

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate Appeal of
Steiger Enterprises, Inc.

**RECOMMENDATION ON MOTIONS
FOR SUMMARY DISPOSITION**

This matter was initiated by the Minnesota Department of Human Services (hereinafter "DHS" or the "Department") by a Notice of and Order for Hearing and Prehearing Conference, dated January 10, 1996, which was duly served upon the Appellant, St. Francis Health Services (hereinafter "St. Francis"), successor to Steiger Enterprises, Inc. (hereinafter "Steiger") as owner of Leisure Hills Health Center (hereinafter "Leisure Hills"). At a prehearing conference held on February 11, 1997, counsel for both parties agreed that an evidentiary hearing in this matter was unnecessary and that the issues could be determined by motions for summary disposition. Counsel further agreed that since acts of the 1997 legislature could potentially affect the outcome of this matter, a hearing on motions for summary disposition would best be conducted after the legislature adjourned.

St. Francis and the Department subsequently served and filed written motions and supporting documentation pursuant to Minn. R. 1400.5500 (K) and 1400.6600 (1995), each requesting a summary disposition on the grounds that no genuine issue of material fact exists with respect to this proceeding and that, as a matter of law, each was entitled to prevail on the merits of this appeal from the Department's rate determination.

The above-entitled matter is, therefore, before the undersigned Administrative Law Judge on the parties' cross motions for summary disposition. Robert V. Sauer, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department. Thomas L. Skorczeski, Attorney at Law, 710 North Central Life Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of St. Francis. The record on these motions closed on October 1, 1997, at the close of the hearing on the motions.

Based upon all of the records, files, and proceedings herein, IT IS HEREBY RECOMMENDED :

- (1) That St. Francis' Motion for Summary Disposition be DENIED;

(2) That the Department's Motion for Summary Disposition be GRANTED;
and

(3) That the Commissioner of Human Services enter an Order upholding the Department's rate determination.

Dated this _____ day of October, 1997.

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

Factual and Legal Background

The material facts underlying this proceeding are set forth in a Stipulation of Facts which the parties entered into on September 9, 1997.^[1] There is no dispute about the underlying facts or about the general legal framework that forms the basis for the rate decisions that the Minnesota Department of Human Services (hereinafter "DHS") makes.

Leisure Hills Health Center (hereinafter "Leisure Hills") is a 192-bed nursing home facility located in Hibbing, Minnesota. For some time prior to 1992 and continuing to the present, Leisure Hills has been certified and licensed to participate in Minnesota's Medicaid (also known as "medical assistance" or "MA") program and to provide care to those of its residents who are eligible MA recipients. Responsibility in Minnesota for administering the medical assistance program, as it relates to facilities such as Leisure Hills, is bifurcated. Pursuant to Minn. Stat. Ch. 144A, the Minnesota Department of Health (hereinafter "MDH") licenses nursing homes to do business in the State of Minnesota and promulgates licensing rules which govern the care that is given to nursing home residents and which establish other requirements for nursing home operations. On the other hand, DHS certifies nursing homes for participation in the medical assistance program and reimburses them for the care they give to MA recipients in accordance with certain statutes and rules that pertain to medical assistance reimbursement. At all times relevant to this proceeding, Leisure Hills was licensed by MDH and certified by DHS to participate in the medical assistance program.

On November 4-7, 1991, MDH conducted a combined federal and state licensing survey and inspection of the operations of Leisure Hills and of the care being provided to its residents. Leisure Hills was then owned and operated by Steiger. That survey and inspection identified multiple violations of MDH's licensing rules for nursing homes. In early 1992 MDH determined that Leisure Hills had failed to take timely corrective action on three of the violations, and MDH assessed civil penalties against Leisure Hills based on those violations. Leisure Hills initiated a contested case proceeding under the Minnesota Administrative Procedure Act, Minn. Stat. Ch. 14 (1996) challenging the validity of MDH's penalty determination. MDH and Leisure Hills filed cross motions for summary disposition in that proceeding, and the Administrative Law Judge recommended that the Commissioner of Health deny Leisure Hills' motion and grant the Department's motion for summary disposition. The Commissioner entered an order adopting the Administrative Law Judge's recommendation. That order was subsequently affirmed by the Minnesota Court of Appeals. Matter of Assessment Issued to Leisure Hills Health Care Center on Mar. 2, 1992, 518 N.W.2d 71 (Minn. App. 1994). What is material about those prior proceedings in this proceeding is their cost. Steiger reported legal fees and related expenses attributable to MDH's enforcement actions and subsequent appeals totaling \$260,014.

During the times at issue here, the payments that DHS makes to Leisure Hills and other nursing homes to reimburse them for care provided to MA recipients are governed by certain statutes and rules, principally Minn. Stat. §§ 256B.41–.48 (1996) and Minn. R. pt. 9549.0010–9549.0080 (commonly known as “Rule 50”). The payments made to nursing homes under Rule 50 are based upon historical costs reported by the nursing home during a “reporting year” (hereinafter sometimes “RYE”) that runs from October 1st through September 30th. Minn. R. pt. 9505.0020, subp. 41 (1995). Participating nursing homes file cost reports with DHS for each rate year. Minn. R. pt. 9549.0041, subp. 1 (1995). Those cost reports are reviewed by auditors at DHS in a process known as a desk audit. Minn. R. pt. 9549.0020, subp. 19 (1995). Based upon allowable costs, DHS then calculates the amounts payable to the nursing facility for the rate year beginning on the following July 1st. Minn. R. pt. 9549.0020, subp. 36 and pt. 9549.0070, subp. 1 (1995).

A nursing home’s total MA payment rate is made up of several, separately calculated components. Among these is an operating cost component, also called the “operating cost per diem,” which, in turn, is composed of a care-related per diem and an “other-operating-cost payment rate.” Minn. R. pt. 9549.0020, subp. 44 and pt. 9549.0056, subp. 5 (1995). The latter category includes general and administrative (hereinafter sometimes “G&A”) services, which, in turn, includes certain types of legal fees and related expenses.

The \$260,014 in legal fees and related expenses which Steiger reported as being attributable to MDH’s enforcement actions and subsequent appeals were spread over three successive reporting years — i.e., those ending on September 30th of 1992 (\$111,479), 1993 (\$82,021), and 1994 (\$82,021). They therefore affected the MA rates payable to Leisure Hills beginning on July 1, 1993, 1994, and 1995. In the spring of 1995, MDH issued a notice to Steiger that it proposed to revoke its license to operate Leisure Hills. On May 1, 1995, however, St. Francis Health Services (hereinafter “St. Francis”) entered into a purchase agreement to purchase Leisure Hills from Steiger. None of the legal fees and expenses that were reported on Leisure Hills’ cost reports for the rate years ending September 30, 1992, 1993, and 1994 were incurred by St. Francis.

Under the MA reimbursement system, legal fees and expenses incurred for the purpose of challenging the actions of governmental agencies must be reported in the rate years in which they are incurred, but they are ultimately allowable only if the challenge to agency action is successful, a result which may not be known until some time after the cost is reported and the rate for the following rate year set. Minn. Stat. § 256B.47, subd. 1(5) (1996); Minn. R. 9549.0036, Item C (1995). The legislature provided nursing homes and DHS with guidance on how to handle these particular kinds of legal costs in Minn. Stat. § 256B.50, subd. 1f (1996):

Subd. 1f. **Legal and related expenses.** Legal and related expenses for unresolved challenges to decisions by governmental agencies shall be separately identified and explained on the provider’s

cost report for each year in which the expenses are incurred. When the challenge is resolved in favor of the governmental agency, the provider shall notify the department of the extent to which its challenge was unsuccessful [or]^[2] the cost report filed for the reporting year in which the challenge was resolved. In addition, the provider shall inform the department of the years in which it claimed legal and related expenses and the amount of the expenses claimed in each year relating to the unsuccessful challenge. The department shall reduce the provider's medical assistance rate in the subsequent rate year by the total amount claimed by the provider for legal and related expenses incurred in an unsuccessful challenge to a decision by a governmental agency.

In accordance with Minn. Stat. § 256B.50, subd. 1f (1996) and pertinent rules, DHS' desk auditors had allowed the legal fees and related expenses reported on 1992 and 1993 cost reports prior to final resolution of Steiger's challenges to the decisions of MDH. After DHS learned during the 1994 reporting year that Steiger's challenges to MDH actions had been unsuccessful, its desk auditors relied on Minn. Stat. § 256B.50, subd. 1f to reduce Leisure Hills medical assistance rates effective for the rate year beginning July 1, 1995, by \$177,993, representing legal fees that had been allowed in Steiger's rates for prior rate years, and by \$82,021, representing legal expenses that would otherwise have been considered for inclusion in the 1995 rate year. On June 2, 1995, DHS announced Leisure Hills July 1, 1995, desk audit rate in a "Notice of Final Payment Rates Effective July 1, 1995."

The sale of Leisure Hills from Steiger to St. Francis closed on November 7, 1995. By that time, the parties to the sale knew that DHS had disallowed certain of the legal fees and related expenses reported by Steiger in its 1992, 1993, and 1994 cost reports because Steiger's appeals of MDH's administrative penalty proceeding had been exhausted. As part of its purchase agreement with St. Francis, Steiger had agreed to indemnify St. Francis for certain liabilities created by Steiger's operation of Leisure Hills. That indemnity payment was made on November 13, 1995, and it included the sum of \$260,014 to indemnify St. Francis for legal fees relating to Steiger's challenge to the actions of MDH – sums that had already been subtracted from Leisure Hills 1995 operating cost per diem because of the failure of Steiger's challenges to MDH.

Meanwhile, in its 1995 session the legislature enacted a statute which had the effect of limiting all nursing homes' operating cost per diem payments. (See Act of May 22, 1995, ch. 207, art. 7, § 26, 1997 Minn. Laws 1283 [amending Minn. Stat. § 256B.431 (1996), *inter alia*, by adding subdivision 25(b)(2)]) This limit, commonly called a "spend-up" limit, effectively restricted the amount by which a nursing home's 1996 operating cost per diem could increase over the 1995 per diem to inflation plus one percent. Since the limit also applied to future rate years, the operating cost per diem for the 1995 rate year effectively became the bench mark for operating cost per diem rates into the indefinite future.

By letter dated July 12, 1995, St. Francis appealed Leisure Hills' July 1, 1995 MA payment rate. The appeal letter specified four areas of disagreement with the rates set by DHS. By letter dated July 19, 1996, DHS issued determinations, pursuant to Minn. Stat. § 256B.50, subd. 1h(b) (1996) on each of the four appeal items. St. Francis accepted DHS's determinations on two of the items under appeal, but by letter dated August 12, 1996, rejected the determinations on appeal items 2 and 4. It was item 4 that related to how DHS had handled the legal fees incurred by Steiger in its unsuccessful challenge to MDH's enforcement actions.^[3] This proceeding ensued.

This proceeding was initiated by a Notice of and Order for Hearing and Prehearing Conference dated January 10, 1996. Because of its concerns about how DHS' adjustment of its 1995 rate year rates would affect its reimbursement in years beyond the 1996 rate year, St. Francis sought relief from the legislature during its 1997 session. As a result of St. Francis' request to the 1997 legislature, a provision was included in the 1997 Health and Human Services Appropriations Bill adding \$2.67 to the "other operating costs" portion of Leisure Hills' rate for the rate year beginning July 1, 1997.

The Administrative Law Judge Has Jurisdiction Over the Subject Matter

This proceeding originated as an appeal by St. Francis, pursuant to Minn. Stat. § 256B.50, subd. 1b (1996), from two of the determinations made by DHS in the course of establishing Leisure Hills' MA reimbursement rates for the rate year beginning July 1, 1995. One of those two determinations was subsequently resolved by agreement of the parties. The remaining determination at issue was DHS' decision to reduce Leisure Hills' 1995 MA reimbursement by \$260,014, representing legal fees and expenses relating to an unsuccessful challenge by Steiger to an enforcement action by MDH. St. Francis' primary concern about that determination has always been the effect that reduction will have on subsequent rate years by operation of Minn. Stat. § 256B.431, subd. 25(b)(2) (1996), which the legislature enacted in May of 1995. As previously noted, that legislation limited increases in nursing homes' operating cost per diem payments in future years to the 1995 per diem payment, plus an annual inflationary increase of one percent. St. Francis does not argue that it was improper or unreasonable for DHS to recover legal fees and costs for which Steiger had previously been reimbursed after its challenge to MDH action became unsuccessful. The essence of its argument is that recovery of those amounts in the 1995 rate year has had the effect, through operation of Minn. Stat. § 256B.431, subd. 25(b)(2) (1996), of placing unreasonably low limitations on Leisure Hills' operating cost per diem payments for rate years 1996 and beyond.

St. Francis concedes that it suffered no actual loss in connection with the 1995 operating cost per diem payments it received from the Department because, as part of its purchase agreement, Steiger indemnified St. Francis against that loss and actually did pay St. Francis the \$260,014 which DHS recovered from Leisure Hills in the 1995 rate year. (Stipulation of Facts, No. 8; Memorandum of St. Francis, dated September 24, 1997, n. 3 at p. 4.) Furthermore, St. Francis concedes that, as the result of action taken by the 1997 legislature, any potential distortions in Leisure Hills' operating cost per diem payments for rate years 1997 and beyond have been corrected. (Stipulation of Facts, Nos. 20 and 21; Memorandum of St. Francis, dated September 24, 1997, n. 3 at p. 4.)

In short, both parties agree that all that remains genuinely at issue here is St. Francis' 1996 operating cost per diem payment, which it contends is unreasonably low^[4] because of DHS' decision to use Leisure Hills' 1995 operating costs, reduced by the \$266,014 in recovered legal costs, as the basis for calculating the 1996 operating cost per diem payment. But it is Leisure Hills' 1995 MA reimbursement rate, and not its 1996 MA reimbursement rate, that is the subject matter of this proceeding. Nevertheless, the Affidavit of Robert V. Sauer, dated September 15, 1997, indicates that St. Francis also appealed the desk audit rates set for Leisure Hills for July 1, 1996, and that appeal included the issue of whether the 1996 rate should also reflect the 1995 reduction of Leisure Hills' operating cost per diem payment because of the recovery of the legal fees attributable to Steiger's unsuccessful challenges to MDH. Attached to the affidavit were copies of the key documents pertaining to St. Francis' 1996 rate appeal. Both parties

have indicated a desire to place that issue, as it also relates to St. Francis' 1996 MA rate, before the Administrative Law Judge for determination.

Minn. R. pt. 1400.5600, subp. 5 (1995) provides:

Subp. 5. **Amendment.** At any time prior to the close of the hearing, the agency may file and serve an amended notice of and order for hearing, provided that, should the amended notice and order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

Both parties have clearly intended the Affidavit of Robert V. Sauer, dated September 15, 1997, to be taken as an amendment to the Notice of and Order for Hearing that initiated this proceeding, and St. Francis' submissions have specifically addressed the issues raised in that affidavit. The Administrative Law Judge will, therefore, accept Mr. Sauer's affidavit as an amendment.

Summary Disposition is Appropriate

In considering motions for summary disposition in administrative contested case proceedings, administrative law judges look to the standards developed in district court practice for considering motions for summary judgment. See Minn. Rules, pt. 1400.6600 (1995). Like summary judgment, summary disposition is appropriate "where there is no genuine issue as to any material fact." Minn. Rules, pt. 1400.5500(K) (1995); compare Minn. R. Civ. P. 56.03; Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Theile v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Here, both parties agree that no dispute exists with respect to any material fact, so this proceeding appears to be amenable to determination by summary disposition. In order to prevail on the merits of its motion, St. Francis must show that the Department's determination of Leisure Hills' 1996 medical assistance rate was incorrect. Minn. Stat. § 256B.50, subd. 1c (1996).

The Issues and Contentions of the Parties

Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) which contains the “spend-up limit” enacted by the 1995 legislature provides:

(2) For the rate year beginning on July 1, 1996, the commissioner shall limit the nursing facility's allowable operating cost per diem for each case mix category to the lesser of the prior reporting year's allowable operating cost per diems plus the inflation factor as established in paragraph (f), clause (2), increased by one percentage point or the current reporting year's corresponding allowable operating cost per diems; [Emphasis supplied.]

In essence, the issue which now must be determined in this proceeding is whether the legislature intended the phrase “prior reporting year’s allowable operating cost per diems” to exclude any reductions in a nursing facility’s 1995 operating costs made by DHS pursuant to Minn. Stat § 256b.50, subd. 1f (1996).

The substance of St. Francis’ argument is that the statutory scheme enacted by the legislature for paying nursing facilities for care provided to MA recipients makes a distinction between the Department’s rate setting functions and its overpayment recovery functions. In its view, Minn. Stat § 256b.50, subd. 1f (1996), although couched in terms of reductions to a medical assistance provider’s rates, was intended by the legislature to be a mechanism for the Department to recover overpayments. St. Francis contends that the legislature intended that statutory provision only to affect a provider’s rates in the rate year when the Department recovers earlier legal expenses that prove to be disallowable, and not the provider’s rates in any other years. According to St. Francis, this manifest legislative intent operates as a gloss on the phrase “prior reporting year’s allowable operating cost per diems” that excludes any reductions in Leisure Hills’ 1995 operating costs made by DHS pursuant to Minn. Stat § 256b.50, subd. 1f (1996). In more simple terms, it is St. Francis’ position that DHS should have added \$177,993 of the \$260,014 legal expense reduction,⁵¹ which it had made for rate year 1995, back into Leisure Hills’ 1995 operating costs for the purpose of making the 1996 rate calculations.

The Department, on the other hand, argues that when Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) refers to “prior reporting year’s allowable operating cost per diems,” it applies to all of the factors which combine to make up the operating cost component of a nursing facility’s payment rate for rate year 1995, including any reductions called for by Minn. Stat. § 256B.50, subd. 1f (1996). The Department reasons that legal expenses fall within the definition of G&A expenses, which, in turn, are one of several components of a nursing facility’s “other-operating-cost payment rate.” In the Department’s view, there is nothing in the language of Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) which manifests an intent on the part of the legislature to exclude any statutorily mandated reduction of a nursing facility’s “other-operating-cost payment rate” in rate year 1995. It is the Department’s position that its calculation of

Leisure Hills' 1996 MA payment rate was properly based on the facility's actual allowable 1995 operating costs, which included the \$177,993 reduction mandated by Minn. Stat § 256b.50, subd. 1f (1996).

**The Department's Interpretation of
Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) Is Correct**

What is ultimately at issue here is interpretation of Minn. Stat. § 256B.431, subd. 25(b)(2) (1996). That statute does not contain any express language excluding reductions in a nursing home's operating costs, pursuant to Minn. Stat § 256b.50, subd. 1f (1996), from the "prior reporting year's [1995] allowable operating cost per diems." And the Department's argument that the plain language of the statute therefore compels it to make such reductions in Leisure Hills' case is persuasive. But even if Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) is deemed to be ambiguous so as to allow an inquiry into whether the legislature intended any reductions pursuant to Minn. Stat § 256b.50, subd. 1f (1996) to be excluded, the result is the same.

Assumptions that underlie St. Francis' position and its supporting arguments are that the legislature has made a clear distinction in Chapter 256B between what St. Francis characterizes as "rate setting" statutes and "overpayment recovery" statutes; that the legislature intended both express and implied limits on the extent to which the overpayment recovery process could intrude upon the rate setting process; and that the Department went beyond those limits in St. Francis' case. Based on these assumptions, St. Francis has developed a series of arguments designed to demonstrate that in its case the Department has overstepped those limits and has improperly allowed efforts to recover overpayments of legal expenses to distort the process setting of payment rates for the care provided to MA recipients at Leisure Hills. Nearly all of St. Francis' arguments presuppose, however, that the \$177,993 reduction the Department made in Leisure Hills' 1995 operating cost payment rate represented recovery of an "overpayment."^[6]

Minn. Stat. § 256B.0641 (1996) specifically addresses recovery of overpayments. Subdivision 1(2) of that statute establishes the following mechanism for recovery of overpayments from medical assistance providers:^[7]

(2) if the overpayment to a medical assistance vendor is due to a retroactive adjustment made because the medical assistance vendor's temporary payment rate was higher than the established desk audit payment rate or because of a department error in calculating a payment rate, the commissioner shall recover from the medical assistance vendor the total amount of the overpayment within 120 days after the date on which written notice of the adjustment is sent to the medical assistance vendor or according to a schedule of payments approved by the commissioner;

Even though the legislature specifically addressed the subject of overpayments there, St. Francis argues that the plain language of Minn. Stat. § 256B.50, subd. 1f (1996) indicates that it is another, more specialized overpayment recovery statute. On the other hand, the Department argues that the plain language of that statute indicates it is a rate setting statute. The Administrative Law Judge concludes the plain language of Minn. Stat § 256b.50, subd. 1f (1996) does not clearly reveal whether it should be regarded as an overpayment recovery or as a rate setting statute, and that it is therefore ambiguous in that respect. As St. Francis points out, the statute does create a mechanism for the Department to recover payments that are later found to be disallowable; it therefore reflects some of the functional characteristics of the process of overpayment recovery.

But there are a number of other things that suggest the legislature regarded it as a rate setting statute. First, the legislature codified the provision in question as a subdivision of Minn. Stat. § 256B.50 (1996), which deals generally with appeals from the Department's determination of rates, rather than in Minn. Stat. § 256B.0641 (1996), which deals with overpayments. Unlike the provisions of Minn. Stat. § 256B.0641 (1996), Minn. Stat. § 256B.0641, subd. 1f (1996) does not even mention the term "overpayment." Rather, it speaks in terms of reducing "the provider's medical assistance rate". [Emphasis supplied.] In short, there is support for the Department's view that the statute simply authorizes a particular kind of provisional payment to be incorporated into a nursing facility's medical assistance payment rate, with the rate subject to reduction in a future year if the payment ultimately proves to be disallowable.

Where a statute is ambiguous, a reviewing tribunal must "determine the probable legislative intent and give the statute a construction that is consistent with that intent." Tuma v. Commissioner of Economic Security, 386 N.W.2d 702, 706 (Minn. 1986). Moreover, when legislative intent with regard to a statute or statutory scheme is in question, deference should be given to the administrative agency's determination concerning construction of the statute. Ross v. Department of Human Services, 469 N.W.2d 739, 740 (Minn. App. 1991). Particular deference should be accorded an agency interpretation where it deals with a program, such as the medical assistance program, that requires a large measure of technical expertise. Resident v. Noot, 305 N.W.2d 311, 312 (Minn. 1981). Based on these principles and on the other support that exists for the Department's interpretation, the Administrative Law Judge therefore concludes that the legislature intended Minn. Stat § 256B.50, subd. 1f (1996) to be a rate setting, rather than an overpayment recovery statute.

One of St. Francis' more specific arguments is that, when viewed as an overpayment recovery statute, Minn. Stat. § 256B.50, subd. 1f (1996) cannot reasonably be interpreted as allowing the Department to recover more from St. Francis, even over time, than the actual amount of the overpayment. This is based on the idea that recovery of an overpayment is a singular event, and that once recovered, application of the statute should not result in further financial liabilities for the party from whom recovery was made, absent a clear legislative intent to the contrary. A related argument is that the subdivision of the overpayment recovery statute relating to

successor owners, Minn. Stat. § 256B.0641, subd. 2 (1996), represents a similar limitation on the 1995 spend-up legislation. But both arguments require acceptance of the proposition that Minn. Stat. § 256B.50, subd. 1f (1996) is an overpayment recovery statute. A rate setting statute, on the other hand, gives rise to no such implication. In fact, by their very nature, “rates” frequently are frequently expected to have continuing financial consequences. In short, if construed to be a rate setting statute, there is nothing about Minn. Stat § 256B.50, subd. 1f (1996) that can be said to manifest a legislative intent to interpret the phrase “prior reporting year’s allowable operating cost per diems” in Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) to exclude any reductions in operating costs made by the Department pursuant to the former statute.

Finally, St. Francis contends that the Department's interpretation of the statute should not be given deference here because it produces what St. Francis considers to be an unreasonable result.^[8] See, e.g., St. Otto's Home v. Minnesota Dept. of Human Services, 437 N.W.2d 35, 40 (Minn. 1989). "The word 'reasonable' is generally found to be synonymous with 'fair,' 'just,' 'equitable' and 'sensible'." Id. In other words, it is appropriate to consider the practical effects of an agency interpretation when deciding whether to give it deference.

St. Francis argues that because Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) establishes Leisure Hills' 1995 medical assistance payment rate as the base rate for future years, using that rate, as reduced by \$177,993 to reflect the disallowance of prior years' legal expenses, has the effect of locking St. Francis indefinitely into an artificially low reimbursement for its operating costs. But in terms of equity, Minn. Stat. § 256B.431, subd. 25(b)(2) (1996) does not single out Leisure Hills for potentially adverse financial consequences. Any number of nursing homes may have had their future reimbursement rates skewed by components of operating costs that were unusually low in the reporting year ending September 30, 1994. St. Francis itself had conceded that "any nursing home whose July 1, 1995 operating cost payment rate was somehow set below its allowable operating costs would see that artificially low operating cost rate perpetuated into the future." [Emphasis in original] (St. Francis' Memorandum of August 18, 1997, at p. 7.) Moreover, the 1997 legislature acted to add \$2.67 to the "other operating costs" portion of Leisure Hills' rate for the period beginning July 1, 1997, thereby mitigating any unanticipated adverse financial consequences to St. Francis for all rate years except 1996.^[9] By all accounts, however, if one accepts the Department's interpretations of the statutes in question, St. Francis will still be disadvantaged financially in the amount of \$177,993 in rate year 1996. On the other hand, what is troubling to the Administrative Law Judge is an even more unreasonable financial result if one accepts St. Francis' arguments. Eliminating the \$177,993 reduction for disallowed legal expenses from 1995 rate calculation for the purpose of calculating Leisure Hills' operating cost payment rate for 1996 will not only eliminate any financial loss to St. Francis in rate year 1996, it will also establish a new and higher base for calculating its operating cost payment rate in future years. The 1997 legislature's action to add \$2.67 to the other operating costs portion of Leisure Hills' rate will then represent a continuing financial windfall for St. Francis.

It is for the reasons set forth above that the Administrative Law Judge has concluded that the Department's motion for summary disposition should be granted and St. Francis' motion for summary disposition should be denied.

B. H. J.

^[1] Certain other underlying facts were determined in prior administrative proceedings that were affirmed by the Minnesota Court of Appeals in Matter of Assessment Issued to Leisure Hills Health Care Center on Mar. 2, 1992, 518 N.W.2d 71 (Minn. App. 1994), rev. denied.

^[2] Almost certainly a typographical error which should read “on.”

^[3] Item 2 disputed DHS’ disallowance of \$25,500 paid by Leisure Hills in settlement of employee grievances and of \$10,793 in legal fees in securing the settlements. This item of the appeal was subsequently resolved by agreement of the parties and is no longer at issue in this proceeding.

^[4] Both parties agree that the actual financial impact of the reduced operating cost per diem payment on St. Francis in rate year 1996 is the sum of \$177,993.

^[5] As previously noted, the remaining \$82,021 represented legal expenses actually incurred during the reporting period for the 1995 rate year and, therefore, were properly disallowable in any event.

^[6] \$82,021 of the \$260,014 reduction in the 1995 represented legal expenses incurred in the reporting year ending September 30, 1994, which were simply not allowable in the 1995 rate because the challenge to MDH was unsuccessfully resolved during the same reporting year.

^[7] Subdivision 2 relates to recover of overpayments from successor owners and provides:

Subd. 2. **Overpayments to prior owners.** The current owner of a nursing home, boarding care home, or intermediate care facility for persons with mental retardation or a related condition is liable for the overpayment amount owed by a former owner for any facility sold, transferred, or reorganized after May 15, 1987. Within 12 months of a written request by the current owner, the commissioner shall conduct a field audit of the facility for the auditable rate years during which the former owner owned the facility and issue a report of the field audit within 15 months of the written request.

Nothing in this subdivision limits the liability of a former owner.

^[8] A related argument raised by St. Francis is that the residual effect of the 1995 reductions is to render its rates in future years inadequate to provide for its costs. St. Francis claims that this would violate Minn. Stat. § 256B.41, subd. 1 (1996) in which the legislature required the Commissioner’s rate setting procedures to “be based on methods and standards that the commissioner finds are adequate to provide for costs . . .” But this misunderstands the purpose of that statute, which arguably represents a limitation on the Commissioner’s rulemaking authority. Here we are dealing with statutes, not rules. Minn. Stat. § 256B.41, subd. 1 (1996) does not represent a limitation that the legislature has imposed on itself, nor could a legislature bind a future legislature in that way. Moreover, Chapter 256B is filled with limitations which the legislature has imposed on reimbursement of medical assistance providers’ costs, not the least of which is Minn. Stat. § 256B.431, subd. 25(b)(2) (1996).

^[9] Although the actions of the 1997 legislature might not be considered to shed light on the intent of the 1995 legislature when it passed Minn. Stat. § 256B.431, subd. 25(b)(2) (1996), it is appropriate to consider the financial relief given to St. Francis by the 1997 legislature in determining whether the Department’s interpretations of the statutes in question are reasonable under the circumstances.