

IN THE MATTER OF THE PROPOSED
AMENDMENT OF DEPARTMENT OF
HUMAN SERVICES RULES RELATING
TO MEDICAL ASSISTANCE OUT-OF-STATE
PROVIDERS, MINNESOTA RULES,
PART 9505.0215

MINNESOTA DEPARTMENT
OF HUMAN SERVICES

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

The above-entitled proposed rule amendments are authorized by Minnesota Statutes, §256B.04, subdivisions 2 (requires the Department to "[m]ake uniform rules, not inconsistent with law, for carrying out" the state medical assistance program); 4 (requires the Department to cooperate with the federal government in order to qualify for federal aid in connection with the medical assistance program); and 12 (requires the Department to "[p]lace limits on the types of services covered by" the medical assistance program).

Minnesota Rules, parts 9505.0170 to 9505.0475 govern the administration of the medical assistance program, establish the services and providers that are eligible to receive medical assistance payments, and establish the conditions a provider must meet to receive payment. The Minnesota medical assistance program is the joint federal-state program that implements the provisions of Title XIX of the Social Security Act by providing for the medical needs of low income or disabled persons and families of dependent children. Title 42, section 431.10 of the Code of Federal Regulations (42 CFR 431.10) requires each state to designate a state agency to supervise the administration of its medical assistance program: The Department of Human Services is Minnesota's designated agency. See Minnesota Statutes, §256B.04, subdivision 1. Additionally, 42 CFR 431.10(b)(2)(ii) requires the Department to make rules that it will follow in administering the state's medical assistance plan. Thus, authority for these proposed rules is found in state and federal law and regulations.

Part 9505.0215, one part of the Department's large medical assistance rule, specifies the circumstances under which medical assistance payments may be made to out-of-state providers. While most Minnesota medical assistance recipients receive medical services from in-state providers, 42 CFR 431.52 provides that in some cases, the state must pay for care given to Minnesota recipients by out-of-state providers. Current rule language does not comply with the federal regulation, and therefore amendment is both necessary and reasonable to comply with 42 CFR 431.52, as well as to clarify those circumstances under which care from out-of-state providers will be covered.

Amendments will: 1) clarify that part 9505.0215 applies only to out-of-state providers who are located outside of Minnesota and outside of the recipient's local trade area; 2) clarify that providers must obtain prior authorization if state law or rules require prior authorization, whether providers provide in-state or out-of-state services; and 3) comply with 42 CFR 431.52.

HISTORY

On July 30, 1990 at 15 *State Register* 311, and again on October 19, 1992 at 17 *State Register* 852, the Department published Notices of Solicitation of Outside Information or Opinions. Because the proposed rule amendments are noncontroversial, the Department has not received public comment to the Notices of Solicitation and has not convened a Rule Advisory Committee. While the vast majority of department rule amendments are promulgated only after the public has seen the proposed amendments in Rule Advisory Committees, it is department practice to forgo Rule Advisory Committees if the proposed amendments are noncontroversial.

SPECIFIC RULE PROVISIONS

The above-entitled rules are affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General.

9505.0215 COVERED SERVICES; OUT-OF-STATE PROVIDERS.

Introductory Paragraph.

The amendments are necessary to clarify that out-of-state providers in local trade areas are considered Minnesota medical assistance providers. In several border communities in Minnesota, local trade areas include cities outside of the state (e.g., Fargo, North Dakota). It is both necessary and reasonable to amend the rule so that it is clear that recipients may receive medical care from providers outside of the state who are nevertheless within the recipient's local trade area.

It is reasonable to delete the word "Minnesota" because it is clear from the definition of "recipient" in part 9505.0175 (the general definition section for parts 9505.0170 to 9505.0475, of which part 9505.0215 is one portion) that the recipient must be a person eligible to receive medical assistance: Part 9505.0175, subpart 41 defines "recipient" as "a person who has been determined by the local agency to be eligible for the medical

assistance program."

The amendment deleting "located outside of Minnesota" and substituting a definition of "out-of-state provider" does not change the substantive content of the rule. The amendment is necessary to clarify that part 9505.0215 applies only to out-of-state providers who are not located in the recipient's local trade area. Part 9505.0215 treats an out-of-state provider the same as an in-state provider if the out-of-state provider is located within the recipient's local trade area. Part 9505.0175, subpart 22 defines "local trade area" as "the geographic area surrounding the person's residence, including portions of states other than Minnesota, which is commonly used by other persons in the same area to obtain similarly necessary goods and services."

The stricken language that stated that the service must meet "one of" the "following" requirements provided for medical assistance payments to be made if the health service met any one of the requirements listed (emphasis added). Current item A lists as one of the requirements that the health service be "within the limitations of parts 9505.0170 to 9505.0475." This language was intended to require that an out-of-state provider be within these limitations and also meet one of the other requirements listed, but because of the way the provision was worded, it inadvertently allowed an out-of-state provider who was within these limitations to be eligible for medical assistance payment without meeting any of the other requirements.

Therefore, it is necessary and reasonable to propose new language to correct this oversight by requiring the provider to meet all of the conditions specified in new items A, B, and C. Items A and B repeat present state requirements, and are included only to clarify that the current requirements apply to out-of-state providers as well as to in-state providers. The conditions listed in item C are those required under 42 CFR 431.52, detailed below.

Item A.

It is reasonable to delete the word "health" because it is clear from the first paragraph that the service referred to is a health service.

It is necessary to delete other language to make the rule "cleaner." The proposed amendment deletes "is within the limitations of parts 9505.0170 to 9505.0475" and states instead that the service must be a "covered service as defined in part 9505.0175, subpart 6." Part 9505.0175, subpart 6 defines "covered services" as "a health service eligible for medical assistance payment under parts 9505.0170 to 9505.0475" (emphasis added). Therefore, this amendment does not change the substantive content of the rule; the only purpose of the proposed

revision is to make the rule "cleaner" and clearer. Making the rule "cleaner" and clearer is reasonable because doing so helps providers and recipients understand more fully what services are covered under the medical assistance program.

Item B.

New item B states that a provider must obtain prior authorization if Minnesota statutes or rules (rules governing medical assistance payments and conditions for medical assistance and general assistance medical care reimbursement) require prior authorization. This item does not change existing departmental administrative requirements, and the item is necessary to inform recipients and providers that current department requirements apply to out-of-state services as well as to in-state services. Adding this item in part 9505.0215 is reasonable, as this part covers out-of-state providers.

Item C.

Item C is necessary in order to comply with the requirements of 42 CFR 431.52(b), which requires that Minnesota pay for services furnished by out-of-state providers to the same extent that it would pay for services provided by in-state providers if the services are provided to a Minnesota resident and certain conditions (subitems (1) to (3)) are met.

Subitem (1). In order to comply with 42 CFR 431.52(b)(3), it is reasonable to add language that the "department determines, on the basis of medical advice from a consultant as defined in part 9505.5005, subpart 3," that the service is not available in Minnesota or the recipient's local trade area. This language does not change current department practice or procedure. Part 9505.5005, subpart 3 defines a consultant as a person who is a professional in an area of health care or medical service; is employed by or under contract with the Department; and who advises the Department on matters relating to health services.

Deleting the words "medically necessary" is reasonable because part 9505.0210, item A, subitem (1) (covering general requirements of covered services) already provides that a health service is not eligible for medical assistance payment unless the service is medically necessary.

The requirement for prior authorization is deleted because new item B covers prior authorization. The purpose of the prior authorization placement in item B is to make the requirement clearer in the context of the other proposed changes to part 9505.0215.

Subitem (2). This subitem is the same as current item D and is reasonable in order to comply with 42 CFR 431.52(b)(1). The

purpose of the new placement is to clarify the requirement in the context of the other proposed revisions to part 9505.0215.

Subitem (3). This provision allows out-of-state coverage when recipients' health would be endangered if they were required to return to Minnesota and is reasonable to comply with the language of 42 CFR 431.52(b)(2). The revision does not change current department practice or procedure.

The language referring to a person's health being "endangered" follows 42 CFR 431.52(b)(2), a less restrictive standard than that of subitem (2), which refers to a situation where the service is provided "in response to an emergency." Part 9505.0175, subpart 11 defines emergency as "a condition including labor and delivery that if not immediately diagnosed and treated could cause a person serious physical or mental disability, continuation of severe pain, or death." The endangerment standard applies when recipients require prompt treatment to prevent a medical condition from significantly deteriorating, even though the criteria for an emergency are not met.

Deleted Item C. Current item C states that a health service provided to a recipient by a provider located out-state is eligible for medical assistance payment if the service is provided to a person who is considered a medical assistance recipient while residing out-of-state as an adopted child receiving a state adoption subsidy or Title IV-E funding or a child in foster care paid by Title IV-E. Certainly, this is a garbled way of simply stating that, under certain circumstances, a health service provided to a recipient by an out-of-state provider will receive medical assistance payment -- exactly the wording of the introductory paragraph.

Originally, item C was included because 42 CFR 431.52 required states to provide services to: 1) foster children who were placed in foster homes outside of Minnesota; and 2) children whose adoption was subsidized by the state or the federal government. 42 CFR 431.52 no longer has such a requirement, so it is no longer necessary to single out these recipients.

Deleted Item D.

Current item D is deleted as its content is now found in proposed new item C, subitem (2). The purpose of the new placement is to make the requirement more clear in the context of the other revisions to part 9505.0215.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, §14.115, subdivision 2 requires the Department to consider specific methods for reducing the impact

of the proposed amendments on small businesses. However, Minnesota Statutes, §14.115, subdivision 7, clause (3) provides that this rulemaking procedure is excepted from this requirement because it covers service businesses regulated by government bodies, for standards and costs, such as "providers of medical care" (emphasis added).

Pursuant to Minnesota Statutes, §14.115, subdivision 4, small businesses must be given the opportunity to participate in the rulemaking process. The Department will comply with this requirement by following Minnesota Statutes, §14.115, subdivision 4, paragraph (b): Publishing in the *State Register* the notice of the proposed rulemaking.

FISCAL COSTS ASSOCIATED WITH PROPOSED LANGUAGE

Because the Department's Fiscal Note anticipates that the proposed amendments will not require local public bodies to expend public money in either of the two years immediately following adoption of the rule amendments, Minnesota Statutes, §14.11, subdivision 1 is not applicable.

Further, because the proposed amendments do not establish or modify fees, Minnesota Statutes, §16A.128 is not applicable.

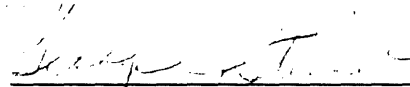
AGRICULTURAL LANDS

Because the proposed rule language does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, §14.11, subdivision 2 is not applicable.

EXPERT WITNESSES

If a public hearing on this rule is necessary, the Department does not intend to have outside expert witnesses testify on its behalf.

Dated: 2/25/74



NATALIE HAAS STEFFEN
Commissioner