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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38____

June 26, 1991

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10).

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 297-4301.

Sincerely,

Eleanor Weber

Eleanor Weber
Rulemaker

Encl.

The Legislative Commission to
Review Administrative Rules

JUN 28 1991



STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rule Amendments
of the Department of Human Services
Relating to Surveillance and Utilization
Review of Medical Assistance Service
Providers and Recipients, Minnesota Rules,
Part 9505.2165, subpart 2, item A,
subitems (9) and (10)

STATEMENT OF NEED
AND REASONABLENESS

Introduction

Minnesota Rules, parts 9505.0180 and 9505.2160 to 9505.2245, of which part 9505.2165 is one section, were proposed by the Department as amendments to existing rules, parts 9505.1750 to 9505.2150 which govern surveillance and utilization review standards and procedures used by the Department to: (1) monitor compliance with medical assistance program requirements; (2) identify fraud, theft, or abuse by medical assistance recipients or providers; (3) establish administrative and legal sanctions in cases of fraud, theft, or abuse; and (4) investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program.

The proposed amendments came on for hearing February 13, 1991. At the hearing, Mr. Joel Jensen representing Care Providers of Minnesota suggested

amending proposed part 9505.2165, subpart 2, item A, subitem (10) by adding the word "repeatedly" at the beginning of the subitem. During the 20 day comment response period, the Department accepted Mr. Jensen's suggestion to amend subitem (10).

On March 8, 1991 the rulemaking record closed. On page 5, #12 of the April 9, 1991 Report of the Administrative Law Judge, the judge noted that the Department had agreed to add the term "repeated" to (sub)item 10. He wrote that the "change eliminates any possibility that a provider or recipient of MA could suffer adverse action through a single error" See Attachment #1.

Through an oversight, the adopted version of this rule, published at 15 S.R. 2563, incorrectly placed the word "repeatedly" at the beginning of part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10). The proposed technical amendment corrects this oversight.

9505.2165 DEFINITIONS

Subp. 2. Abuse.

Item A. Subitem (9) As explained above, insertion of the word "repeatedly" at the beginning of this subitem rather than at the beginning of subitem (10) was an oversight. Therefore, it is necessary and reasonable to delete the word from this subitem.

Subitem (10) As explained above, during the 20 day comment response period, the Department agreed to amend this subitem by adding the word "repeatedly"

at the beginning of the subitem, but through oversight, the amendment was incorrectly added to subitem (9). Therefore, it is now necessary to amend this subitem. This amendment is reasonable for the reason cited by the Administrative Law Judge in his report at pages 5-6, #12:

Addition of these terms makes the proposed rule's language consistent with the intent behind the abuse provision. The change eliminates any possibility that a provider or recipient of MA could suffer adverse action through a single error

See Attachment #1. Instead, a pattern of repeated failures should determine "abuse."

SMALL BUSINESS CONSIDERATION

This rule amendment will not impact small business costs.

EXPERT WITNESSES

If this rule amendment goes to public hearing, the Department does not plan to solicit outside expert witnesses to testify on its behalf.

Dated: June 21, 1991



NATALIE HAAS STEFFEN
Commissioner