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State of Minnesota
Department of Human Services

Human Services Building
444 Lafayette Road N
St. Paul, Minnesota 55155

August 24, 1994

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 Eyeglass Services under Medical Assistance, Minnesota Rules, part 9505.0277.

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
Rules Division

Encl.



STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption
of Rules of the State Department of
Human Services Governing Eyeglass
Services under Medical Assistance
Minnesota Rules, Part 9505.0277

DUAL NOTICE:

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC
HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING,
AND
NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING
ARE RECEIVED

Introduction. The Minnesota Department of Human Services intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule within 30 days or by September 28, 1994 a public hearing will be held on Thursday, October 13, 1994. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after September 29, 1994 and before October 13, 1994.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Eleanor E. Weber
Minnesota Department of Human Services
Rules and Bulletins Section
444 Lafayette Road
Saint Paul, Minnesota 55155-3816
(612) 297-4302
Fax (612) 297-3173

Subject of Rule and Statutory Authority. The rule is about the criteria to receive medical assistance payment as a provider of eyeglass services to persons eligible for medical assistance. The proposed rule will: 1. define terms used in the provision of eyeglass services; 2. specify persons eligible to provide eyeglass services; 3. establish criteria for the frequency of vision examinations and the provision and replacement of eyeglasses; 4. specify eyeglass services that are not covered by medical assistance. The statutory authority to adopt the rule is in Minnesota Statutes, sections 256B.04, subdivisions 4 and 12, and 256B.0625, subdivision 12.

Copy of the Rule. A free copy of this rule is available upon request from

the agency contact person listed above. A copy of the proposed rule may also be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Comments. You have until 4:30 p.m. on September 28, 1994 to submit written comment in support of or in opposition to the proposed rule or any part of subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on September 28, 1994. Your written request for a public hearing must include your name, address and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as printed in the State Register and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for October 13, 1994 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Eleanor E. Weber at (612) 297-4301 after September 28, 1994 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on October 13, 1994, Room 116A, Department of Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155 beginning at 9:00 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Steve Mihalchick. Judge Mihalchick can be reached at the Office of Administrative Hearings, 100 Washington Square, #1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138; telephone (612) 349-2544.

Hearing Procedure. If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Governing Eyeglass
Services Under Medical Assistance

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for
publication in the State Register


Paul M. Marinae
Deputy Revisor

- 1 B. Dispensing services related to noncovered services.
- 2 C. Fashion tints, photo-chromatic lenses, polarized
3 lenses, transition lenses, and sunglasses.
- 4 D. Protective coating for plastic lenses.
- 5 E. Edge and antireflective coating of lenses.
- 6 F. Industrial or sport eyeglasses unless they are the
7 recipient's only pair and are necessary for vision correction.
- 8 G. Eyeglasses, lenses, or frames that are not
9 medically necessary.
- 10 H. Invisible bifocals or progressive bifocals.
- 11 I. An eyeglass service for which a required prior
12 authorization was not obtained.
- 13 J. Replacement of lenses or frames due to the
14 provider's error in prescribing, frame selection, or
15 measurement. The provider making the error is responsible for
16 bearing the cost of correcting the error.
- 17 K. Services or materials that are determined to be
18 experimental or nonclinically proven by prevailing community
19 standards or customary practice.
- 20 L. Repair of eyeglasses during the warranty period if
21 the repair is covered by warranty.
- 22 M. Purchase of eyeglasses or lenses not covered by a
23 contract obtained through the competitive bidding process under
24 part 9505.0200.
- 25 N. Backup eyeglasses.
- 26 REPEALER. Minnesota Rules, part 9505.0405, is repealed.

this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearing no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Small Business Considerations. In preparing these proposed amendments, the Department considered the requirements of Minnesota Statutes, section 14.115 but determined that these rules, as was found in the case of previously adopted medical assistance rules, are exempt from these requirements according to the exemption given in section 14.115, subdivision 7, clauses (2) and (3).

Expenditure of Public Money by Local Public Bodies. A copy of the fiscal note is available from the agency contact person at the address and telephone number listed above. The Department estimates that the proposed rule will not result in additional state and local costs. The Department also estimated that there will be a savings due to a limit on the number of intermediate vision examination that a recipient may receive in a two-year period.

Impact on Agriculture Lands. The Department has determined in the review required under Minnesota Statutes, section 14.11, subdivision 2 that the proposed amendments will have no impact on agricultural lands.

Lobbyist Registration. Minnesota Statutes, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at 1st Floor, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155; telephone (612) 296-5148.

Adoption Procedure if No Hearing. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the Attorney General or be notified of the Attorney General's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Eleanor Weber at the address listed above.

Adoption Procedure After the Hearing. If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency

may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Date: 7/25, 1994


for MARIA R. GOMEZ
Commissioner

1 Department of Human Services

2

3 Proposed Permanent Rules Governing Eyeglass Services Under

4 Medical Assistance

5

6 Rules as Proposed (all new material)

7 9505.0277 EYEGLASS SERVICES.

8 Subpart 1. Definitions. The following terms used in this
9 part have the meanings given them.

10 A. "Comprehensive vision examination" means a
11 complete evaluation of the visual system.

12 B. "Dispensing services" means the technical services
13 necessary for the design, fitting, and maintenance of eyeglasses
14 as prescribed by an optometrist or ophthalmologist.

15 C. "Eyeglass services" means comprehensive and
16 intermediate vision examinations provided by and within the
17 scope of practice of a provider who is an optometrist or
18 ophthalmologist and the eyeglasses provided by an optician,
19 optometrist, or ophthalmologist.

20 D. "Eyeglasses" means a pair of lenses mounted in a
21 frame and other aids to vision prescribed by an optometrist or
22 ophthalmologist.

23 E. "Intermediate vision examination" means an
24 evaluation of a specific visual problem.

25 F. "Medically necessary eyeglasses" means that:

26 (1) for initial eyeglasses, there is a correction
27 of .50 diopters or greater in either sphere or cylinder power in
28 either eye; or

29 (2) for replacement eyeglasses, there is a change
30 in correction of .50 diopters or greater in either sphere or
31 cylinder power in either eye, or a shift in axis of greater than
32 ten degrees in either eye. For purposes of this item, "diopter"
33 means the unit of refracting power of the lens.

34 G. "Ophthalmologist" means a physician who has
35 academic training in ophthalmology beyond the requirements for



1 licensure under Minnesota Statutes, chapter 147, and experience
2 in the treatment and diagnosis of diseases of the eye.

3 H. "Optician" means a supplier of eyeglasses to a
4 recipient as prescribed by the recipient's optometrist or
5 ophthalmologist.

6 I. "Optometrist" means a person licensed under
7 Minnesota Statutes, sections 148.52 to 148.62.

8 Subp. 2. **Covered eyeglass services.** To be eligible for
9 medical assistance payment, eyeglass services must meet the
10 requirements of items A to C.

11 A. One comprehensive vision examination in a 24-month
12 period.

13 B. One intermediate vision examination in a 12-month
14 period.

15 C. One pair of medically necessary eyeglasses in a
16 24-month period except that a recipient shall receive:

17 (1) one identical replacement within the 24-month
18 period if the eyeglasses were misplaced, stolen, or irreparably
19 damaged; or

20 (2) a new pair of eyeglasses due to a change in
21 the recipient's head size, a change in vision after a
22 comprehensive or intermediate vision examination shows that a
23 change in eyeglasses is medically necessary, or an allergic
24 reaction to the eyeglass frame material. For purposes of this
25 item, "change in eyeglasses" means a change in prescription.

26 Subp. 3. **Excluded services.** The following eyeglass
27 services are not eligible for payment under the medical
28 assistance program.

29 A. Services provided for cosmetic reasons. Examples
30 are:

31 (1) contact lenses prescribed for reasons other
32 than aphakia, keratoconus, aniseikonia, marked acuity
33 improvement over correction with eyeglasses, or therapeutic
34 application; and

35 (2) replacement of lenses or frames due to the
36 recipient's personal preference for a change of style or color.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment
of Department of Human Services Rules
Governing Eyeglass Services, Minnesota
Rule, part 9505.0277 (formerly part 9505.0405,
Vision Services)

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

Proposed Minnesota Rules, part 9505.0277 and its predecessor, present part 9505.0405, establish the standards of eligibility to receive payment as an eyeglass provider in the medical assistance program. Part 9505.0405 was adopted by the Department of Human Services (DHS) in November 1987. Proposed part 9505.0277 revises and clarifies the standards of part 9505.0405. The adoption of part 9505.0277 will repeal part 9505.0405.

DHS believes that the title, eyeglass services, better describes the rule content which sets medical assistance standards for visual examinations and the prescribing and dispensing of eyeglasses based on the findings of the visual examinations. Because of the new title, eyeglass services, the Department proposes renumbering the part as part 9505.0277 so that it maintains the alphabetical organization of services in what is informally known as Department of Human Services Rule 47, provider services under medical assistance. Nevertheless, many of the provisions of part 9505.0277 continue without change standards set under part 9505.0405. This statement of need and reasonableness will identify such rule provisions but will discuss only new or revised provisions.

The commissioner's authority to regulate payment to eyeglass vendors from medical assistance funds is found in Minnesota Statutes, sections 256B.04, subdivisions 4 and 12, and 256B.0625, subdivision 12.

BACKGROUND

The proposed amendments were developed through meetings with representatives of the provider industries and members of DHS staff. Minnesota, as do most other states, seeks federal funds available under Title XIX of the Social Security Act, Medicaid, to help make medical assistance payments. Therefore, it is important that the state comply with federal statutes and regulations governing Medicaid reimbursement. Parts of the rule revision thus affect changes that are necessary to remain consistent with federal law. Under Minnesota Statutes, section 256B.04, subdivision 4, the department is required to:

Cooperate with the federal department of health, education, and welfare in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program, including the making

of such reports, in such form and containing such information as the department of health, education, and welfare may, from time to time, require, and comply with such provisions as such department may, from time to time, find necessary to assure the correctness and verifications of such reports.

It is, therefore, clear that Minnesota must implement its eyeglass services program in the manner mandated by Medicaid in order to access federal aid dollars.

In addition, for the sake of its own budget and compliance with state law, Minnesota must operate the program efficiently, without overlap or duplication of services. See Minnesota Statutes, section 256B.04, subdivision 15 (1) which requires the state agency to:

Establish on a statewide basis a new program to safeguard against unnecessary or inappropriate hospital admissions or lengths of stay, and against underutilization of services in prepaid health plans, long-term care facilities or any health care delivery system subject to a fixed rate reimbursement. In implementing the program, the state agency shall utilize both prepayment and postpayment review systems to determine if utilization is reasonable and necessary. The determination of whether services are reasonable and necessary shall be made by the commissioner in consultation with a professional services advisory group or health care consultant appointed by the commissioner.

The revision of part 9505.0277 was aimed at these goals. The following sections detail each change and the need for and reasonableness of the change.

SMALL BUSINESS CONSIDERATION IN RULEMAKING

Under Minnesota Statutes, section 14.115, subdivision 7, clause (3), the small business consideration in rulemaking does not apply to service businesses, such as providers of medical care, regulated by government bodies for standards and costs. The proposed amendments here are regulated by the government for standards and costs. Therefore, these requirements under Minnesota Statutes, section 14.115 do not apply to this rule.

IMPACT ON AGRICULTURAL LANDS

Minnesota Statutes, section 14.11, subdivision 2, requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land in this state to comply with additional statutory requirements. The amendments to the rule governing payment rates for services to persons needing eyeglasses have no impact on agricultural land. Therefore, the additional statutory provisions do not apply.

PUBLIC PARTICIPATION

A Notice of Solicitation of Outside Information or Opinion was published in

the State Register on Monday, July 30, 1990, on Monday, October 19, 1992, and, again, on Monday, October 4, 1993. The Department established an advisory committee composed of members of the affected businesses, county representatives, and other interested parties. A list of the advisory committee members is attached.

RULE AMENDMENTS

Part 9505.0277, subpart 1, Definitions

Item A. This item amends present rule, part 9505.0405, subpart 1, item A. An amendment is necessary because the term "complete vision examination" is no longer the prevailing term used by vision care providers to describe a complete evaluation of the visual system. According to the Physicians' Current Procedural Terminology Guide published in 1993 by the American Medical Association, the current term to describe such services is comprehensive ophthalmological services. The definition was recommended by the optometrist on the Advisory Committee and is consistent with the definition of comprehensive ophthalmological services in the Physicians' Current Procedural Terminology. Thus, the definition is reasonable because it is consistent with current standards of practice accepted by the medical profession.

Item B. (Formerly, part 9505.0405, subpart 1, item B.) It is necessary to amend this item to clarify that a "physician skilled in diseases of the eye" means an ophthalmologist. Under federal regulations in Title 42, Code of Federal Regulations, section 440.120, paragraph (d), (42 CFR 440.120(d)), eyeglasses prescribed by a "physician skilled in diseases of the eye" are eligible for medical assistance payment. However, the regulations do not define such a practitioner. Minnesota Statutes, chapter 147, sets the scope of practice of a physician but does not define or set requirements for an area of specialized practice such as diseases of the eye. However, professionally accepted standards of current medical practice limit treatment of diseases related to the health of the eye to a physician who has had academic and supervised practical training in ophthalmology in addition to that required for licensure as a physician. The definition is reasonable because it is consistent with current standards of practice accepted by the medical profession.

Item C. This item amends the present item G of subpart 1 (vision care services); it is relettered to maintain the alphabetical arrangement of definitions. It is necessary to amend this item to bring it into consistency with the terms used in federal law. The federal Medicaid law does not use the term "vision care" in the categories of Medicaid services listed in the Social Security Act and the federal regulations. Under Title 42, United States Code, section 1396d(a)(12) and 42 CFR 440.120(d), this category of service is described as the furnishing of eyeglasses.

Item D. Formerly item C, this item is being amended to make it consistent with the definition of eyeglasses under the federal regulations in 42 C.F.R.440.120(d). The addition of the term "ophthalmologist" and the deletion of the term "physician skilled in diagnosing and treating diseases of the eye"

are necessary in order to clarify that the deleted term, as noted in item B above, means an ophthalmologist.

Item E. This new term, "intermediate vision examination", is necessary because it is recognized as the prevailing term used by providers to describe an evaluation of a specific visual problem. According to the Physicians' Current Procedural Terminology Guide published in 1993 by the American Medical Association, the term to describe such services is intermediate ophthalmological services. The definition was recommended by the optometrist on the Advisory Committee and is consistent with the definition of intermediate ophthalmological services in the Physicians' Current Procedural Terminology. Thus, the definition is reasonable because it is consistent with current standards of practice accepted by the medical profession.

Item F. This item is necessary to set a payment standard. It is medically necessary to provide eyeglasses to those clients who meet this standard. A survey of 13 state Medicaid programs shows that 11 of the 13 states currently use a "diopter" standard. The Advisory Committee agreed on the need to set a standard in the rules and indicated that the use of a ".50 diopter" standard is consistent with accepted professional practice. The eligibility for eyeglasses for a client who meets this standard is consistent with 42 C.F.R. 440.230(d) and Minnesota Statutes, section 256B.04, subdivisions 12 and 15. In addition, it is consistent with 42 CFR 440.230(b) in that the purpose of the subpart is to provide eyeglasses to every client who meets this standard.

It is also necessary to define the term "diopter". The definition was recommended by the ophthalmologist on the Advisory Committee; it is consistent with the definition of "diopter" in the Illustrated Stedman's Medical Dictionary, 24th Ed., page 399.

Item G. Item F of the present rule defines a "physician skilled in the diseases of the eye." Proposed item G replaces the phrase with the term ophthalmologist, who is a physician who has experience in the treatment and diagnosis of diseases of the eye. Under federal regulations in 42 C.F.R. 440.120(d), eyeglasses prescribed by a "physician skilled in diseases of the eye" are eligible for medical assistance payment. However, the regulations do not define such a practitioner. Minnesota Statutes, chapter 147, sets the scope of practice of a physician but does not define or set requirements for an area of specialized practice such as diseases of the eye. However, professionally accepted standards of current medical practice limit treatment of diseases related to the health of the eye to a physician who has had academic and supervised practical training in ophthalmology in addition to that required for licensure as a physician. The definition is reasonable because it is consistent with current standards of practice accepted by the medical profession.

Item H. Item D of the present rule defines the term optician. Proposed item H amends the item to clarify that ophthalmologist is what is meant by the deleted reference to a "medical doctor".

Item I. A definition of the term optometrist is necessary to clarify its

meaning. The definition is reasonable as it is consistent with the state laws which set the scope of licensed optometric practice.

Part 9505.0277, subpart 2, Covered eyeglass services

Item A. The limit of one examination in a 24-month period remains unchanged. It is necessary to amend this item to replace the outmoded term "complete" with the new term "comprehensive", as discussed above in the SNR of part 9505.0405, subpart 1, item A. This item is being revised to remove the prior authorization required for an additional examination within the 24 month period. Under proposed item B, a recipient who is experiencing visual problems may have one intermediate vision examination in a 12 month period. (See the definition in subpart 1, item E.) Thus, prior authorization of an intermediate eyeglass service will not be necessary for a recipient who is experiencing visual problems during the 24-month interval between comprehensive visual examinations. Additionally, it is no longer necessary to place prior authorization requirements in rule as Minnesota Statutes, section 256B.0625, subdivision 25, authorizes the Commissioner of Human Services, (hereafter, commissioner), to publish a list of services that require prior authorization in the State Register. (This statute was enacted by Laws of 1987, after the promulgation of the prior authorization provisions of the current rules.) Thus, it is reasonable to remove the prior authorization requirement from these rules.

Item B. Pursuant to Minnesota Statutes, section 256B.04, subdivision 12, a limit on the number of intermediate vision examinations is necessary to control medical assistance expenditures. The Advisory Committee agreed to a limit of one intermediate vision examination in a 12-month period. The Minnesota Medical Association (MMA) also has taken the position that it is appropriate to impose coverage limitations on vision examinations. In a 1991 report by its Medical Benefits Task Force, the MMA recommended placing limitations on the number of vision examinations that a person can receive. The report of the task force is published in the March 1991 edition of Minnesota Medicine under the title "What is Basic Medical Care?".

The limitation is reasonable, because data studied by the Department show that of a total of 26,018 people who received intermediate vision examinations in a two-year period (between July 1, 1990 and June 30, 1992), 23,869 (approximately 92%) needed only one intermediate vision examination, 1,499 (approximately 6%) needed two examinations and 650 (approximately 2%) received three or more examinations in this two-year period.

Thus, this rule provision would have served 98% of the MA population that received intermediate examinations. In so doing, it complies with 42 CFR 440.230(b), which requires each service to be sufficient in amount, duration and scope to reasonably achieve its purpose. The courts have held that a service is adequate in amount, duration, and scope if it adequately meets the needs of the substantial majority of individuals eligible for Medicaid to pay for that service. The federal courts, including the United States Supreme Court, have upheld reductions in coverage in cases in which the state Medicaid agency showed that the needs of anywhere from 88% to 96.1% of the recipients

were met by the coverage provisions. The cases are:

*Alexander v. Choate, 469 U.S. 287, 303 (1985) (noting that 14-day limitation on annual inpatient hospital days would fully serve 95% of handicapped individuals eligible for state Medicaid program)

*Charleston Memorial Hospital v. Conrad, 693 F.2d 324, 330 (4th Cir. 1982) (upholding reduction in coverage to 12 inpatient days as meeting the needs of 88% of Medicaid population)

*Curtis v. Taylor, 625 F.2d 645, 657 (5th Cir. 1920), modified, 648 F.2d 946 (5th Cir.) (upholding reductions in coverage of physician visits to three per month where the needs of 96.1% of the medical population were met by the coverage)

*Virginia Hospital Association v. Kenley, 427 F. Supp. 781, 785 (E.D. Va. 1977) (holding that limitations on inpatient hospital coverage to 21 days did not violate federal law on grounds that 92% of all hospitalized Medicaid patients are discharged with a 21-day time period)

In addition, Administrative Law Judge Steve M. Mihalchick, in a Minnesota rules proceedings decision dated January 14, 1993, (Docket No. 69-1800-7003-1), upheld a proposed limitation on hearing aids in a case in which the Department showed that the reduction in coverage would meet the needs of 99.8% of the medical assistance population.

A prior authorization requirement is not continued in proposed item B for the reasons discussed under item A above.

Item C. Proposed item C revises present item C. Pursuant to Minnesota Statutes, section 256B.04, subdivision 12, a limit on the number of eyeglasses is necessary to control medical assistance expenditures. Moreover, a recipient has a responsibility to care for equipment purchased with public monies through medical assistance for his or her individual use. Thus, the item is reasonable as it safeguards against unnecessary services, as required under Minnesota Statutes, section 256B.04, subdivision 15.

The Advisory Committee agreed to a limit of one identical replacement of eyeglasses in a 24 month period if the eyeglasses were misplaced, stolen or irreparably damaged. The Minnesota Medical Association (MMA) also has taken the position that it is appropriate to impose coverage limitations on eyeglasses. In a 1991 report by its Medical Benefits Task Force, the MMA recommended placing limitations on the number of eyeglasses that a person can receive within a specific period. The report of the task force is published in the March 1991 edition of the Minnesota Medicine magazine under the title "What is Basic Medical Care?".

The limitation is reasonable, because data studied by the Department show that of a total of 112,722 people who received eyeglasses through MA in a two-year period (between July 1, 1990 and June 30, 1992), 109,340 (approximately 97%) needed only one pair of glasses during this period, 3,137 (approximately 2.9%)

needed one pair of replacement eyeglasses and only a small number of people--164 (.1%)--received two or more replacement eyeglasses. This rule provision thus would have served 99.9% of the MA population that received eyeglasses. In so doing, it complies with 42 CFR 440.230(b), which requires each service to be sufficient in amount, duration and scope to reasonably achieve its purpose. As noted in the discussion of item B above, the federal courts and an administrative law judge have upheld reductions in coverage in cases in which the state Medicaid agency showed that the needs of anywhere from 88% to 99.9% of the recipients were met by the coverage.

This item also is necessary to set standards for when a recipient can obtain a new pair of glasses within the 24 month limitation period. The Advisory Committee agreed on the need to set standards in the rules and indicated that the use of the standards in item C is consistent with accepted professional practice.

Providing for a change in eyeglasses based on medical necessity is reasonable as it is consistent with the criterion of medical necessity set in Minnesota Statutes, section 256B.04, subdivision 15. The determination of medical necessity is part of a comprehensive or intermediate vision examination. The medical necessity standard is discussed above in subpart 1, item F.

Proposed subpart 2 continues the exception allowed for replacement of an identical pair of eyeglasses or of an identical lens in the eyeglasses if the replacement is necessary because the eyeglasses were misplaced, stolen or irreparably damaged [subitem (1)]. Subitem (2) provides three additional circumstances in which a recipient may receive a new pair of medical medically necessary eyeglasses. The circumstances are situations beyond the control of the recipient. If a child's head grows during a growth spurt, the child may need a different size of eyeglasses and eyeglass frames. Because one purpose of a comprehensive or intermediate visual examination is to determine whether eyeglasses are medically necessary, it is reasonable to allow the person a new pair shown to be medically necessary. A person experiencing a documented allergic reaction to the material in his or her eyeglass frames needs to have frames that do not cause such a reaction.

A definition of the term "change in eyeglasses" is necessary to set a standard and avoid confusion. The definition is reasonable as it is consistent with accepted professional standards as recommended by the advisory committee.

A prior authorization requirement is not continued in proposed item C for the reasons discussed under item A above.

Part 9505.0277, subpart 3, Excluded services

Listing the services that are not covered informs affected persons and, thereby, reduces confusion and misunderstanding. This subpart complies with 42 CFR 440.230(d), which allows the department to place appropriate limits on a service based on "medical necessity", and with Minnesota Statutes, section 256B.04, subdivisions 12, which requires the department to place limits on the types of services covered by medical assistance, and 15, which requires the

department to safeguard against the unnecessary and inappropriate use of medical assistance services.

Proposed subpart 3 continues without change some of the items of the present rule in part 9505.0405, subpart 4, revises others, and adds three. The items continuing without change are items A and B, D to F, H (formerly item I), J and K (formerly K and L.) This SNR will not discuss the items being continued without change.

The amendment of item I, formerly item J, of proposed subpart 3 is a technical amendment that conforms its language to the revised service title, eyeglass service.

Item C. The Advisory Committee agreed that these services should be excluded from coverage because they do not meet the standard of medical necessity. The exclusion of these services also is consistent with the past practice of the department.

Item G. It is necessary to disallow medical assistance payment for eyeglasses, lenses or frames that are not medically necessary in order to comply with 42 CFR 440.230(d) and with Minnesota Statutes, section 256B.04, subdivision 15.

Item I. This item remains substantively as set forth in present part 9505.0405, subpart 4, item J. The change replaces the term "vision care service" by the term used throughout proposed part 9505.0277, "eyeglass service".

Items L to N are additional items.

Item L. It is necessary to require that repairs to eyeglasses covered by warranty under the volume purchase contract or a warranty from an eyeglass provider are not eligible for medical assistance. The cost of the warranty is part of the purchase price. Therefore, it is reasonable that if eyeglasses are already covered by a warranty, the state should not pay for repairs as such payment would be a duplicate payment.

Item M. Pursuant to part 9505.0200, the state follows the terms of the contracts obtained through the medical assistance competitive bidding process. It is necessary, then, to provide that purchase of non-contract eyeglasses or lenses will not receive medical assistance payment. This is reasonable as it is consistent with Minnesota Statutes, section 256B.04, subdivision 14 which permits the commissioner to provide eyeglasses using volume purchase through competitive bidding.

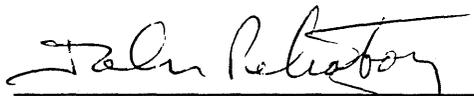
Item N. This provision is reasonable because it safeguards against purchases of a second or back-up pair of eyeglasses for recipients who have already received eyeglasses. Two pairs of intact eyeglasses with the same correction are not a necessity and, thus, would be a duplication of services. Provision has been made for recipients to get additional eyeglasses in case of need, i.e., a change in the correction needed, loss or breakage of the glasses, an

allergy to the frames, or a sudden growth spurt. Therefore, a second pair of glasses, in the absence of any of the cases of need provided for, is a duplication of service. The Advisory Committee agreed on the need to exclude back-up eyeglasses. This exclusion is consistent with accepted professional practice. It also is consistent with part 9505.0310, subpart 4, item C which excludes from medical assistance coverage medical equipment that will serve the same purpose as equipment already in use by a recipient. See Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against unnecessary or inappropriate use of medical services.

EXPERT WITNESSES

The department will not present expert witnesses other than department staff members to testify on behalf of the department concerning the proposed rule amendments.

July 25, 1994



MARIA R. GOMEZ, Commissioner
Department of Human Services

