

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into

program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

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

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

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

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

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

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

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

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

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

F. If a facility's total allowable historical operating cost per diem or allowable historical operating cost per diems in any of the operating cost categories is greater than

the respective operating cost payment rate established for the corresponding rate year, there must be no retroactive cost settlement, unless the difference is due to:

- (1) a field audit adjustment as in part 9553.0041, subpart 13; or
- (2) a settle-up payment rate computed as in part 9553.0075.

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

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

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

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

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

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. A facility whose program allowable historical operating cost incurred during the

reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) program supplies;

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

(d) program consultants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Published Electronically: *October 15, 2013*