

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF HENNEPIN

COMMISSIONER OF HEALTH

IN THE MATTER OF PROPOSED
AMENDMENTS TO RULES RELATING
TO ELIGIBILITY, COST SHARING
AND REIMBURSEMENT FOR SERVICES
FOR CHILDREN WITH HANDICAPS,
AND ADULTS WITH CYSTIC FIBROSIS
AND HEMOPHILIA, MINNESOTA RULES
CHAPTER 4705.

STATEMENT OF NEED
AND REASONABLENESS

The Minnesota Commissioner of Health (hereinafter "Commissioner"), pursuant to Minnesota Statutes, sections 14.05 through 14.12 and 14.21 through 14.28, presents facts establishing the need for and reasonableness of the proposed amendments to rules relating to the matter of proposed amendments to rules relating to eligibility, cost sharing and reimbursement for services for children with handicaps, and adults with cystic fibrosis and hemophilia.

In order to adopt the proposed amendments, the commissioner must demonstrate that she has complied with all the procedural and substantive requirements of rulemaking. Those requirements are that: 1) there is statutory authority to adopt the rule, 2) all necessary procedural steps have been taken, 3) the rules are needed, 4) the rules are reasonable, and 5) any additional requirements imposed by law have been satisfied. This statement demonstrates that the commissioner has met these requirements.

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1. STATUTORY AUTHORITY.

The commissioner's legal authority for adopting these rules is found in Minnesota Statutes, sections 144.05 through 144.07, and 144.09 through 144.12. Further authority is vested in the commissioner through Minnesota Department of Administration Reorganization Order No. 101 issued pursuant to Minnesota Statutes, section 16.125 (hereinafter "Reorganization Order 101"). Reorganization Order 101 vests within the commissioner the authority to implement Minnesota Statutes, sections 250.05, 256.01, subdivision 2(3) and (5), 256.011, 257.175, and 260.35 insofar as these statutes concern the Services for Children with Handicaps Program.

2. STATEMENT OF NEED.

The legislature has delegated to the commissioner certain responsibilities for administering and supervising programs related to children with handicaps and adults with cystic fibrosis and hemophilia. (Minnesota Statutes, section 256.01, subdivisions 2, 3 and 5.) Under the program entitled Services for Children with Handicaps (hereinafter "SCH"), the commissioner reimburses service providers for service(s) authorized by SCH for physically handicapping conditions in children and for care and treatment of individuals with hemophilia. Such reimbursement is subject to the limitation of available federal and state funds. In order to implement and affectuate these program responsibilities, the commissioner adopted Minnesota Rules, parts 4705.0100 to 4705.1400. These rules established, among other things, income and eligibility criteria, and cost sharing arrangements.

There is a need to make changes to these rules for several reasons. First, after working with these provisions for several years, the department staff have come up with good ideas for improving and simplifying the criteria, procedures and responsibilities relating to applicant eligibility, applicant cost sharing and reimbursement to service providers for service(s) authorized by SCH. Second, amendments are necessary regarding the state median income definition due to fluctuations in the economy which have a direct impact upon program participants.

The rule-by-rule justification will explain the need for each rule amendment, as well as justifying the reasons for making these changes.

3. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS.

The commissioner has determined that the amendment of the rules in parts 4705.0100 to 4705.1400 is non-controversial and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.05 through 14.12 and 14.22 through 14.28 which provide for an expedited process for the adoption of non-controversial administrative rule changes without the holding of a public hearing.

Procedural Rulemaking Requirements of the Administrative Procedure Act

Minnesota Statutes, section 14.10 requires an agency which seeks information or opinions in preparation for adoption of rules from sources outside the agency to publish a notice of its action in the State Register and afford all interested persons an opportunity to submit data or comments on the subject. In the State Register issue of Monday, April 23, 1984, at page 2306, the commissioner published a notice entitled "Outside Opinion Sought Regarding: 1) Rules Governing Administration of the Special Supplemental Food Program for Women, Infants and Children (WIC); 2) Rules Governing Administration of the Maternal and Child Health (MCH) Grant Programs; 3) an Amendment to a Rule Governing Metabolic Screening, 7 MCAR § 1.172 [now 4615.0300 to 4615.0700]; 4) an Amendment to a Rule Governing Family Planning Special Projects, 7 MCAR § 1.457 [now 4700.1900 to 4700.2500]; 5) Repeal of a Rule Governing Private Baby Homes

and Infant Homes, MDH 171 [now 4615.0200]; and 6) Amendments to Rules Relating to Services for Children with Handicaps and Adults with Cystic Fibrosis and Hemophilia for Eligibility, Cost Sharing and Reimbursement, 7 MCAR §§ 1.651-1.657 [now 4705.0100 to 4705.1400]."

These rules minimize the duplication of statutory language. See Minnesota Statutes, section 14.07, subdivision 3 (1). The implementation of these rules will not require the expenditure of public money by local public bodies of greater than \$100,000 in either of the two years following their adoption, nor do the rules have any impact on agricultural land. See Minnesota Statutes, section 14.11. The adoption of these rules will not affect small businesses. See Minnesota Statutes, section 14.115, subdivision 7 (c).

Pursuant to Minnesota Statutes, section 14.23, the commissioner has prepared this statement of need and reasonableness which is available to the public. The commissioner will publish notice of intention to adopt the rules without public hearing in the State Register and mail copies of the notice and proposed rules to persons registered with the Minnesota Department of Health pursuant to Minnesota Statutes, section 14.14, subdivision 1 (a). The notice will include the following statements: a) that the public have 30 days in which to submit comments on the proposed rule; b) that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period; c) giving information pertaining to the

manner in which persons shall request a hearing; d) that the rule may be modified if modifications are supported by data and the views submitted; and e) other information required by Minnesota Statutes, section 14.22.

If 25 or more persons submit to the Minnesota Department of Health a written request for a hearing on the proposed rule, the agency shall proceed under the provisions of Minnesota Statutes, sections 14.131 through 14.20 and notice of the hearing shall be published in the State Register.

If no hearing is required, the commissioner will submit the proposed rule and notice as published, the rule as proposed for adoption, any written comments which have been received, and this statement of need and reasonableness to the Attorney General for approval as to their legality and form to the extent that it relates to legality.

These rules shall become effective five working days after publication of a notice of adoption in the State Register.

4. GENERAL STATEMENT OF REASONABLENESS.

In order to adopt administrative rules, an agency must demonstrate that the proposed rules are reasonable. Rulemaking is a process which primarily involves policy decisions. There are many differing policy perspectives and biases which can, therefore, result in many reasonable ways to address a subject covered by administrative rules.

The original rules reflect policy decisions which the Minnesota Department of Health made regarding the Services for Children with Handicaps Program. These rules were written pursuant to Title V of the Social Security Act, U.S.C., title 47, chapter 7, which authorizes the program, and pertinent state statutes which enable the commissioner to promulgate rules. The original rules were previously judged to be reasonable, having been approved through the rulemaking process in 1979.

The proposed amendments generally are procedural rather than substantive in nature. While the original rules reflect policy decisions and procedural choices, these amendments reflect procedural improvements. Other amendments are intended to clarify the original meaning of the rules and are nonsubstantive in nature. Because these amendments will serve to make the Services for Children with Handicaps Program more efficient and make the application process less time-consuming, and because the original rules have previously been determined to be reasonable, amendments to the rules are also reasonable.

Additionally, these amendments are reasonable because they are not unduly burdensome to participants. Also, the commissioner does not exceed the scope of her rulemaking authority as provided by state statute.

5. RULE-BY-RULE JUSTIFICATION.

Part 4705.0100, subp. 3 defines the term "administrative review committee." The previous definition referred to the Division of Community Services. The proper reference is now the Maternal and Child Health Division. Therefore, an amendment is being made in this subpart in order to correct this reference.

Part 4705.0100, subp. 4 defines the term "allowable deductions." The amendment to this subpart increases the allowable travel expense deduction for mileage from \$.17 a mile to \$.27 a mile.

This amendment is in recognition of the increased cost of operating and maintaining an automobile. Increasing the allowable mileage deduction for the purpose of determining an applicant's cost-sharing liability will help to offset the financial burden which is placed upon those applicants who must frequently travel in order to obtain medical and dental treatment.

A rate of \$.27 a mile is commensurate with the amount state professional employees receive for operating their vehicles to conduct official state business. When this subpart was first promulgated, in 1979, \$.17 a mile was commensurate with the amount state professional employees were then receiving for mileage. Because the Department of Employee Relations has already determined what is a reasonable allowable mileage reimbursement rate, and because SCH has relied upon this unit in the past for determining a

reasonable mileage deduction, it is expedient for SCH to use the current rate when updating the rules.

Part 4705.0100, subp. 11 relates to the cost-sharing schedule. The current definition cross references part 4705.0600, subp. 3, which is being repealed. Because this schedule is being repealed, there is no need to include such a cross reference. Therefore, this reference has been deleted.

Part 4705.0100, subp. 27 defines the term "state gross median income." This definition relates to cost-sharing and cost-sharing procedures. State gross median income is used to determine how much a family seeking financial assistance from SCH may be required to share in the cost of treatment services. The amendment is needed to reflect the reality of inflation within the economy and to recognize that determinations of need for monetary assistance should be based on the most current figures of median income rather than those available from a previous year. Since the gross median frequently rises, it is reasonable to expect that the most recent available figures should be used by the commissioner in calculating family cost-shares.

Further, within the past several years, the commissioner has observed that the use of a static median income causes a number of families whose sole source of income is social security or other public programs to cost-share, that is, to pay for a portion of the treatment for those persons eligible for treatment. These families presently need not pay a portion of the costs to qualify for other social service

programs. Thus, a cost-share schedule which is based on outdated median income figures presents a significant financial hardship for low-income families who have a member with a long-term handicapping condition.

The United States Secretary of Health and Human Services is required to annually promulgate state median income figures, pursuant to United States Code, title 42, § 2002 (a)(6), as amended through August 12, 1981. These figures are used by the Minnesota State Department of Human Services as a basis for determining income eligibility and fees for social services. It is reasonable and desirable that the commissioner be consistent with other state programs which use gross median income levels to determine whether applicants must share in the cost of services. Also, the commissioner does not have the capacity nor the resources to independently establish gross state median income figures. Because these figures are already established by a federal source it is appropriate to use them.

Part 4705.0300 establishes criteria which an applicant must meet in order to be eligible for a diagnostic evaluation authorized by SCH. The amendments clarify the intended meaning of this part and do not alter its purpose or application.

Part 4705.0400 establishes criteria which an applicant must meet in order to be eligible for SCH reimbursement to service providers for the cost of treatment services. The amendment to Item B and the repeal of Item C clarify the

intended meaning of these criteria and do not alter its purpose or application.

Part 4705.0500, subp. 4 deals with the SCH application process. This amendment eliminates the need for a cost-sharing agreement which must be signed and returned to the SCH office before an applicant is eligible to have treatment services authorized by SCH.

The cost-sharing agreement caused an unnecessary delay in the application process and as a result, applicants were often unable to receive needed services in a timely fashion. Yet, the agreement served no truly useful or necessary function because it was not a contract; therefore, it did not create rights or remedies for either the state or the participating applicant.

Therefore, the cost-sharing agreement has been eliminated. Eliminating the agreement will reduce the administrative costs associated with the application process and will allow applicants to receive assistance more quickly.

Part 4705.0500, subp. 6 establishes the time period in which an applicant remains eligible for SCH authorization for reimbursement to service providers. The amendment eliminates the reference to a signed cost-sharing agreement. This amendment has been made in order to keep this provision consistent with the rest of the rules. Because the cost-sharing agreement has been replaced by a letter which is sent to SCH applicants explaining their cost-sharing responsibility, the eligibility determination will now be

made at the same point in the application process for all applicants.

Part 4705.0600, subpart 1 relates to applicants who are required to cost-share. The amendment to this subpart will no longer allow those persons who receive Medical Assistance to be automatically exempt from cost-sharing.

Currently, there are families receiving Medical Assistance who are not in the low income category. Medical Assistance has numerous exemptions (see, e.g., part 9500.0810) which permit individuals in higher income categories to receive some Medical Assistance benefits. When SCH initially promulgated its rules, this was not the case. At that time, Medical Assistance was available only for low income persons.

Therefore, Medical Assistance is no longer an acceptable criteria to be used in determining an applicant's exemption from cost-sharing responsibilities. Removing this criteria will not affect those applicants who are truly low income and who still qualify for exemption.

Part 4705.0600, subp. 2 relates to adjusted gross income. This amendment merely corrects an error in citing to the Minnesota Rules. The correct cite is part 4705.0100, subp. 3.

Part 4705.0600, subp. 3 relates to the cost-sharing schedule. This amendment removes the schedule from the bound volumes of the rules, and allows the commissioner to publish an annually updated version in the State Register.

Previous cost-sharing schedules which have been included in the text of the rules are not representative of current median income figures. Using outdated figures to determine an applicant's cost-sharing responsibilities would place an unreasonable burden upon applicants.

By updating the cost-sharing schedule in this timely and efficient manner, SCH is addressing the financial concerns of its participants in the most suitable fashion possible. Also, by publishing the revised schedule in the State Register 30 days prior to the effective date and keeping a copy of the most recent schedule on reference at the Minnesota Department of Health library, interested parties will be provided an adequate opportunity to review any changes in the Cost-sharing Schedule.

Part 4705.0900 establishes limitations on the authorization of reimbursement for treatment services. The amendment to this part allows the SCH medical director to authorize reimbursement for acute care under limited conditions.

Providing an applicant acute care before a medical condition causes irrevocable damage can be a cost saving measure. The costs associated with later treatment could significantly increase if immediate care is not provided. Also, secondary problems developed as a result of an untreated condition, could hamper a child's later physical development.

The possibility of having untreated conditions complicate the delivery of eligible treatment services, thus

creating a greater hardship to the applicant and a greater financial burden for the state, make this type of acute health care desirable.

Part 4705.1400, subp. 2 relates to the payment of service providers. The amendment to this part allows SCH to refer to the most current Medical Assistance Rates Schedule when providing reimbursement for authorized care.

The current rule obligates SCH to use a schedule which was last revised September 7, 1978. This creates several problems. First, the Medical Assistance rates schedule is periodically updated to reflect changes in the cost of dental, medical and hospital care. This means that SCH is using a schedule which Medical Assistance no longer uses. Thus, providers who offer services to Medical Assistance participants and to SCH participants are being reimbursed at different rates for the same types of services. Therefore, there is no incentive for these providers to offer services to SCH if the reimbursement rate for these services is less than Medical Assistance rates. Second, the outdated rates are not an accurate reflection of current dental, medical and hospital care costs.

It is proper for SCH to use the rate schedule which Medical Assistance uses for provider reimbursement. By agreeing to participate in the SCH program, physicians and other health care providers acknowledge the appropriateness of this rate schedule and view it as a consistent and impartial means for SCH to provide reimbursement for

authorized care. Also, the Medical Assistance Rate Schedule is the only such available schedule covering thousands of procedures and categories of care. It would be prohibitively expensive and a waste of resources for the program to independently generate a schedule. Indeed, this complex schedule is an undertaking beyond the capacity of the SCH Program.

Referring to the most current rate schedule ensures that SCH is reimbursing service providers at the same rate at which Medical Assistance reimburses.

Part 4706.1600 provides an illustration for the purpose of explaining how cost-sharing determinations are made. The amendment to this part eliminates this illustration.

The cost-sharing schedule will now be updated on an annual basis and will be published in the State Register. Because the cost-sharing schedule is subject to change, the figures used in the illustration are also subject to change. Therefore, this illustration will be rendered inapplicable.

It is best to remove this illustration from the rules, in order to prevent any confusion which might occur if it were not so removed.