of a terminology change that does not change the substance of the rule, nor does it create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no additional costs are created.

There are no changes to subpart 5.

9050.0560 MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.

The proposed rule amendments to subpart 1 and item A consist of grammar and terminology changes that make the rule clearer, but do not change the substance of the rule, nor do they create any responsibilities or obligations of the department, other entities, applicants or residents; therefore, no additional costs are created.

There are no changes in items B-E of subpart 1.

The proposed rule amendment to the paragraph at the end of item E adds the following:

> *Failure of the applicant or resident to report the substantial change accurately and timely to the facility may result in a discharge in accordance with part 9050.0200.*

This is a clarification of the standard already applied in the current rule under Minn. R. 950.0200, subpart 3, item G, which provides that falsifying or incorrectly representing information on an applicant's or resident's income disclosure and verification forms are grounds for discharge from the facility. Failure to report information is a consistent theme within the Administrative Rule Ch. 9050 such that all assets and income must be verified to determine the appropriate level of payment by the applicant/resident for the care they receive. The effect of this proposed rule amendment is that an applicant or resident must report a change in their financial situation, however the cost to implement and enforce the rule by the department, as well as the cost to comply with the rule, is nominal because it is consistent with all other parts within the rule regarding an applicant's or resident's finances. In addition, enforcement of the rule is already provided for under the discharge provisions.

The proposed rule amendment to subpart 2 replaces the word "and" with "or" after item A and before item B. Either item A applies to a resident or item B applies, but not both. This rule amendment is a grammar change and does not create any responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

9050.0580 REVIEW OF MAINTENANCE CHARGE DETERMINATION.

The proposed rule amendments are grammar changes and terminology additions that provide clarity to the rule. Clarifying the ten days for submitting a request is ten "business" days provides an applicant or resident more time to request a reconsideration of a maintenance charge. The proposed rule amendments do not create any responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

9050.0590 MAINTENANCE CHARGE; REFUND.

The proposed rule amendments consist of terminology and text changes for clarity. The proposed rule amendments do not change the substance of the rule and do not create any responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

9050.0600 PROPERTY LIMITATIONS.

The proposed rule amendment to item A adds text to help identify the bases for evaluation of a life estate ownership of a resident. The original text proposed by the department requested use of the Minnesota Department of Human Services (DHS) Health Care Programs Eligibility Policy Manual. However, the comments received by the public provided an opportunity for the department to reconsider its position and we proposed a change in our Response to Comments to amend the evaluation standard to the IRS actuarial tables under section 7520 of the Internal Revenue Code.[36] The cost implications of this proposed rule amendment are difficult to calculate because the phrase, "according to law" is vague, unclear, and open to interpretation without the added language of the proposed rule amendment. There is no basis for a comparison of the costs to comply with the rule before the proposed rule amendment and after the proposed rule amendment. However, the number of residents that own a life estate interest is minimal, and since the MDVA already has a calculation formula for a life estate in the current rule text, the cost upon the affected parties to implement and enforce, or to comply, the department believes will be nominal.

The proposed rule amendment to item B consists of a terminology change that does not change the substance of the rule and does not create any responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

There are not changes to items C and E.

The proposed rule amendments to item D delete the term, "Keogh account" and replace it with clarifying text. The term "Keogh account" is not needed because it is covered under pension plans. The proposed rule amendments make clear that the financial staff is "determining the value" of individual retirement accounts, pensions, and deferred compensation plans and not just "evaluating" them, which is unclear and subject to wide-ranging interpretation. The proposed rule amendments also make clear that it is the individual retirement accounts, pensions, and deferred compensation plans of the resident whose value is being determined. The proposed rule amendments do not change the substance of the rule and do not create any responsibilities or obligations of the department, other entities, or applicants or residents that are not already consistent with the current rule or department practice; therefore, no costs are created.

The proposed rule amendment to subpart 2, item A, subitem 1 adds the word "dependent," before the word "children" and provides consistency in its application of standard for exceptions. The proposed rule amendment does not change the substance of the rule, nor does it create an additional responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

There are no changes to item A, subitems (2) and (3).

The proposed rule amendments in subitem (4) replace the term, "home" with "homestead" to maintain consistency with the language in item A and in subitem (1), as well as to be consistent with the definition in the current language under Minn. R. 9050.0040, subpart 48. The proposed rule amendments do not change the substance of the rule and do not create any responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

In subpart 2, there are no changes to items B-D or F.

The proposed rule amendments in subpart 2, item E remove provisions from the rule that allow real property to be classified as "not saleable" and therefore excluded when calculating a resident's maintenance charge or

[36] OAH Docket No.71-9054-37629, MDVA Response to Comments-Minn. R. 9050 February 22, 2022, p. 27

spousal allowance. Furthermore, all provisions related to two neutral licensed real estate professionals to estimate a market value price and ultimately determine if a property is saleable or not saleable are removed. The proposed rule amendments now consider real property that is a resource under Minn. R. 9050.0550 as an asset which must be liquidated for the resident or applicant to meet the financial needs established by the maintenance charge calculations.

The proposed rule amendments require that, "If the real property is not sold within six months, the real property must continue to list for sale. If the resident or applicant continues to make a reasonable effort to sell the real property, the real property will be excluded until it is sold." The proposed rule amendments determine a "reasonable attempt to sell" real property by:

> *(1) an actual good-faith sale attempt was made at a fair market value price based on the current property tax evaluation for the property. If a purchase offer at the current property tax evaluation amount was received, but was rejected by the resident or applicant, it is presumed that the failure to sell the property was due to an improper action on the part of the resident or applicant. Upon failure by the resident or applicant to attempt to sell the real property, the current property tax evaluation must be the figure considered in determining the resident's maintenance charge or the spousal allowance.*
>
> *(2) For purposes of this item, "an actual sale attempt" means the individual has listed the property with a licensed real estate broker or salesperson or, if the property is offered for sale by the owner, the owner has affixed to the property a prominently posted, conspicuous sign that is readable from the road or driveway entrance. The sign must include in large, legible type a notice of the sale and the address or phone number of the owner. The owner must prominently advertise the property for sale in the official newspaper of the county, the newspaper of largest circulation in the county, or a creditable property listing website. Proof of this listing can be requested by the facility at any time until the property is sold.*

The cost implications of the proposed rule amendments for applicants and residents are difficult for the MDVA to determine with any specificity. In both the current rule and the proposed rule amendments, an applicant or resident will incur the costs of initially trying to sell the property, i.e., listing, signage, and advertising. Under the proposed rule amendments, the resident or applicant will not have to obtain the services of two licensed real estate professionals to provide a fair market value estimate of the value of the property; however, the resident or applicant is required to leave the property on the market until it sells. Because the current language creates the expense of hiring two licensed professionals to satisfy the classification of "nonsalable" or put the property up for sale whereas the proposed language eliminates the expense of hiring two professionals but requires a continuous effort to sell the property, the cost to the resident to comply has been assessed by the department as nominal since the current and the proposed rule cancel one another out.

The cost implications of the proposed rule amendments to the department for enforcement are also difficult to determine with any specificity. Under the current text, the department reviews the value of the property and the determination of salability from two independent professionals or a good faith sale attempt of the property under the current market value determined by two professionals. However, the proposed rule amendment text provides that the department will have to review the value of property by using a tax statement and then confirm the real property is on the market for sale. The implementation and enforcement appear to be less burdensome and do not include the subjective opinion of two professionals, which the department has to consider in its review. Upon initial review, the cost associated for the proposed changes to subpart 2 appear to be drastic. However, in application and when comparing the current subpart 2 and

proposed revisions to subpart 2, the proposed language is less cumbersome, creates less subjective analysis, and requires fewer actions by the resident to fulfill their compliance. The proposed revisions also lessen the amount of staff time necessary for implementation and enforcement. Overall, the department believes that the proposed text creates a nominal change for compliance, as well as implementation and enforcement, and therefore only has nominal costs associated with the proposed language for the department, other entities, or applicants or residents.

There are no changes to subpart 3 items A, and C-F. The proposed rule amendments to subpart 3 item B consist of a revision to establish the type of trust and the statute that governs. Because this proposed rule amendment will eliminate non-irrevocable burial accounts (that were once allowed), the cost implications of this proposed rule amendment are the possibility of an increase in an applicant's or resident's maintenance charge due to having excessive assets, or a reduction in the amount of a spousal allowance due to having excessive assets. However, the specific cost amounts for complying with this rule are difficult to project since this proposed amendment applies only in certain and unique cases, and the value of these trusts vary greatly. Because of the variability and after reasonable efforts by the department to ascertain the approximate cost, the department believes that the proposed rule amendment creates a nominal cost for the department and the resident/applicant, but not other entities.

The proposed rule amendment to subpart 4 adds language to clarify that comingling of funds excluded from consideration as an available resource by subparts 2 or 3 with other funds that are considered available is prohibited. To retain the exclusion, excluded funds must be placed in a separate account. The proposed rule amendment does not change the requirement or add to or diminish the responsibility for a separate account that currently exist in the rule text; therefore, no additional costs are created for the department, other entities, or an applicant or resident.

9050.0650 TRANSFERS OF PROPERTY.

The proposed rule amendments to subpart 1 consist of three features: (1) terminology changes, (2) the addition of text that clarifies that for real property the "market value" is the current county property tax valuation, and (3) for real property transfers, the effective date is the date the transfer document is recorded with the county property records office. These clarifications do not change the substance of the rule and do not create any additional responsibilities or obligations of the department, other entities, or applicants or residents. The proposed rule amendments expedite the evaluation process by having a clear standard of property value.

While the department has determined that no new obligations are created by this proposed rule amendment, the MDVA believes if any cost is associated with the proposal, that the cost will be nominal. Because there are no standards in the current rule for establishing how to calculate the market value of a property owned by a resident, the ability to determine cost implications is difficult. Under the current language, the property value is determined by the "market value" at the time of sale or transfer. A market value determination creates an uncertain standard that requires the resident and department staff time and expense to accurately and fairly calculate the value. With the proposed rule amendment, the implementation of the tax evaluation as the standard to determine property value, the department has a direct and efficient way to clearly identify the value of the property at the time of sale or transfer by simply referring to the property's tax statement. Furthermore, the utilization of the tax evaluation amount when establishing the value of property of a resident will more likely benefit the resident because in most cases the tax evaluation is generally lower than the market value. Therefore, if the applicant or resident is required to identify a property that was transferred, the department can quickly determine if the property was transferred for the "market value" by

simply referencing the property tax records.

The proposed amendment that sets the date of recording as the effective date of transfer for the purpose of application for admission or residency provides a clear date of the established value and an identifiable date for resident/applicant planning purposes. The proposed change to the date of transfer creates less of a burden on the department for enforcement and the cost to comply is nominal, if any, for the resident/applicant.

The proposed rule amendments in subparts 2, 3, and 4 consist of changes in terminology that do not change the substance of the rule and do not create any additional responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created. There are no proposed rule amendments to subpart 5.

9050.0700 INCOME.

There are no changes in subparts 1 and 3. The proposed rule amendments in subpart 2, item A include terminology changes that do not change the substance of the rule, nor do they create any responsibilities or obligations for the department, other entities, or applicants or residents. The proposed rule amendments clarify that transferred property (under part 9050.0650) also includes trusts that were amended within 12 months before admission or during the resident's stay in a facility. The proposed rule amendments are consistent with other parts of the rule when determining the value of an applicant's or resident's assets and income. Because it is not typical to have an applicant or resident of a Minnesota veterans home have funds from a trust distributed or changed within the identified time frames within Minn. R. 9050.0700, the department has determined that any costs that would be associated with the proposed rule amendments is nominal.

9050.0710 CALCULATION OF GROSS INCOME.

In subpart 1a there are no changes to items A-C. The proposed rule amendments to subpart 1a add new items D and E, which add that (1) contractual or retroactive payment of benefits are considered an asset prior to admission and income upon admission, and (2) state and federal tax refunds or rebates are considered income upon receipt and an asset in subsequent months. The proposed rule amendments will potentially increase the amount of financial resources available to a resident. This change could increase the resident's maintenance charge. The current rule considers a tax refund to be "lump sum" income.[37] Therefore, the MDVA believes that any costs associated with the proposed rule amendment are nominal since the proposed text does not substantively change how these funds are currently accounted for when calculating a resident's maintenance charge.

The proposed rule amendment to subpart 5 adds item C, which establishes that an annuity amount received or should have been received by a resident or applicant is treated as unearned income. If an applicant or resident can withdraw the cash value of the annuity, then the cash value is the amount of unearned income, regardless of whether or not it is actually withdrawn. This proposed rule amendment will potentially increase the amount of financial resources available to an applicant or resident. This change could increase the applicant's or resident's available income, thus increase their maintenance charge. The cost to the applicant or resident for complying with this rule amendment is difficult for the MDVA to project since the proposed rule amendment applies under limited circumstances and a resident's or applicant's maintenance charge is different in each case, as well as being impacted by a multitude of financial factors (not just this single

[37] Minn. R. 9050.0040, subparts 68 and 54 and Minn. R. 9050.0700 subpart 1

element). Therefore, the MDVA has determined that costs associated with this proposed amendment would be nominal for applicants and residents. Any costs to the department for implementation and enforcement of the proposed rule amendment are nominal, as the department's financial staff already reviews annuities when determining resident maintenance charges, pursuant to Minn. R. 9050.0770.

The proposed rule amendments to subpart 6 clarify the treatment of a lump sum received by an applicant or resident. The proposed rule amendments also contain the same text found in subpart 1a D and E. The proposed rule amendments will potentially increase the amount of available income to an applicant or resident. The overall costs to comply with these proposed rule amendments are difficult for the department to project since these amendments apply only under limited circumstances and the financial circumstances of a resident or applicant is different in each case. The proposed rule amendments pertaining to tax refunds are consistent with the current rule text and will have nominal cost to the department, other entities, or applicants or residents.[38] Based on the limited occurrence of a resident receiving income through a contractual payment or retroactive payment of benefits, the department considers the cost of the proposed rule amendment to be nominal.

9050.0720 CALCULATION OF NET INCOME; DEDUCTIONS FROM INCOME.

There are no changes in subpart 1. In subpart 2 there are no changes to items A to N, nor Q and R. The proposed rule amendments in item O consist of changes in terminology and the addition of clarifying language. The proposed rule amendments do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, or applicants or residents. The proposed changes replace language that is vague and open to interpretation, as such, the department has determined that there are no associated costs.

In item P, the proposed rule amendments consist of a grammatical change and shifts the decision-making authority for education expenses to the commissioner or the commissioner's designee, which is well within the scope of the commissioner's duties and does not result in any additional costs for the department, other entities, or applicants or residents.

9050.0750 DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

The proposed rule amendment to subpart 1 establishes that in the case of an applicant or resident who does not qualify for federal aid and attendance under Code of Federal Regulations, Title 38, Section 3.351, due to excess spousal assets, then the spouse does not qualify for spousal allowance under this part until the total of all assets owned by the spouse and resident are consistent with the federal veterans administration threshold limit for aid and attendance qualification. The potential impact of this amendment is that costs for the department are reduced by what would be the amount of the spousal allowance while costs would rise for the spouse who is not eligible for the spousal allowance. The overall cost amounts for complying with this rule amendment are difficult to project as this amendment applies only in certain cases where the resident's or applicant's spouse is applying for spousal allowance and the resident or applicant was denied federal aid and attendance due to excess spousal assets. The cost to comply with the proposed rule amendments is projected to be nominal by the department because the proposed text is not creating additional cost for the applicant/resident or spouse, but instead ensuring the resident/applicant maximizes the assets available to them before applying for spousal support. The department cost should be minimal in implementation and enforcement as it has always reviewed the federal aid and attendance in its spousal support application

[38] Id.

process.

The proposed rule amendments to subpart 1b are changes in terminology and the addition of clarifying language. The proposed rule amendments do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, or applicants or residents; therefore, no costs are created.

The proposed rule amendments in subpart 1c clarifies that a spouse (or dependent) must apply for the maximum amount of a benefit they are allowed to receive, unless it would create a financial hardship. This text is consistent with current application of this rule, and compliance should not create any additional cost and for the department, other entities, resident's spouses or other individuals. The specific costs for this rule are difficult to project since it applies only in certain cases and the benefits required to be liquidated in each case will be different, requiring a case-by-case analysis. Therefore, the department believes that any cost associated with the proposed rule amendments would be nominal.

In subpart 2 there are no changes in items B to E and item G. In item A there are no changes in subitems (1) and (3) to (10). In subitem (2), shifts the decision-making authority for education expenses to the commissioner or the commissioner's designee, which is well within the scope of the commissioner's duties and does not result in any additional costs for the department, other entities, or applicants or residents.

In item F the proposed rule amendments consist of changes in terminology and the addition of clarifying language. The proposed amendment does not change the substance of the rule, nor does it create additional responsibilities or obligations of the department, other entities, or applicants or residents. The clarifying language replaces language that is vague and subject to interpretation. The department believes that there is no cost associated with the proposed rule amendments.

The proposed rule amendments in item H include a terminology change and limit payments of consumer debts to the minimum monthly payment due. By limiting debt payments to the minimum monthly payment is intended to preserve the spouse's income and assets to help accurately calculate the needed spousal allowance. This proposed rule amendment may reduce the amount of the spousal allowance, which reduces cost for the department and increasing costs for a spouse. The specific cost amounts for complying with this rule are difficult to project as this amendment applies only in certain cases where spousal allowance is requested and where there is legally responsible debt of the spouse. The department has considered this change as nominal cost to the department, other entities, and spouses.

Item I's proposed rule amendment clarifies that the payments to a former spouse or dependents are based on an amount identified in a court-order. Formal recognition and definition of resources makes application of the rule regarding use of dependent resources possible. The proposed text does not implement an additional cost in compliance or enforcement, as it is the standard applied under the current rule. The proposed amendment ensures clarity to the reader and the MDVA staff.

The proposed rule amendments to item F include adding language "individually owned" and removing the term "Keogh accounts," which is unclear as to whether it is an individually owned account. Keogh accounts are still covered, but they are no longer referenced in the proposed rule amendments because the term may not be understood by all parties. The proposed rule amendments do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, applicants or residents; therefore, no costs are created.

The proposed rule amendment to item G clarifies which type of burial accounts, contracts, and trusts are

considered excludes assets. This proposed rule amendment will eliminate non-irrevocable burial accounts that were previously excluded. This proposed change may cause an increase an applicant's or resident's maintenance charge or a reduction in the amount of the spousal allowance. The specific cost amounts for complying with this rule are difficult to project as this proposed rule amendment applies only in certain and unique circumstances and the value of these types of trusts vary greatly. Because of the uncertainty of these situations, and after reasonable efforts of the department to ascertain the cost, the department believes that that the proposed rule amendment creates a nominal cost for the department and the resident/applicant.

The proposed rule amendment to item I specifies that only "individually owned" savings accounts or other monetary investment instruments are excluded. This proposed rule amendment clarifies an already established practice, the change will have no effect on the resident/applicant compliance with it or the department enforcement. Therefore, the department does not believe that this proposed rule amendment will create costs for the department, external agencies, or the individual.

The proposed rule amendments to subpart 2c are changes in terminology that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department, other entities, applicants or residents; and therefore, no costs are created.

9050.0760 ANTICIPATING INCOME.

There are no changes to items A-F. The proposed rule amendment in item G is a change in terminology that does not change the substance of the rule, nor does it create any responsibilities or obligations of the department, other entities, applicants or residents; and therefore, no costs are created.

9050.0770 BENEFITS APPLICATION REQUIRED.

The proposed rule amendments to this rule part require that an applicant, resident, or legal representative apply for the maximum of every benefit for which the applicant or resident may be eligible that will increase the income or eligible benefits of the applicant or resident and reduce the facility's expenditures. The proposed rule amendment merely extends the rule beyond its original scope and, as such, no new costs are foreseen. The obligation set forth in the rule is to apply for the maximum of every benefit for which there may be eligibility. Whether it is applying for an increase in income or other eligible benefits, the department believes the cost is negligible because the department provides assistance to residents and applicants when applying for benefits. In addition, the proposed rule amendment makes clear that the benefits covered under the rule are those that will reduce the facility's expenditures; therefore, the department and the resident or applicant will not waste time applying for benefits that do not reduce the facilities expenditures. The cost to the resident or applicant to comply with the rule is nominal, as it is a benefit the resident already has available to them.

9050.0800 FINANCIAL INFORMATION AND INTERVIEW.

There are no changes to subparts 1 and 1a. In subpart 2 there are no changes to items B-E. The proposed rule amendment in item A of Subpart 2 is a change in terminology that does not create any responsibilities or obligations of the department, other entities, applicants or residents, or a spouse or dependents; therefore, no costs are created.

The proposed rule amendment in item F requires the information pamphlet to be in writing. The proposed rule amendment in item G requires that persons be provided information about veterans programs. In the proposed rule amendment in item H, subitem (5), changes terminology. And in proposed rule amendment in item I, the department is requiring a person sign the necessary authorization forms and provide financial

information, as opposed to simply requesting that the forms be signed and the information be provided. These proposed rule amendments are well within the scope of the responsibilities and obligations of the department, other entities, applicants, residents, spouses or dependents when determining eligibility or cost of residing at the facility. The department believes that no costs are created from these proposed rule amendments.

9050.0820 VERIFICATION OF FINANCIAL INFORMATION.

There are no changes to subparts 1 and 3. In subpart 2, items A and C-I are not changed. In item B the proposed rule amendment clarifies the insurance benefits that must be reported by an applicant or resident. By clarifying that only insurance benefits that may reduce the facility's expenditures must be reported, the costs associated for applications/residents with reporting, and to the department for evaluating insurance benefits, will be reduced. The proposed rule amendments are within the scope of the responsibilities and obligations of the department, applicants, residents, spouses or dependents when determining eligibility or cost of residing at the facility. The department believes that no costs are created from the proposed rule amendment.

9050.0900 AUTHORIZATION FORMS.

There are no changes to subparts 1 and 2. In subpart 3, items A-E are not changed. In subpart 3, the proposed rule amendment to the paragraph after item E updates a cross-reference in the rule to item C within Minn. R. 9050.0200. The proposed text does not create any responsibilities or obligations of the department, other entities, or residents or applicants; therefore, no costs are created.

9050.1000 RESIDENT CARE PLANNING.

The proposed rule amendments to this rule part consist of changes in terminology and language that do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created.

9050.1030 RESIDENT CARE SERVICES.

The rule amendments to subpart 1 consist of changes in terminology that do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created.

In the second paragraph of subpart 1, the proposed rule amendment removes a cross-reference to an obsolete Untied States Department of Veterans Affairs (USDVA) regulation and adds a cross-reference to federal CMS regulations. Any costs associated with this proposed rule amendment are the result of the requirements of the federal regulations and not the rule. In the fifth paragraph of subpart 1, the proposed rule amendment adds that facility staff must assist residents to apply for maximum benefit amounts from benefit programs for which the resident may be eligible. The department believes that this proposed rule amendment does not create any additional responsibilities because this requirement is already in the current rules, and as such there are no costs created by this rule amendment.

In subpart 1a, item A there are no changes to subitems 1, 3, 6, 7, and 9. The proposed rule amendments in subitems 2, 4, 5, 8, 10, and 11 consist of changes in terminology and the addition of clarifying language that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department, other entities, or residents; therefore, the department believes no costs are created. New subitem (12) requires that pharmaceutical services be provided, the costs of which are covered under the legislative

appropriations for operation of the veterans homes and addressed in part 9050.1090.

In subpart 1a, item B, most of the proposed rule amendments consist of changes in terminology and the addition of clarifying language that do not change the substance of the rule, nor do they create any additional responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created.

In the first paragraph of subpart 1a, item B, the proposed rule amendment adds the requirement that the medical director must approve all care plans, treatments, or procedures of the resident ordered by a private attending provider. This is an added responsibility taken on by the department; however, the department feels that it is within the scope of the current duties of the medical director and will not result in any additional costs for the department, other entities, or residents.

In subpart 1a, item C the proposed rule amendments of changes in terminology that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department or residents; therefore, no costs are created.

In subpart 1b there are no changes to items A and D. The proposed rule amendment to item B removes the requirement for a contractual agreement for dental care. And item C removes the requirement that a resident's attending provider must pre-approve podiatric care and diagnostic services. The department believes these proposed rule amendments will reduce costs by making the provision of these services more efficient.

9050.1070 RESIDENT RIGHTS AND RESPONSIBILITIES.

The proposed rule amendments do not change subparts 13, 17, 23, 25, 27, 28, 29, 35, 36, and 38. In subparts 1, 2, 3, 4, 7, 8, 11, 12, 14, 15, 16, 20, 21, 22, 24, 30, and 33, the proposed rule amendments consist of terminology changes. The substance of these rules has not changed. The proposed amendments have not created any additional responsibilities or obligations for the department, other entities, or residents; therefore, there are no costs for compliance.

In the first paragraph of subpart 5 the proposed rule amendment allows for another MDVA staff member to assist the resident in reviewing the resident handbook upon admission. Because the tasks are in the scope of staff duties to assist residents, no cost is expected for the proposed change.

There are no changes in items A-C and in item E of subpart 5. The proposed rule amendment in item D is only a terminology change that causes no change in the substance of the rule.

The proposed rule amendment to the last paragraph in subpart 5 that adds the language "as appropriate" which means that the department does not have to notify residents of changes in the handbook that are made solely for the purposes or correcting grammatical and spelling errors and do not substantially change the provisions of the handbook. This rule amendment will save the department money by eliminating reprints of the handbook to reflect typographical changes.

The proposed rule amendments in subparts 6 and 9 consist of terminology changes and the elimination of cross-references to federal regulations that have been repealed. The costs associated with complying with the federal regulations that have been repealed are eliminated. This is not the result of the rule, but rather the repeal of those federal regulations. These changes do not create any responsibilities or obligations for the department, other entities, or residents; therefore, no costs are created.

The proposed rule amendment to subpart 10 places the decision to use chemical and physical restraints solely

in the hands of the medical director or designee as opposed to any physician. This change is well within the purview of the current responsibilities of the medical director and does not result in any costs to the department to implement and comply with this change.

The proposed rule amendments to subpart 18 consist of changes in terminology that do not change the substance of the rule, nor do they create any responsibilities or obligations for the department, other entities, or residents; therefore, no costs are created. The proposed rule amendments also eliminate obsolete language without changing the substance of the rule or adding additional responsibilities or obligations for the department, other entities, or residents.

The proposed rule amendments to subpart 19 consist of terminology changes that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department or residents; therefore, no costs are created. The proposed rule amendments also remove a cross-reference to a statute that has been repealed and replaces it with a cross-reference to the applicable statute. Any changes in costs are due to the changes in governing statute and not the rule.

Most of the proposed rule amendments to subpart 26 consist of terminology changes that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created. The proposed rule amendments also add a requirement that residents maintain their room in a manner consistent with internal facility policies. It is difficult to calculate what costs for this proposed rule amendment will be given that internal policies change and differ from facility to facility, but MDVA has an established process for creating internal policies, and moreover, would provide any necessary equipment and staff to clean. The department believes that any cost connected with compliance falls with MDVA, and that the cost will be nominal.

The proposed rule amendments to subpart 31 consist of a terminology change that does not change the substance of the rule, nor does it create any responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created. The proposed rule amendments also remove all text that allows a bed ridden resident to smoke. This change eliminates all costs associated with this practice. In addition, the proposed rule amendments establish that smoking is only allowed during designated smoking times, and that the administrator of each facility must take the necessary interventions to ensure the safety of residents and others. Restricting smoking to certain times does not come with a cost to the resident and as the practice has been already implemented by the department (during the COVID pandemic), therefore anticipate only nominal costs.

The proposed rule amendments to subpart 34 adds that the sale, distribution, consumption, and possession of illegal narcotics is not allowed on veterans home campuses. The department believes that there will be no costs to comply with this proposed rule amendment, as the mechanisms for enforcement already exist.

The proposed rule amendments to subpart 37 add any other items identified by facility policy to the list of contraband. As with subpart 34, the department believes that there will be no costs to comply with this proposed rule amendment as the mechanisms for enforcement already exist.

The proposed rule amendments to subpart 39 consist of terminology changes that do not change the substance of the rule, nor do they create any responsibilities or obligations of the department, other entities, or residents; therefore, no costs are created. The proposed rule amendments to subpart 39 also clarify the circumstances when written consent is not required for photographing, voice recording, or videotaping a resident. The proposed rule amendment narrows the responsibility and obligation of the department to obtain written consent; therefore, associated costs to the department are reduced, and there are no costs for

other entities or residents.

9050.1080 ADULT DAY HEALTH CARE PROGRAM.

This proposed rule addition creates new rule part 9050.1080 which consists of the standards, processes, and procedures the department follows in the administration of the adult day health care program. According to the Office of the Legislative Auditor, these standards, processes, and procedures must be adopted as administrative rules. The proposed rule addition does not add to or create any new responsibilities or obligations of the department or residents that do not currently exist; therefore, there are no costs aside from what the department already spends to administer the adult day health care program.

9050.1090 VETERANS AFFAIRS PHARMACEUTICAL SERVICES.

This proposed rule addition creates new rule part 9050.1090 which consists of the standards, processes, and procedures the department follows in the provision of pharmaceutical services to facility residents. According to the Office of the Legislative Auditor, these standards, processes, and procedures must be adopted as administrative rules. The proposed rule addition does not add to or create any new responsibilities or obligations of the department or residents that do not currently exist; therefore, there are no costs aside from what the department already spends to provide pharmaceutical services.

c. MDVA's analysis under 14.131(7) is accurate that the language is not in conflict with the federal language and any differences that were not addressed was a harmless error.

To assess any differences between the proposed rule by the department and existing federal regulations, MDVA is providing a part-by-part analysis of its rule amendments to confirm its original statement that the revisions align with state and federal regulations.

9050.0030 COMPLIANCE WITH STATUTES, RULES, AND CODES.

The only changes to part 9050.0030 effected by the proposed rule amendments are changes in terminology and the removal of a reference to a USDVA code that is no longer in effect. Changing the term "Patient's Bill of Rights" to "Health Care Bill of Rights" to align with language of Minn. Stat. § 144.651 does not affect the substance of the rule and the rule remains consistent with existing federal regulations. Removing the cross-reference to the USDVA Code M-1, part 1, chapter 3, which was repealed in 1995, assists with the clarity of the rule by not referencing obsolete regulations. The public comments received, and the Report suggest additional references should be added, but fail to identify how the proposed language within this subpart creates a difference in state and federal regulations. Although cross-referencing applicable federal regulations in state administrative rules may at times be recommended, doing so is not requirement in the applicable federal regulations. Therefore, despite comments recommending cross-references to 42 C.F.R. part 483 and 38 C.F.R. § 51, it is not required, nor does the proposed text create a conflict with the federal law.

9050.0040 DEFINITIONS.

Subparts 1-4, 5a, 7, 9-13, 15, 17, 19-20, 22, 25, 26a, 29, 31, 32-35, 37, 39-40a, 42, 45-49, 51-52, 54-55, 57, 60-61, 65-69, 70, 75-88a, 90-94a, 95, 96-99, 101-105, 106a, 111, 113, and 115a-119 are not changed by the proposed rule amendments and remain consistent with existing federal regulations.

Amendments to subparts 6, 8, 14, 16, 18, 28, 30, 36, 38, 41, 44, 50, 56, 58, 58a, 62, 63, 69a, 71, 73, 74, 100, 107, 108, 109, 110, 112, and 115 are only changes in terminology and vocabulary that are not matters of substance. The definitions remain consistent with existing federal regulations:

- “Attending physician” replaced by “provider”
- “Commissioner of veterans affairs” replaced by “commissioner”
- “Nursing home” replaced by “skilled nursing facility”
- “multidisciplinary” replaced by “interdisciplinary”
- “MVH” replaced by “Minnesota veterans home”

The proposed rule amendment to subpart 5 requires that the admissions agreement must identify the resident’s responsibilities with respect to a facility’s policies and safety practices. This proposed rule amendment does not change the substance of the rule and is consistent with 42 C.F.R. § 483.10(g)(1) and 38 C.F.R. § 51.70(b)(1) governing information and communication and notice of rights and services.

The proposed rule amendment to subpart 16 adds the words “or dispensed” after “self-administered” which does not change the substance of the rule, the rule remains consistent with 42 C.F.R. § 483.10(c)(7) and 38 C.F.R. § 51.70(n) and the rights to self-administer medication and 38 CFR §51.300 governing residents’ rights.

The proposed rule amendment to subpart 21 removes the language, “physical and mental condition and treatment needs by the care plan team” and inserts the language, “medical, nursing, mental, and psychological needs.” This does not change the substance of the rule and the proposed rule amendments remains consistent with the requirements of 42 C.F.R. § 483.21(b)(2)(iii) and 38 C.F.R. § 51.110(e)(2)(iii), requiring the development and implementation of a person-centered comprehensive care plan for each resident.

Item E of subpart 21 added proposed amendment text that requires review and appropriate revision of the treatment and care recommendations be completed, “in conjunction with the resident, resident’s family, surrogate, or representative, as appropriate” which does not change the substance of the rule and the rule remains consistent with the requirements of 42 C.F.R. § 483.(b)(2)(ii)(E) and 38 C.F.R. § 51.(e)(2)(ii) providing for the participation of others in the development and implementation of a person-centered comprehensive care plan for the resident.

The proposed rule amendment to subpart 36 replaces the language “personal reasons” with the term, “therapeutic leave,” which is consistent with the terminology used 42 C.F.R. § 483.15 and 38 C.F.R. § 51.80 governing admissions, transfers, and discharge rights.

The proposed rule amendment to subpart 38 clarifies that transportation expenses, which are part of the educational expenses that can be deducted from the income of an applicant or resident, apply only to transportation to and from “high” school. This proposed rule amendment does not conflict with and remains consistent with existing federal law/regulations.

The proposed rule amendment to subpart 73 makes clear who oversees the overall all direction of the facility and is consistent with 42 C.F.R. § 483.70(h)(2) and 38 C.F.R § 51.210(i)(2).

The proposed rule amendments to subparts 23, 24, 26, 27, 43, 53, 59, 64, 72, 95a, 106, and 114 all remove cross-references to other Minnesota statutes and administrative rules that have been repealed, and also removes references to the ICD-9-CM and replaces them with references to the ICD-10-CM. The rules remain consistent with 42 C.F.R. part 483 and 38 C.F.R. part 51 and other applicable federal regulations.

New subparts 17a (business days), 26b (commissioner), 30a (delinquent account), 30b (department), 58b (interdisciplinary staff), 88b (patient classification system), 94b (provider), 105a (skilled nursing facility), and 109a (therapeutic leave) each create a new term used in the proposed rule amendments. These terms and

their definitions are consistent with terms used in 42 C.F.R. part 483 and 38 C.F.R. part 51 and other applicable federal regulations.

Overall, there are no known conflicts between 42 C.F.R. part 483 and 38 C.F.R. part 51 and other applicable federal regulations. The amended definitions, as well as the new definitions, serve only to update and clarify the rules. While cross-referencing applicable federal regulations in state administrative rules may be helpful, doing so is a not requirement in the applicable federal regulations or in the state's Administrative Procedures Act, Minn. Stat. Ch. 14.

9050.0050 PERSONS ELIGIBLE FOR ADMISSION.

In Finding No.'s 114-120 and the associated footnotes, the Administrative Law Judge (ALJ) addresses the department's proposed change to the residency requirements for admission to the Veterans Homes under Minn. R. 9050.0050, subpart 3a and the department's failure to discuss the constitutionality of the proposed changes.[39] In response to the ALJ's findings, and if this request for reconsideration is granted, the department proposes to strike the proposed rule amendments to subpart 3a that require residency for 90 days. The revision to proposed rule amendments to subpart 3a in response to the public hearing and the OAH Report is provided in Section 4 of this request for reconsideration.

Subpart 1 is proposed for repeal to eliminate language that is no longer necessary under this part. The provisions and requirements of subpart 1 that are still necessary have been incorporated in proposed rule amendments to subparts 2 and 3. Subparts 2 and 3 have been rewritten to remove confusing language and to improve the distinction between veteran and nonveteran requirements. Subpart 3a is no longer being amended. Subpart 4 is marked for repeal to once again eliminate language that is no longer necessary and is confusing and unclear. The provisions and requirements of subpart 4 that are still necessary have been incorporated in new subpart 5.

Overall, there are no anticipated or known conflicts between the proposed rule amendments and the criteria for admission to a facility as provided in 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300. 42 C.F.R. part 483 and 38 C.F.R. part 51 do not have residency requirements and do not speak to the issue of "exclusion" in subpart 5.

9050.0055 ADMISSIONS PROCESS, WAITING LIST, PRIORITY.

There are no known applicable federal regulations which govern the vocabulary, terminology, and cross-referencing used in state administrative rules. The proposed rule amendments to subpart 1 consist of minor vocabulary changes that do not change the substance of the rule. The proposed rule amendment to subpart 1a removes the cross-reference to Minnesota statute, section 256B.0911 as it does not apply to preadmission screening. The proposed rule amendments to subpart 1b are minor terminology changes in items D and G enabling an administrator's designee to obtain the information required for the admission application. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The amendments to subpart 2 are minor terminology and vocabulary changes that do not change the substance of the rule. This proposed rule amendment is consistent with, and does not conflict, with any known federal law or regulation.

[39] In the Matter of the Proposed Rules of the Minnesota Dep't of Veterans Affairs Governing Minnesota Veterans Homes, Minnesota Rules, Chapter 9050, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at p. 26-28 (Apr. 15, 2022)

The proposed rule amendments to subpart 3 require the department to maintain only one waiting list for a facility as opposed to maintaining two waiting lists. This proposed rule amendment is consistent with, and does not conflict, with any known federal law or regulation.

The proposed rule amendments to subpart 4 reduce the subpart from one large paragraph to new items A-D. The proposed rule amendments contained in new items A-C consist of minor vocabulary and grammar changes that reflect the change to one admission waiting list but do not further change the substance of the rule. The rule amendments contained in item D require that an applicant accept or reject an offer of admission within three business days of the offer as opposed to merely "considering" the offer with no set deadline for an actual decision. The rule amendments incorporate of the terms "business days" and "admission waiting list". These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendments to subpart 5 require an applicant who refuses admission on two occurrences to reapply is for admission. The proposed rule amendments to subpart 6 consist of minor vocabulary and grammar changes and do not change the substance of the rule. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

This rule part and its provisions are part of the overall admissions process to include preadmission screening, the application and application review processes, priority of admissions, waiting lists, and limitations on refusals to offers of admissions. The rule part and its proposed amendments are consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 38 C.F.R. 51.300 governing admissions to a facility and the requirement that a facility develop and implement an admissions policy.

9050.0060 ADMISSIONS COMMITTEE; CREATION, COMPOSITION, AND DUTIES.

The proposed rules amendments to part 9050.0060 subpart 2 consist of terminology changes that do not change the substance of the rule. The rule is part of the admissions process and consistent with the provisions of 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 38 C.F.R. 51.300 governing admissions to a facility and the requirement that a facility develop and implement an admissions policy. This proposed rule amendment is consistent with, and does not conflict, with any known federal law or regulation.

9050.0070 TYPES OF ADMISSIONS.

The proposed rule amendments to part 9050.0070 consist primarily of terminology changes and some targeted procedural changes. There are no changes to subpart 1. The proposed rule amendments to subpart 2 contain terminology changes, as well as remove cross-references to statutes that are confusing and no longer necessary. Subpart 2 is also part of the admissions process and overall remains consistent with the provisions of 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.310 governing admissions to a facility. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendments to subpart 3 are changes in terminology that do not change the substance of the rule. There are no changes to items A, F-H, J and M. The amendments to items B, C, K, L, and N contain terminology changes that do not change the substance of the rule. The proposed rule amendments remain consistent with the provisions of 38 C.F.R. §§ 51.300 and 51.310 governing residents' rights and assessments and admission to and continued stay in a boarding care facility. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

Item C, as amended, does not violate 38 C.F.R. § 51.70, the right to a provider of choice. Item C as written has three requirements. First, a person must have a medical, or if appropriate, a psychiatric diagnosis from a

provider indicating placement in a boarding care facility is a medical necessity. Second, if a resident has not specified a provider, the attending provider must be a Minnesota Veterans Homes staff physician. Third, if an applicant for admission has not specified a provider, Minnesota Veterans Home facility staff must assist the applicant in finding a physician to provide an admitting diagnosis. None of these requirements infringe upon a person's right to receive care or an admitting diagnosis from a provider of their choice. The second requirement only establishes that until a person has chosen a provider, the attending provider must be a MDVA staff physician. If the second requirement of item B violates a person's right to choose their provider, who then must be listed as the attending provider, if not a Minnesota veterans homes staff physician. Finally, there are no provisions in 38 C.F.R. § 51.70, (j)(1)(iii) that prevent a facility from assigning a staff provider to an applicant if the applicant has not yet specified a provider.

The proposed rule amendments to subpart 3, items D and E add requirements for additional assessments of people with mental health diagnoses. These requirements are consistent with the provisions of 38 C.F.R. § 51.310 governing resident admissions and assessments. There are no stipulations in 38 C.F.R. § 51.310 that mental health assessments must be conducted by the resident's provider of choice, nor are there any conditions in the regulations prohibiting staff providers from reviewing and further assessing a person with a diagnosis of mental illness. In addition, the proposed rule amendments do not require a resident to forgo choosing their provider of psychiatric services. Requiring a staff psychologist or psychiatrist to review and possibly assess a person with a mental health diagnosis does not impede the resident from choosing their psychiatric service provider.

The proposed rule amendments to item I of subpart 3 removes the limitation of "up to five days" for face-to-face monitoring that exceeds twice per day and extends to a designee of the director of nursing, as opposed to just the assistant director of nursing, the authority to approve additional face-to-face monitoring. The proposed rule amendments are consistent with the provisions of 38 C.F.R. § 51.310 governing resident admissions and assessments.

Proposed rule amendments to subpart 4 are changes in terminology that do not change the substance of the rule. The rule amendments are consistent with the provisions of 42 C.F.R. §§ 483.20 and 483.15 and 38 C.F.R. §§ 51.110 and 38 C.F.R. §§ 51.80 governing resident assessments and admission to and continued stay in a skilled nursing facility.

The proposed rule amendment to item A in subpart 4 requires use of the state or federal system used to classify residents in a Medicare covered facility. The rule amendment remains consistent with the provisions of 42 C.F.R. § 483.20 and 38 C.F.R. § 51.110 governing assessments and admission to and continued stay in a skilled nursing facility.

Proposed rule amendments to items B-E in subpart 4 are changes in terminology that do not change the substance of the rule. The rule amendments do not conflict and are consistent with the provisions of 42 C.F.R. § 483.20 and 38 C.F.R. § 51.110 governing resident assessment and admission to and continued stay in a skilled nursing facility. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

Item B of subpart 4 as proposed for amendment does not conflict or violate 42 C.F.R. § 483.10(d) and 38 C.F.R. § 51.70(j)(1)(iii) and the right to a provider of choice. Item B as written has three requirements. First, a person must have a medical, or if appropriate, a psychiatric diagnosis from a provider indicating placement in a skilled nursing facility is a medical necessity. Second, if a person has not specified a provider, the provider must be a Minnesota Veterans Home staff physician. Third, if an applicant for admission has not specified a provider, Minnesota Veterans Home facility staff must assist the applicant in finding a physician to provide an

admitting diagnosis. None of these requirements infringe upon a person's right to receive care or an admitting diagnosis from a provider of their choice. The second requirement only establishes that until a person has chosen a provider, the attending provider must be a staff physician. If the second requirement of item B violates a person's right to choose their provider, who then must be the attending provider, if not a Minnesota Veterans Homes staff physician. Finally, there are no provisions in 42 C.F.R. § 483.10(d) and 38 C.F.R. § 51.70(j)(1)(iii) that prevent a facility from assigning a staff provider to an applicant if the applicant has not yet specified a provider.

Proposed rule amendment in item D does not violate 42 CFR §483.10(c)(6) and 38 CFR §51.70(b)(4)(7), which allows the right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. 42 CFR §483.10(c) provides a resident with the overall right to be informed of, and participate in, his or her treatment. There are eight paragraphs to 42 CFR §483.10(c) of which paragraph (2) establishes the right to participate in the development and implementation of his or her person-centered plan of care, which encompasses the rights to: (i) participate in the planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person-centered plan of care; (ii) the right to participate in establishing the expected goals and outcomes of care, the type, amount, frequency, and duration of care, and any other factors related to the effectiveness of the plan of care; (iii) the right to be informed, in advance, of changes to the plan of care; (iv) the right to receive the services and/or items included in the plan of care; and (v) the right to see the care plan, including the right to sign after significant changes to the plan of care. Of equal standing to paragraph (2) is paragraph (6) which establishes the right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. A person exercising their rights under paragraph 6 is part of, and does not conflict with, the person exercising their rights under paragraph 2 because both fall under the umbrella of the resident having the right to be informed of, and participating in, his or her treatment.

The proposed rule amendments to items F and G add to the personnel authorized to complete the assessment required in items F and G. The rule amendments are consistent with the provisions of 42 C.F.R. § 483.20 and 38 C.F.R. § 51.110 governing resident assessments admission to and continued stay in a skilled nursing facility. The amendments to items F and G do not interfere with a person's choice or consent and 42 C.F.R. § 483.20 and 38 C.F.R. § 51.110 do not require that a provider assessing an applicant or resident be the applicant's or resident's provider of choice.

As stated within this response, as well as the response provided in the department's response to public comments[40], the proposed language changes to this subpart are valid, provide improvement in process, add clarity, and finally, are consistent with, and do not conflict with, any federal law/regulations or other applicable state laws.

9050.0080 ADMISSION DECISION; NOTICE AND REVIEW.

The proposed rule amendment to subpart 1 is a terminology change that does not change the substance of the rule. The proposed rule amendments to subpart 2 reduce the subpart from one paragraph to items A and B. The proposed rule amendments in item A add the word "calendar" to clarify the type of days that apply. The proposed rule amendments in item B remove the administrator's burden to request that the admissions committee reconsider its own decision and the administrator's burden to review admissions committee meeting minutes to determine the reasons for denial of admission. The responsibility for initiating a reconsideration of an admissions committee's decision lies with the applicant or applicant's representative

[40] OAH Docket No.71-9054-37629, MDVA Response to Comments-Minn. R. 9050 February 22, 2022, p. 10-15

and the process for doing so is no more than that of requesting a review within 14 calendar days of receiving the decision. The proposed rule amendments establish the time requirements for submitting a request for reconsideration of an admissions committee decision as well as the time requirements for the administrator's final decision. The proposed rule amendments to this rule part are consistent with the provisions of 42 C.F.R. §§ 483.15 and 483.204 and 38 C.F.R. §§ 51.80 and 51.310 governing admission, transfer, and discharge rights and appeals of discharges, transfers, and preadmission screening determinations.

9050.0100 TRANSFER.

In subpart 1 the proposed rule amendments, the first paragraph in item A, and in the paragraph after item C consist only of terminology changes that do not change the substance of the rule. There are no proposed rule amendments to items B and C. The proposed rule amendments to the first paragraph of subpart 2 remove a long list of hypothetical circumstances that may result in a transfer. The proposed rule amendments to items A-C are terminology changes. The proposed rule amendments in subpart 2 do not change the substance of the rule. Overall, the rule remains consistent with the provisions of 42 C.F.R. § 483.15, 38 C.F.R. §§ 51.80, and 51.310 governing admission, transfer, and discharge rights. The proposed rule amendments do not change subpart 3. In subpart 4, there is only one terminology change that does not change the substance of the rule. The proposed rule amendments do not change subpart 5.[41] These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0150 BED HOLD.

The proposed rule amendments in subpart 1 consist of one terminology change and the elimination of a cross-reference to part 9050.0540, which is not necessary and does not change the substance of the rule. The proposed rule amendments to subparts 2, 3, and 5 are changes in terminology that do not change the substance of the rules. There are no amendments to subpart 6. The proposed rule amendments to subpart 4 are changes in terminology and a limit to therapeutic leave to a cumulative total of 12 calendar days per calendar year. The proposed rule amendments in subpart 7 contain terminology changes, the shortening of the time between bed hold reviews from once every 30 days to once every 7 days, and elimination of provisions for therapeutic leave that exceeds 36 days per year. The proposed rule amendments are consistent with the provisions of 42 C.F.R. § 483.15,38 C.F.R. §§ 51.80, and 51.310 governing admission, transfer, and discharge rights to include bed-hold and therapeutic leave policy. Additionally, the proposed amendments are consistent with the requirements set forth under 38 CFR §51.40, the federal per diem rate. [42]

9050.0200 DISCHARGE.

In Finding No. 110 the ALJ states, "Commenters raised concerns that the rules have extensive differences with federal law, however. For example, commenters noted that the MDVA's proposed rule regarding the grounds for an involuntary discharge conflict with federal regulations governing transfer and discharge of residents in skilled nursing facilities under 42 C.F.R. § 483.15 (2021), and domiciliary care settings under 38 C.F.R. § 51.300 (2021). Those rules establish specific grounds that may be used to discharge residents."[43]

In Finding No. 111 the ALJ states, "The MDVA proposes to repeal Minn. R. 9050.0200, subp. 3 (2021), which currently contains the bases for involuntary discharge from the Veterans Homes and amend subpart 2(B) to

[41] Id. at p. 15-18

[42] Id. at p. 18

[43] In the Matter of the Proposed Rules of the Minnesota Dep't of Veterans Affairs Governing Minnesota Veterans Homes, Minnesota Rules, Chapter 9050, OAH No. 65-9000-37175, REPORT OF THE ADMINISTRATIVE LAW JUDGE at p. 25 (Apr. 15, 2022)

state these grounds. In connection with these changes, the MDVA adds new language that would allow it to discharge a resident involuntarily when "the resident's behavior exhibits willful or deliberate disregard for the veterans home facility's regulatory requirements or policies." This is not one of the grounds federal laws identifies as a basis for discharge."[44]

In Finding No. 112 the ALJ states, "In the SONAR, the MDVA states that the grounds for discharge in its proposed rule part 9050.0200, subpart 2(B) "align with" the existing reasons for discharge under Minn. R. 9050.0200, subp. 3, and contends that it is reasonable to identify the circumstances under which the MDVA may involuntarily discharge a resident. The SONAR's rule-by-rule analysis does not acknowledge that the MDVA is adding a new basis for discharge or analyze how the addition of this provision differs from the federal regulations."[45]

The proposed rule amendments to subpart 1 consist of changes in terminology and the addition of the language, "As allowed in this part, a resident may be discharged from any veterans home facility." This proposed rule amendment is consistent with federal regulations because the department does have the authority to discharge residents under the circumstances set forth in this rule part provided there is consistency with the provisions of 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80, 51.300, and 51.310 governing admission, transfer, and discharge rights.

The proposed rule amendments to subpart 2 contain provisions already present in the current rule text under subpart 3, which is proposed for repeal. Based on the initial approval of this text in prior amendments, as well as conducting its own analysis of the validity of the rule text, the department sees no conflicts with the provisions of 42 C.F.R. part 483 and 38 C.F.R. part 51.

The proposed rule amendments to subpart 2 also add language that establishes that a resident can be discharged "immediately". An immediate discharge is an involuntary discharge that is expedited depending on the circumstances. This is consistent, and does not conflict, with the provisions of 42 C.F.R. § 483.15(c)(4)(ii)(A)-(E) and 38 C.F.R. §§ 51.80(a)(5)(ii)(A)-(D) and 51.300(d)(5)(ii)(A)-(D) governing admission, transfer, and discharge rights.

The proposed rule amendments to subpart 2, item A add the language, "Voluntary discharge begins when the resident or the resident's legal representative submits a written notice to the facility for discharge of the resident." 42 C.F.R. part 483 and 38 C.F.R. part 51 do not contain a specific definition of "voluntary discharge. This provision already exists as subpart 3, item B of the current rules and is consistent with the requirements in 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80, 51.300, and 51.310 to establish discharge policies. There are no provisions in the referenced federal regulations that prohibit the rule requirement that voluntary discharge begin with a written notice. The proposed rule amendments to subpart 2 item A also remove text that includes a spouse and attending physician as parties in a voluntary discharge; however, a spouse can still participate in a voluntary discharge as the resident's representative, and the administrator of the facility will always consult the resident's attending physician before consenting to a voluntary discharge.

The proposed rule amendments to subpart 2, item B add the language, "Involuntary discharge procedures start if one of the following circumstances exist:…". This provision already exists as subpart 3 within the current language under this part. 42 C.F.R. part 483 and 38 C.F.R. part 51 do not contain a specific definition of "involuntary discharge" however, the reasons given in item B as grounds for an involuntary discharge are consistent with the provisions of 42 C.F.R. § 483.15(c)(1)(i)(A)-(E) and 38 C.F.R. §§ 51.80(a)(2)(i)-(v) and

[44] Id.
[45] Id. at 25-26.

51.300(d)(2)(i)-(v) governing admission, transfer, and discharge rights.

The proposed rule amendments in subpart 2, item B that establish new subitems (1)-(6) state the circumstances under which discharge procedures are initiated. Item B, new subitems (1)-(3) are clearly stated in 42 C.F.R. § 483.15(c)(1)(i)(E)(A)(B) and 38 C.F.R. §§ 51.80(a)(2)(v)(i)(ii), and 51.300(d)(2)(v)(ii)(i) as reasons for discharge. The department understands that a discharge must meet the requirements in 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300.

42 C.F.R. § 483.10(g)(1) and 38 C.F.R. § 51.70(b)(1) provide residents with the right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility. This indicates that the MDVA has a right to establish rules and policies governing resident conduct and enables the MDVA to act if a resident is violating the rules and policies. 42 CFR § 483.70(b) requires a facility operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This regulation provides that the MDVA has a right to ensure residents' behavior complies with rules and policies governing resident conduct and does not interfere with the veterans homes' regulatory requirements and enables the MDVA to act if a resident's behavior does so. New subitem (5) is also consistent with a discharge under 42 C.F.R. § 483.15(c)(1)(i)(B)(A) and 38 C.F.R. §§ 51.80(a)(2)(ii)(i), and 51.300(d)(2)(i)(ii) as an appropriate mechanism for the MDVA because the resident's health has improved sufficiently such that the resident no longer needs the facility services, with a discharge being necessary for the resident's welfare, and the resident's needs not being met in the facility.

The same reasoning regarding 42 C.F.R. § 483.10(g)(1) and 38 C.F.R. § 51.70(b)(1) and a resident's right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility applies to new subitem (6) (a)-(c). The MDVA has a right to establish rules and policies governing resident conduct pertaining to the subject matter of (a)-(c) and to act if a resident or resident's representative violates the rules and policies. Units (a)-(c) question the of eligibility of an individual to reside in a veterans home that was based on false information, which then would nullify any rights pertaining to discharge. In addition, (a)-(c) are violations of the requirements in 42 C.F.R. chapter IV, subchapter C, part 435 and the applicable subparts governing the verification of financial information and reporting requirements. In addition, (a) -(c) are consistent with the requirements in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General, sections 3.256 and 3.277 governing eligibility and reporting requirements. Unit (d) is consistent with a discharge being necessary for the resident's welfare and the resident's needs not being met in the facility, as well as fraudulent admission to a veterans home which would nullify any rights pertaining to discharge.

In the interest of moving forward with these proposed rule amendments to Rule 9050, the department agrees to remove subpart 2B(4), if this request for reconsideration is granted. The proposed change to this subpart is provided in Section 4 of this request for reconsideration.

Finally, the proposed rule amendments in subpart 2, item B remove language that includes a spouse and attending physician as parties in an involuntary discharge. A spouse can still participate in an involuntary discharge as the resident's representative and the administrator of the facility will always rely on the utilization review committee before acting on a discharge recommendation.

The proposed rule amendment which constitutes subpart 2, new item C already exists as subpart 3, item E in the current rules. 42 C.F.R. part 483 and 38 C.F.R. part 51 do not contain a specific definition of what is considered an "immediate involuntary discharge"; however, the reasons given new item C as grounds for an immediate discharge are clearly stated in 42 C.F.R. § 483.15(c)(1)(i)(C)(D) and 38 C.F.R. §§ 51.80(a)(2)(iii)(iv),

and 51.300(d)(2)(iii)(iv) as reasons for discharge. In addition, there are provisions in 42 C.F.R. § 483.15(c)(4)(ii)(A)-(E) and 38 C.F.R. §§ 51.80(a)(5)(ii)(A)-(D) and 51.300(d)(5)(ii)(A)-(D) that require notice of discharge to be made as soon as practicable before discharge when the safety of individuals in the facility would be endangered or the health of individuals in the facility would be endangered. Furthermore, federal guidance from CMS allows for such an extreme circumstance when a facility can provide evidence that a complete discharge planning process is not practicable.[46]

Subparts 3, 4, and 5 of the current rules are marked for repealed. The provisions of subpart 3 have been incorporated in subpart 2 and the provisions of subparts 4 and 5 are incorporated in rule part 9050.0220. There are no changes to subpart 6.

9050.0210 VOLUNTARY DISCHARGE PROCEDURES.

The proposed rule amendments to subparts 1 and 2 consist only of terminology changes. This rule part does not conflict and remains consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80, 51.300, and 51.310 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff to document the discharge proceedings. Furthermore, any reporting requirements governed by CMS or the USDVA have been adhered to and the current proposed rule amendments do not conflict with those requirements.

9050.0220 INVOLUNTARY DISCHARGE PROCEDURES.

The proposed rule amendments to subpart 1 add facility financial staff and facility social services staff to those who can recommend involuntary discharge in addition to clarifying the requirement that the recommendation by the utilization review committee, facility financial staff, or facility social services staff, for involuntary discharges must be provided to the administrator of the facility. The rule amendment creating new subpart 1a establishes the roles of "neutral administrator" and "neutral designee". The rule amendments to subpart 1 and the creation of the position of neutral administrator are consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80, 51.300, and 51.310 and the rights and requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. If the reconsideration is granted and the department is able to move forward with the implementation these proposed rule amendments, the department agrees to remove "social service staff" as a party who may make a recommendation for discharge. Proposed changes to this subpart are provided in Section 4 of this request for reconsideration.

The proposed rule amendments to subpart 2 new item A contain the same responsibilities and obligations of the facility administrator as in subpart 2 of the rules as currently written. The proposed rule amendments to subpart 2 new item B contain the same language and all of the requirements as in part 9050.0200, subpart 4 which is marked for repeal. A new provision creating an abbreviated notice period for an immediate discharge under subpart 7 is added. The proposed rule amendments to subpart 2 new item C contain the same language and all of the requirements as in part 9050.0200, subpart 5, items A-D which are marked for repeal. The proposed rule amendments to subpart 2 new item D contain the same language and all of the requirements as in part 9050.0200, subpart 5, the second paragraph after item D which is marked for repeal. Each of the proposed rule amendments to subpart 2 are consistent with 42 C.F.R. § 483.15(c)(3)(4)(5) and 38 C.F.R. §§ 51.80(a)(4)(5)(6) and 51.300(d)(4)(5)(6) and the rights and requirements therein to establish and

[46] State Operations Manual, Appendix PP- Guidance to Surveyors for Long Term Care Facilities (Nov. 2017) at p. 178 of 749, F624, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf

follow specific discharge policies and procedures and providing proper notice of discharge.

The proposed rule amendments to part 9050.0220, subpart 3 make clear that the subpart governs the reconsideration hearing and creates new items A-D. The proposed rule amendments that create subpart 3, new item A establish the scheduling a reconsideration hearing at least ten days from the date of the notice of involuntary discharge with provisions for practicality and agreement between the parties to do otherwise. The proposed rule amendments in subpart 3, new item A provide for the reconsideration hearing to be held before the newly created role of neutral administrator or neutral designee. The rule amendments to subpart 3 that create new item B contain the same language and all of the requirements as in the first paragraph after item D of part 9050.0200, subpart 5 in the current language, which is marked for repeal. The proposed rule amendments to subpart 3 new item C contain the same language and all of the requirements as in part 9050.0220, subpart 4, item D, subitems (1)-(6) of the current rules. New subitem (7) provides for any other reason determined by the neutral administrator or an identified neutral designee for extending the date and time of the reconsideration hearing. The proposed rule amendments to subpart 3 new item D contain the same language and all of the requirements as in part 9050.0220, subpart 4, item D, subitem (6) in the current rules. Each of the proposed rule amendments to subpart 3 are consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. The proposed rule amendments to subpart 3 are also consistent with 42 C.F.R. part 483, subpart E governing appeals of discharges and transfers.

The proposed rule amendments to subpart 4 create a new item A with five subitems containing the general procedures for the reconsideration hearing. The proposed rule amendment that creates new subitem (4) establishes the resident's or resident's representative's as well as the facility's responsibility as it pertains to the reconsideration hearing. The proposed rule amendment that creates new subitem (5) establishes the facility's responsibility to provide a copy of all information pertaining to the resident's discharge upon the resident's or representative's request.

The proposed rule amendments to subpart 4 new item B, subitems (1)-(7) incorporate in the rule the exact procedures the department currently follows when conducting reconsideration hearings. It is also important to note that of the proposed addition of subitems (1)-(7) under this subpart, only subitems (1) and (7) are mandatory and only apply to the department. Subitems (2)-(6) are at the discretion of the facility or the resident, and subsequently any outside agency. Each of the proposed rule amendments to subpart 4 are consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings in a manner that is fair and equitable and in the best interest of the care of the resident and the care of the other residents within the facility. The proposed rule amendments to subpart 4 are also consistent with 42 C.F.R. part 483, subpart E governing appeals of discharges and transfers.

The proposed rule amendments to subpart 5 notify a resident of their right to appeal pursuant to subpart 6. What the proposed rule amendments do is shift the responsibility for issuing a decision and order from the facility administrator to the neutral administrator or neutral designee. The department proposed this amendment to provide additional protection to residents so that a neutral decision maker will address the issue for the first time, as opposed to the current rule where the decision maker in the reconsideration hearing is the same person that approved the notice of discharge. The decision and order must still identify the basis for the neutral administrator's or neutral designee's decision. Each of the proposed rule amendments to subpart 5 remains consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and

the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care, and the responsibilities of staff in administering discharge proceedings. The proposed rule amendments to subpart 5 are also consistent with and do not conflict with 42 C.F.R. part 483, subpart E governing appeals of discharges and transfers and providing proper notice of discharge.

The proposed rule amendments to subpart 6 consist of terminology changes and language changes that reflect the role of the "neutral administrator" or "neutral designee" as opposed to the facility administrator. The second paragraph of subpart 6 and items A-B are removed and moved word-for-word to new subpart 8. The proposed rule amendments to the third paragraph of subpart 6 remove cross-references to statutes and other rule parts that are no longer necessary. Each of the proposed rule amendments to subpart 6 remains consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. The rule amendments to subpart 6 are also consistent with and do not conflict with 42 C.F.R. part 483, subpart E governing appeals of discharges and transfers.

The proposed rule amendments pertaining to subpart 7 creates a new subpart containing requirements to implement an involuntary immediate discharge. Under federal law, discharges are always discouraged and are requested to be implemented as a last resort. The same is true when it comes to the need to immediately remove a resident from a facility because the resident creates an immediate safety concern regarding the health and welfare of the resident or others in the facility and a complete discharge planning process is not practicable.[47] Subpart 7 contains much of the same responsibilities and obligations of the facility administrator as in an involuntary discharge, as it pertains to the review of recommendations for immediate involuntary discharge and if in agreement to issue a notice in a time specific manner. Because the department needs to have the ability to address concerns in a direct and swift matter, and when the complete discharge process will not maintain a safe environment at the facility, subpart 7 is necessary. Each of the proposed rule amendments to subpart 7 remain consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. Specifically, subitem 7 is consistent Code of Federal Regulations that allows for an exception to forgo delay of discharge when the "failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility" (see 42 CFR §483.15(c)(1)(ii)). The proposed rule amendments to subpart 7 are also consistent with, and do not conflict with, 42 C.F.R. part 483, subpart E; governing appeals of discharges and transfers and providing proper notice of discharge.

The proposed rule amendment adding subpart 8 of Minn. R. 9050.0220 is consistent with the text already implemented in the current language under subpart 6. The proposed rule amendments adding subparts 8 remain consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. Furthermore, the addition of subpart 8 is also consistent with, and does not conflict with, 42 C.F.R. part 483, subpart E; governing appeals of discharges and transfers and providing proper notice of discharge.

9050.0230 ENFORCEMENT OF FINAL DISCHARGE ORDER.

The proposed rule amendments to part 9050.0230 consist only of terminology changes. The rule amendments to this rule part remain consistent with 42 C.F.R. § 483.15 and 38 C.F.R. §§ 51.80 and 51.300 and the

[47] Id.

requirements therein to establish and follow specific discharge policies and procedures that ensure equal access to quality care and the responsibilities of staff in administering discharge proceedings. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0300 CARE PLANNING.

The proposed rule amendments to subpart 1 of this part consist of terminology changes and the addition of language clarifying the interdisciplinary team. In subpart 2 there are no changes to Items A-D and item F. The rule amendments in items E and G consist of terminology changes. There are no changes to subpart 3. The proposed rule amendments to this rule part do not conflict and remain consistent with 42 C.F.R. § 483.10(c)(2) and a person's right to participate in the development and implementation of his or her person-centered plan of care and 42 C.F.R. § 483.21 and 38 C.F.R. §§ 51.110 and 51.310, and the requirements therein to develop and implement a baseline care plan for each resident that includes the instructions needed to provide effective and person-centered care of the resident that meet professional standards of quality care.

9050.0400 UTILIZATION REVIEW COMMITTEE.

In subpart 1 the proposed rule amendment consists of a terminology change. The proposed rule amendments to subpart 2 contain text that clarifies the composition and functioning of the utilization review committee. In subpart 3 there are no changes in items A, E and F. The proposed rule amendments to items B and D consist of a terminology change. The rule amendments to item C consist of a change in terminology when referring to the care evaluation study to be conducted by the utilization review committee and the addition of text that clarifies the committee's duty to review the care needs of residents based on the state licensure of the facility. Licensure requirements for the facility are established by the Minnesota Department of Health. There are no changes in subitems (1) to (4) of item G. The proposed rule amendment to item G is a change in terminology that provides consistency with the federally mandated process for clinical assessment of all residents in CMS certified nursing homes. There are no changes to subpart 4. The proposed rule amendments to this rule part are consistent with 42 C.F.R. § 483.70 and 38 C.F.R. §§ 51.210 and 51.390 governing the administration of the veterans homes.

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

There is no change to subpart 1. The proposed rule amendment to subpart 2 removes language that is no longer necessary. Proposed rule amendments to subpart 2, items A and B change how direct costs and indirect costs are defined, as provided by the federal CMS manual system. The proposed rule amendment to item A clarifies 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. The proposed rule amendment in item B clarifies indirect costs must be reduced by the number of receipts received, not to include reimbursement. The proposed rule amendment to item C consists of a terminology change. There are no changes to subpart 3 items B and E. The rule amendments to subpart 3 and items A, C, D, F and G consist only of terminology changes. The proposed rule amendment to subpart 4 replaces the term "ability to pay" with cross-references to rule parts 9050.0700, 9050.0710, and 9050.0720. The proposed rule amendments to this rule part are aimed at bringing the terminology and cross-references in the rule in line with federal regulations and remain consistent with 42 C.F.R. § 433.34 and 38 C.F.R. part 51, subpart C.

9050.0510 MAINTENANCE CHARGE; ADDITIONAL SERVICES.

The proposed rule amendment to subpart 1 removes the 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 the 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. The repeal of subpart 2 removes language that explains "veteran exclusive services". This subpart is no longer needed because veteran exclusive care is treated as additional services as in subpart 1. The rule amendments to this rule part make the rule consistent with the rights of a resident provided in 42 C.F. R. § 483.10 and 38 C.F.R. 38 § 51.70 in which there is no mention of conditions placed on the types of health care services a resident may use and pay for at their own expense.

9050.0520 MAINTENANCE CHARGE; DELINQUENT ACCOUNTS; INTEREST; DISCHARGE.

There are no changes to subpart 1. The proposed rule amendments in subpart 2 update the cross-references to other rule parts within chapter 9050 to coincide with changes in part 9050.0200, subpart 2, item B, subitem (1). The changes in part 9050.0200, subpart 2, item B, subitem (1) have been previously discussed and determined to remain consistent with 42 C.F. R. § 483.15(c)(E) and 38 C.F.R. 38 §§ 51.80(a)(2)(v) and 51.300(d)(2)(v) governing reasons for discharges. The changes also retain consistency with Minn. Stat. § 198.03, subd. 3 and Minn. Stat. § 334.01 regarding overdue maintenance charges and imposition of or assessment of interest.

9050.0530 RATES AND CHARGES; AGREEMENT AT TIME OF ADMISSION.

The proposed rule amendments to this part consist only of terminology and grammar changes. The amendments to this rule part do not conflict and are consistent with 42 C.F. R. § 483.15(a) and the requirement to establish and implement an admissions policy which would include and admissions agreement; 42 C.F. R. §§ 483.10(f)(10) governing the right of a resident to know, in advance, what charges a facility may impose against a resident's personal funds; and 483.10(g)(17)(i)(A)(B) and 483.10(g)(18)(i)-(v) governing information and communication; and 38 C.F.R. 38 § 51.70(b)(5) governing notice of rights and services.

9050.0550 MAINTENANCE CHARGE; RESOURCES CONSIDERED.

The proposed rule amendments in subpart 1 clarify that the insurance governed by the rule is that which is "applicable" to the applicant or resident and the proposed rule amendments add the applicant's or resident's assets to the resources considered when determining the ability to pay. The proposed rule amendments to subpart 2 add the term "long-term care" to identify the type of insurance governed by the rule. The rule amendments in subpart 3 add language that makes clear the provisions of the rule governing residents of a skilled nursing facility and provisions of the rule that govern residents of a boarding care facility. The proposed rule amendments also add provisions that allow boarding care residents in transition from the boarding care facility to the community to own property in excess of $3,000 up to six months prior to discharge from the boarding care facility. The proposed rule amendments to subpart 4 consist only of a terminology change. There are no changes to subpart 5. The proposed amendments to this rule part are consistent with 38 C.F.R. § 51.51(a)(1)(2) governing eligibility for domiciliary care and the determination of eligibility for VA Pension Aid and Attendance; 38 C.F.R. § 51.50(g) and 38 U.S.C. § 1722(a) governing eligibility for nursing home care, and 42 C.F.R. chapter IV, subchapter C, part 435, subparts G, H, and I.

9050.0560 MAINTENANCE CHARGE DETERMINATION; TIME AND CALCULATION METHOD.

The proposed rule amendments to subpart 1, and item A consist of grammar and terminology changes that make the rule clearer and are consistent with 42 C.F. R. § 483.10(f)(10), the right of a resident to know, in

advance, what charges a facility may impose against a resident's personal funds; and 42 C.F.R. §483.10(g)(18)(i)-(v) governing information and communication; and 38 C.F.R. 38 § 51.70(b)(5) governing notice of rights and services.

There are no changes in items B-D.

Item E is consistent with 38 C.F.R. § 51.51(a)(1)(2) governing eligibility for domiciliary care and the determination of eligibility for VA Pension Aid and Attendance; 38 C.F.R. § 51.50(g) and 38 U.S.C. § 1722(a) governing eligibility for nursing home care; and 42 C.F.R. chapter IV, subchapter C, part 435, subparts G, H, and I. The proposed rule amendment to item E adds the following language:

> *Failure of the applicant or resident to report the substantial change accurately and timely to the facility may result in a discharge in accordance with part 9050.0200*

The department's proposed change to item E does not conflict and is consistent with the justifications for discharge under 42 C.F.R. § 483.15(c)(E) and 38 C.F.R. 38 §§ 51.80(a)(2)(v) and 51.300(d)(2)(v).

The proposed rule amendment to subpart 2 replaces the word "and" with "or" after item A and before item B. This proposed rule amendment is consistent with, and does not conflict, with any known federal law or regulation.

9050.0580 REVIEW OF MAINTENANCE CHARGE DETERMINATION.

The proposed rule amendments to this rule part are grammar changes and terminology additions that provide clarity to the rule. Clarifying the ten days for submitting a request is ten "business" days gives an applicant or resident more time to request a reconsideration of a maintenance charge. The proposed rule amendments are consistent with 42 C.F. R. § 483.15(a) and the requirement to establish and implement an admissions policy, which would include a review of the maintenance charge determination.

9050.0590 MAINTENANCE CHARGE; REFUND.

The proposed rule amendments to this rule part consist of terminology and language changes added for clarity. The rule amendments do not conflict and are consistent with 483.10(g)(18)(iii) and (iv) pertaining to refunds and 38 C.F.R. § part 51, subpart C pertaining to the calculation of days.

9050.0600 PROPERTY LIMITATIONS.

The provisions and limitations in this rule part and the amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility. Minn. Stat. Ch. 256B is modeled on and must meet the requirements in 42 C.F.R. Chapter IV, Subchapter C, in particular Part 435, Subparts G, H, and I and other applicable subparts governing Medicaid financial eligibility. In addition, the provisions and limitations of this rule part are also modeled on those in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General, Sections 3.263, 3.274, and 3.275 governing property ownership and eligibility for VA Pension. The only difference between the proposed rule amendments and the state statute and codes of federal regulations is the use the Internal Revenue Service actuarial tables under Section 752 of the Internal Revenue Code pertaining to life estates. After receiving numerous comments, it was determined that Section 752 of the Internal Revenue Code pertaining to life estates is more appropriate than the standard used for Medical Assistance eligibility found in the life estate table in the Department of Human Services Minnesota Health Care Programs Eligibility Policy Manual. In its response to the public comments, and as addressed in Section 4 of this request for reconsideration, the

department has agreed to modify the original proposed rule amendments.

In subpart 1 there are no changes to items C and E. The rule proposed rule amendment to item A adds and inserts the language, "using the Internal Revenue Service actuarial tables under Section 752 of the Internal Revenue Code pertaining to life estates". The proposed rule amendment to item B consists of a terminology change that does not change the substance of the rule. In subpart 1 there are no changes to item C. The proposed rule amendments to item D delete the term, "Keogh account" and add clarifying language. The term "Keogh account" is not needed because it is covered under pension plans. The proposed rule amendments make clear that the financial staff is determining the value of individual retirement accounts, pensions, and deferred compensation plans and not just "evaluating" them, which is unclear and subject to interpretation. The proposed rule amendments also make clear that it is the individual retirement accounts, pensions, and deferred compensation plans of the resident whose value is being determined. The proposed rule amendments do not change the substance of the rule. In subpart 1 there are no changes to item E. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendment to subpart 2, item A, subitem 1 adds the word "dependent" before the word "children". This rule amendment does not change the substance of the rule as children who are not dependents of an applicant or resident have no standing under this rule chapter. There are no changes to item A, subitems (2) and (3). The proposed rule amendments in subitem (4) replace the term, "home" with "homestead" to maintain consistency with the text in item A and in subitem (1). The proposed rule amendments do not change the substance of the rule. In subpart 2 there are no changes to items B-D or F. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendments in subpart 2, item E remove provisions from the rule that allow real property to be classified as "not saleable" and therefore excluded when calculating a resident's maintenance charge or spousal allowance. All provisions for allowing two neutral licensed real estate professionals to estimate a market value price and ultimately determine if a property is saleable or not saleable are removed. The proposed rule amendments now consider real property that is a resource under part 9050.0550 as an asset that must be liquidated for the resident or applicant to meet the financial needs established by the maintenance charge calculations. The proposed rule amendments require that, "If the real property is not sold within six months, the real property must continue to list for sale. If the resident or applicant continues to make a reasonable effort to sell the real property, the real property will be excluded until it is sold." The proposed rule amendments determine a "reasonable attempt to sell" real property by identifying factual and identifiable standards to be applied. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The department does not propose changes to subpart 3 item A. The rule amendments to subpart 3, item B consist of a terminology change, the addition of the word, "irrevocable" and the inclusion of the language, "established in compliance with Minnesota Statutes, section 149A.97 as it pertains to burial accounts, contracts, and trusts. There are no changes to subpart 3 items C-F. The rule amendment to subpart 4 adds the language, to make clear that comingling of funds excluded from consideration as an available resource by subpart 2 or 3 with other funds that are considered available is prohibited. To retain the exclusion, excluded funds must be placed in a separate account. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0650 TRANSFERS OF PROPERTY.

The provisions and limitations in this rule part and the amendments therein are modeled on the application of Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility. In addition, the provisions and limitations of this rule part are also modeled on those in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General, Section 3.276 governing property transfers. Additionally, using the property tax valuation as the market value of a property for the purposes of calculating the maintenance charge, which Minn. R. part 9050.0600 and Minn. R. part 9050.0650 play a role in, is already established in Minn. R. part 9050.0040. The assessed value of a property as shown on the most recent property tax statement provides a clear and objective standard by which the amount of assets available to an applicant or resident can be calculated and the value of property transferred or sold can be assigned.

The proposed rule amendments to subpart 1 consist of terminology changes and the addition of language that makes clear that for real property the "market value" is considered to be the current property tax valuation and that for real property transfers the effective date for the purpose of application for admission or residency is the date the document is recorded with the county property records office. The terminology change does not change the substance of the rule. The rule amendments in subparts 2, 3, and 4 consist only of changes in terminology that do not change the substance of the rule. There are no changes to subpart 5. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0700 INCOME.

The provisions and limitations in this rule part and the proposed rule amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility and 42 C.F.R. Chapter IV, Subchapter C, Part 435, Subparts G, H, and I, and other applicable subparts governing financial eligibility and the consideration of income. In addition, the provisions and limitations of this rule part are also consistent with 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General, Sections 3.260 and 3.261, and Sections 3.270 to 3.272 governing income and eligibility for VA Pension.

9050.0710 CALCULATION OF GROSS INCOME.

The provisions and limitations in this rule part and the proposed rule amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility, and 42 C.F.R. Chapter IV, Subchapter C, Part 435, Subparts G, H, and I, and other applicable subparts governing financial eligibility and the consideration of income. In addition, the provisions and limitations of this rule part are also modeled on those in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General sections 3.260 and 3.261, and §§ 3.270 to 3.272 governing income and eligibility for VA Pension. The proposed amendments do not have a conflict with any existing federal regulations.

There are no changes in subpart 1. In subpart 1a there are no changes to items A-C. The proposed rule amendments to subpart 1a add new items D and E which contain provisions for counting contractual or retroactive payment of benefits as well as state and federal tax refunds or rebates as assets and income depending upon when they are received. There are no changes in subparts 2-4. In subpart 5 items A and B are not changed. The proposed rule amendment to subpart 5 adds new item C adds the provision that the amount received or that should be received from an annuity by the applicant, or the resident is unearned income. If the applicant or resident can withdraw the cash value of the annuity, then the amount of cash value is the amount of unearned income, regardless of whether or not it is actually withdrawn. In subpart 6 the proposed rule amendments treat a lump sum received by an applicant or resident as available income immediately in the month it is received and an asset in the subsequent month. The proposed rule

amendments also contain the same language and provisions contained in new items D and E in subpart 1a. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0720 CALCULATION OF NET INCOME; DEDUCTIONS FROM INCOME.

The provisions and limitations in this rule part and the proposed rule amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility, and 42 C.F.R. chapter IV, subchapter C, part 435, subparts G, H, and I. In addition, the provisions and limitations of this rule part are also modeled on those in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General sections 3.260 and 3.261, and §§ 3.270 to 3.272 governing income and eligibility for VA Pension. The department contends that the proposed amendments do not have a conflict with any existing federal regulations.

There are no changes in subpart 1. In subpart 2 there are no changes to items A to N nor Q and R. The rule amendments in item O consist of changes in terminology and the addition of clarifying text "the medical and basic needs portion of assisted living or supportive services". The amendments do not change the substance of the rule. In item P the proposed rule amendments make a grammatical change and shifts the decision regarding education expenses to the commissioner or the commissioner's designee. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0750 DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

The proposed revision to Minn. R. part 9050.0750, subpart 1 continues with the overall intent of Minn. R. 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. 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. Because MDVA's facilities are part of the State Veterans Home program and the USDVA provides federal assistance to states by providing percentage of costs and per diem, the proposal moves to make the rule part 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.

In subpart 2 there are no changes in items B to E and item G. In item A there are no changes in subitems (1) and (3) to (10). In subitem (2) the decision regarding education expenses shifts to the commissioner or the commissioner's designee. In item F, the proposed rule amendments consist of changes in terminology and the addition of clarifying text "the medical and basic needs portion of assisted living or supportive services". The proposed rule amendments do not change the substance of the rule. The proposed rule amendments to item H are a terminology change and the limitation on payments of consumer debts to only the minimum monthly payment. The proposed rule amendment to item I limits payments to a former spouse or dependents to the court-ordered amount. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

In subpart 2a there are no changes in items B-E and item H. The proposed rule amendments in item A

stipulate that real property that is excluded must be homesteaded and actually be used as the primary residence of the spouse. The proposed rule amendments to item F include adding language "individually owned" removal of the term "Keogh accounts" which is unclear as to whether it is individually owned. Keogh accounts are still covered but they are no longer referenced because the term may not be understood. The proposed rule amendment to item G includes the language, "established in compliance with Minnesota Statutes, section 149A.97 as it pertains to burial accounts, contracts, and trusts. The proposed rule amendment to item I specifies that only "individually owned" savings accounts or other monetary investment instruments. There are no changes to subpart 2b. The proposed rule amendments to subpart 2c are changes in terminology that do not change the substance of the rule. There are no changes to subpart 3. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

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. Because 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 proposed rule change is necessary to guide that estimate, which is based on "prior performance." The proposed change provides direction of financial staff to complete a financial review when there is a recent financial change. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0770 BENEFITS APPLICATION REQUIRED.

The proposed rule amendments to this rule part require that an applicant, resident, or legal representative apply for the maximum of every benefit for which the applicant or resident may be eligible that will increase the income or eligible benefits of the applicant or resident and reduce the facility's expenditures. The obligation set forth in the rule is to apply for the maximum of every benefit for which there may be eligibility. In addition, the proposed rule amendment makes clear that the benefits covered under the rule are those that will reduce the facility's expenditures.

The provisions and limitations in this rule part and the proposed amendments therein are modeled on and consistent with those in Minnesota Statutes, Chapter 256B Medical Assistance of Needy Persons and Minnesota Rules, Chapter 9505, Medical Assistance Eligibility, 42 C.F.R. Chapter IV, Subchapter C, Part 435, Subpart G § 435.608 which requires a person to apply for other benefits they may be eligible for. Additionally, the proposed amendments do not conflict with existing federal law, to include, 38 CFR § 55 and 20 CFR 416.

9050.0800 FINANCIAL INFORMATION AND INTERVIEW.

The provisions and limitations in this rule part and the proposed amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility, and 42 C.F.R. Chapter IV, Subchapter C, Part 435, Subpart J. There are no changes to subparts 1 and 1a. In subpart 2 the proposed rule amendment in item A is a change in terminology. There are no changes to items B-E. The proposed rule amendment in item F requires the information pamphlet to be in writing. The proposed rule amendment in item F requires that persons be provided information about veterans programs. In item H, subitems 1-4 are not changed and in subitem (5) there is a proposed rule amendment that changes terminology that is used. In item I there is a proposed rule amendment that makes it necessary that the department "require" a person sign the necessary authorization

forms and provide financial information as opposed to simply "requesting" that the forms be signed, and the information be provided. In the department's analysis, the proposed amendments do not have a conflict with any existing federal regulations.

9050.0820 VERIFICATION OF FINANCIAL INFORMATION.

The provisions and limitations in this rule part and the amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, as well as 42 C.F.R. chapter IV, subchapter C, part 435 subpart J and other applicable subparts governing the verification of financial information and reporting requirements. In addition, the provisions and limitations of this rule part are also modeled on those in 38 C.F.R. Chapter 1, Part 3, Subpart A, Subgroup General sections 3.256 and 3.277 governing eligibility reporting requirements. There are no changes to subpart 1. In subpart 2, items A and C-I are not changed. In item B the rule amendment clarifies the insurance benefits that must be reported by an applicant or resident. By clarifying that only insurance benefits that may reduce the facility's expenditures needed to be reported costs associated with reporting and evaluating insurance benefits will be reduced. There are no changes to subpart 3. In the department's analysis, these proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

9050.0900 AUTHORIZATION FORMS.

There are no changes to subparts 1 and 2. In subpart 3, items A-E are not changed. In subpart 3, the proposed rule amendment to the paragraph after item E updates a cross-reference in the rule. The provisions and limitations in this rule part and the proposed amendments therein are modeled on and consistent with those in Minn. Stat. Ch. 256B Medical Assistance of Needy Persons and Minn. R. Ch. 9505, Medical Assistance Eligibility. The proposal also models the language form 42 C.F.R. Chapter IV, Subchapter C, Part 435, Subpart J, and other applicable subparts governing the verification of financial information and reporting requirements. In addition, the provisions and limitations of this rule part are not in conflict with 38 U.S.C. 501(a) or 38 C.F.R. Chapter 1, Part 3, Subpart A.

9050.1000 RESIDENT CARE PLANNING.

The proposed rule amendments to this rule part consist of changes in terminology and language that do not change the substance of the rule. The rule remains consistent with 42 C.F.R. § 483.21 and 38 C.F.R. §§ 51.110 and 51.310.

9050.1030 RESIDENT CARE SERVICES.

The proposed rule amendments to the first, third, and fourth paragraphs in subpart 1 consist only of changes in terminology that do not change the substance of the rule. In the second paragraph of subpart 1 a rule amendment removes a cross-reference to an obsolete USDVA regulation and inserts a cross-reference to federal CMS regulations. In the fifth paragraph of subpart 1, a proposed rule amendment adds that facility staff must assist residents in applying for maximum benefit amounts from other benefit programs the resident may be eligible for. The proposed rule amendments to the first four paragraphs of subpart 1 are consistent with federal regulations stated. The proposed rule amendment to the fifth paragraph in subpart 5 is consistent with the requirements in 42 C.F.R. chapter IV, subchapter C, part 435, subpart G § 435.608 which requires a person to apply for other benefits for which they may be eligible.

In subpart 1a, item A there are no changes to subitems 1, 3, 6, 7, and 9. Proposed rule amendments in subitems 2, 4, 5, 8, 10, and 11 consist of changes in terminology and the addition of clarifying language that do not change the substance of the rule. New subitem (12) requires that pharmaceutical services be provided. In

subpart 1a, item B, the majority of the proposed rule amendments consist of changes in terminology and the addition of clarifying language that do not change the substance of the rule. In the first paragraph of item B a proposed rule amendment adds the requirement that the medical director or designee of the department must approve all care plans, treatments, or procedures of the resident ordered by the private attending provider. In subpart 1a, item C the proposed rule amendments consist only of changes in terminology that do not change the substance of the rule. In subpart 1b there are no changes to items A and D. The proposed rule amendment to item B removes the requirement for an in-place contractual agreement for dental care and the requirement that a resident's attending provider must pre-approve podiatric care and diagnostic services. There are no changes to subparts 2-19. The proposed rule amendments to subparts 1a and 1b are consistent, and do not conflict, with 42 C.F.R. §§ 483.10 to 483.90, 38 C.F.R. §§ 51.70 to 51.200, or §§ 51.300 to 51.350.

9050.1070 RESIDENT RIGHTS AND RESPONSIBILITIES.

In subparts 1, 2, 3, 4, 7, 8, 11, 12, 14, 15, 16, 20, 21, 22, 24, 30, and 33 the proposed rule amendments consist only of terminology changes. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation. There are no changes in subparts 13, 17, 23, 25, 27, 28, 29, 35, 36, and 38.

In subpart 5 in the first paragraph the proposed rule amendments replacing the reference to "nursing staff" with "designee" to identify those personnel who may review the resident handbook with a resident on admission. There are no changes in items A-C and item E. The proposed rule amendment in item D is only a terminology change that causes no change in the substance of the rule. The proposed rule amendment to the last paragraph in subpart 5 that adds the language "as appropriate" means that the department does not have to notify residents of changes in the handbook that are made solely for the purposes or correcting grammatical and spelling errors and do not substantially change the provisions of the handbook. The proposed rule amendments in subparts 6 and 9 consist of terminology changes and the elimination of cross-references to federal regulations that have been repealed. In subpart 6, the proposed rule amendments consist of terminology changes and the removal of a cross-reference to an obsolete federal regulation. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendment to subpart 10 places the decision to use chemical and physical restraints solely in the hands of the medical director or designee as opposed to any physician. The proposed rule amendments to subpart 18 consist of changes in terminology and the elimination of obsolete language without changing the substance of the rule. The proposed rule amendments to subpart 19 consist of terminology changes and the removal of a cross-reference to a statute that has been repealed and the insertion of a cross-reference to the applicable statute. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The proposed rule amendments to subpart 26 consist of terminology changes and the addition of a requirement that residents shall maintain room cleanliness and conditions in a manner consistent with internal facility policies. The proposed rule amendments to subpart 31 consist of terminology changes. The proposed rule amendments remove all text that allows a bed ridden resident to smoke. In addition, the proposed rule amendments establish that smoking is only allowed during designated smoking times, and that the administrator of each facility must take the necessary interventions to assure the safety of residents and others. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

Proposed rule amendments to subpart 34 add the sale, distribution, consumption, and possession of illegal narcotics to that of alcohol, which is not allowed on veterans home campuses. Proposed rule amendments to

subpart 37 add to the list of contraband any other items identified by facility policy. Proposed rule amendments to subpart 39 consist of terminology changes that do not change the substance of the rule. Proposed rule amendments to subpart 39 also clarify under what circumstances written consent is required for photographing, voice recording, or videotaping a resident. These proposed rule amendments are consistent with, and do not conflict with, any known federal law or regulation.

The rule amendments in to rule part 9050.1070 are consistent and do not conflict with 42 C.F.R. § 483.10(a)-(k) governing the following:

(a) *Residents rights.*
(b) *Exercise of rights.*
(c) *Planning and implementing care.*
(d) *Choice of attending physician.*
(e) *Respect and dignity.*
(f) *Self-determination.*
(g) *Information and communication.*
(h) *Privacy and confidentiality.*
(i) *Safe environment.*
(j) *Grievances.*
(k) *Contact with external entities:* and

38 C.F.R. § 51.70(a)-(n)

(a) Exercise of rights.
(b) Notice of rights and services.
(c) Protection of resident funds.
(d) *Free choice.*
(e) *Privacy and confidentiality.*
(f) *Grievances.*
(g) *Examination of survey results.*
(h) *Work.*
(i) *Mail.*
(j) *Access and visitation rights.*
(k) *Telephone.*
(l) *Personal property.*
(m) *Married couples.*
(n) *Self-Administration of Drugs;* and

38 C.F.R. § 51.300(a)-(h)

(a) *Notice of rights and services—notification of changes.*
(b) *Work.*
(c) *Married couples.*
(d) *Transfer and discharge.*
(e) *Notice of bed-hold policy and readmission—notice before transfer.*
(f) *Resident activities.*
(g) *Social services.*
(h) *Environment.*

9050.1080 ADULT DAY HEALTH CARE PROGRAM.

The proposed rule amendments that create new rule part 9050.1080 consist of the standards, processes, and procedures the department has been following in the administration of the adult day health care program. Per the Office of the Legislative Auditor these standards, processes, and procedures must be adopted as administrative rules. New subpart 9050.1080 is consistent with the requirements of 38 C.F.R. part 51, Subpart C—Requirements Applicable to Eligibility, Rates, and Payments and Subpart F—Standards Applicable to the Payment of per Diem for Adult Day Health Care.

9050.1090 VETERANS AFFAIRS PHARMACEUTICAL SERVICES.

The proposed rule amendments that create new rule part 9050.1090 consist of the standards, processes, and procedures the department has been following in the provision of pharmaceutical services. Per the Office of the Legislative Auditor these standards, processes, and procedures must be adopted as administrative rules. New subpart 9050.1090 is consistent with the requirements of 42 C.F.R. § 483.54 and 38 C.F.R. § 51.180 governing pharmacy services.

4. **If the request for reconsideration is granted by OAH, MDVA agrees to modify the following proposed amendments within Minn. R. 9050.**

   If this reconsideration is granted and the rules are allowed to be approved, the department agrees to make the following changes to the current Proposed Permanent Rules Relating to the Veterans Homes.[48] MDVA has provided as Attachment 5, the draft form the Revisor's office with the proposed changes. [49]

Minn. R. part 9050.0040, subpart 26b

> *Subp. 26b.* ***Commissioner.*** *"Commissioner" means the commissioner of the Minnesota Department of Veterans Affairs ~~or another department employee who has delegated authority from the commissioner~~.*

Minn. R. part 9050.0040, subpart 40.

> *Subp. 40.* ***Equity.*** *"Equity" means the amount of equity in real or personal property owned by a person. Equity is determined by subtracting any outstanding encumbrances on ~~fair~~ market value.*

Minn. R. part 9050.0050, subpart 3a, item A

> *Subp. 3a.* ***Residency.*** *For purposes of determining ~~residency under Minnesota Statutes, section 198.022, paragraphs (2) and (3)~~, a person is a permanent resident of Minnesota ~~if~~:*
>
> > *A. the person physically resides ~~currently resides~~ in Minnesota~~ and intends to reside in the state permanently rents, owns, maintains, or occupies a residence in Minnesota suitable for year-round use~~ for at least 90 days prior to application to a veterans home operated by the commissioner; and*
> >
> > *B. the person does not rent, own ~~or,~~ maintain, or occupy a home in another state.*

Minn. R. part 9050.0200, Subpart 2B(4)

[48] Rule Making Hearing, OAH Docket No.71-9054-37629, January 31, 2022, Exhibit C The Proposed rules, including Revisor's approval

[49] Attachment 5: AR4384-1818590364239720574

B. A discharge is involuntary if it is without mutual consent of between the resident, or the resident's legal representative who has the legal authority, or spouse, if any, the resident's attending physician, and the administrator of the facility. Involuntary discharge procedures start if one of the following circumstances exist:

(1) the resident or resident's legal representative fails or refuses to comply with payment obligations in the admission agreement as determined by the veterans home facility financial staff as provided for in part 9050.0040, subpart 5, item C;
(2) the veterans home facility is unable to meet the care needs of the resident, as determined by the utilization review committee according to part 9050.0070, subpart 3 or 4;
(3) the resident no longer has a medical need for the services provided by a veterans home facility as determined by the utilization review committee according to part 9050.0070, subpart 3 or 4;
~~(4) the resident's behavior exhibits willful or deliberate disregard for the veterans home facility's regulatory requirements or policies;~~
(5) the resident is absent without notice from the veterans home facility for more than 96 consecutive hours, or a definitive arrangement has been made for an absence longer than 96 hours and the resident fails to comply with that arrangement; or

Minn. R. part 9050.0220, Subpart 1

*Subpart 1. **Generally, recommendations.** Involuntary discharge for a reason specified in part 9050.0200, subpart ~~3~~ 2, item ~~C~~ B, must be based on the recommendation of either the utilization review committee or facility financial staff~~, or facility social services staff~~. ~~Involuntary discharge under part 9050.0200, subpart 3, item A, F, or G, must be based on the recommendation of the facility financial staff or social services staff.~~ The recommendation by the utilization review committee or facility financial staff, ~~or facility social services staff~~ must be provided to the administrator of the facility.*

Minn. R. part 9050.0220, Subpart 2

*Subp. 2. ~~**Notice,** **Review of recommendation**~~**, notice, and service**.*
A. ~~A notice for involuntary discharge must be issued by the administrator of the facility operated by the commissioner of veterans affairs or administrator's designee if, after review of the recommendations and documentation from the utilization review committee or Management and Budget Department, the administrator agrees with the recommendations.~~ The administrator shall review the recommendation and documentation from the utilization review committee, facility financial staff, ~~or facility social services staff~~. If the administrator agrees with the recommendation and documentation for involuntary discharge, the administrator must issue a notice of involuntary discharge to the resident or the resident's legal representative.

Minn. R. part 9050.0600, subpart 2, item E, new subitem (1) (Line 52.25)

~~(2)~~ (1) an actual good faith sale attempt was made at a ~~fair~~ market value price ~~not more than an estimate of~~ based on the ~~highest current market value obtained within six months of application for admission or since the last determination of the maintenance charge, but no offer to purchase was received. The market value price estimate must be based upon the written estimates from two licensed real estate professionals~~ current property tax evaluation for the property. If a purchase offer at the ~~lowest professional market value price estimate~~ current property tax evaluation amount was received but was rejected by the ~~seller~~ resident or applicant, it is presumed that the failure to sell the property was due to an improper action on the part of the ~~seller~~ resident or applicant. Upon failure by the

resident or applicant to attempt to sell the real property, the ~~lowest market price estimate~~ current property tax evaluation must be the figure taken into account in determining the resident's maintenance charge or the spousal allowance.

Minn. R. part 9050.0600, subpart 1, Item A

*Subpart 1. **General provisions of property ownership.** The equity value of all nonexcluded real and personal property owned by an applicant or resident must not exceed $3,000. The facility financial staff must use the equity value of legally available real and personal property, except property excluded in subpart 2 or 3, determine the resources available to or on behalf of an applicant or resident.*

A. If real or personal property is jointly owned by two or more persons, the facility financial staff shall assume that each person owns an equal share. When the owners document greater or smaller ownership, the facility financial staff shall use that greater or smaller share to determine the equity value held by or on behalf of an applicant or resident. Other types of ownership, such as a life estate, must be evaluated according to law using the Internal Revenue Service actuarial tables under Section 7520 of the Internal Revenue Code pertaining to life estates ~~table in the Department of Human Services Minnesota Health Care Programs Eligibility Policy Manual. 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.~~

Minn. R. part 9050.0650, subpart 3, second paragraph (Line 56.6)

Subp. 3. **Incorrect transfers.**

*If a resident's maintenance charge or a spousal allowance is adjusted because of a transfer for less than ~~**fair**~~ market value, the resident, spouse, dependent, or their legal representative may request from the administrator a waiver if the adjusted maintenance charge or spousal allowance will cause undue hardship resulting in an imminent threat to the individual's health or well-being. In evaluating a request for a waiver, the administrator shall take into account whether the individual was the victim of financial exploitation, whether the individual has made reasonable efforts to recover the transferred property or resource, and other factors relevant to a determination of hardship. If the administrator does not approve a waiver, the administrator shall issue a written notice to the individual stating the reasons for the denial and the process for appealing the decision. The decision may be appealed to the commissioner of ~~veterans affairs.~~ An appeal to the commissioner ~~of veterans~~ affairs must be handled in the same manner as a hearing under part 9050.0580.*

Conclusion

The MDVA submits this memorandum for reconsideration of the Report of the Chief Administrative Law Judge dated April 15, 2022, In the Matter of the Proposed Rules of Amendments Governing the Minnesota Veterans Homes, Minnesota Rule, Chapter 9050 (Report) (OAH 71-9054-37629) and respectfully requests that it reverse its decision disapproving the proposed rules and the recession of the MDVA's Additional Notice Plan, and instead approve the proposed rule with the requested changes as identified herein, so that the MDVA may proceed to adopt the proposed rule amendments.

Thank you for your attention and consideration in this matter.

_____

Dale Klitzke
dale.klitzke@state.mn.us
Deputy General Counsel
Minnesota Department of Veterans Affairs
20 West 12th Street, Saint Paul, MN 55155
Telephone: (651) 548-5706

ATTACHMENTS

ATTACHMENT 1

ATTACHMENT 2

ATTACHMENT 3

ATTACHMENT 4

ATTACHMENT 5