



Protecting, maintaining and improving the health of all Minnesotans

December 1, 2010

Governor Tim Pawlenty

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons
Revisor of Statutes

Policy and Funding Committees and Divisions with
Jurisdiction over the Minnesota Department of Health

[A complete list of addressees is at the end of the letter.]

Subject: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by Minnesota Statutes, Section 14.05, Subdivision 5.

Minnesota Statutes, section 14.05, subdivision 5, states:

By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.

We have identified that the Minnesota Department of Health (MDH) has obsolete rules in Minnesota Rules, Chapter 4740, which governs accrediting environmental laboratories. In 2009 the Legislature amended Minnesota Statutes, sections 144.98 and .99, requiring the commissioner to accredit labs according to national laboratory standards and charging the fees stated in the amended statute. Consequently, the following subparts are duplicative or obsolete for the reasons stated:

2010 (1) 4740.2010, subpart 39 — “Method detection limit” or “MDL” are defined terms that are no longer used in Minnesota Rules 4740.2050, subpart 1 but are defined in statutes elsewhere.

4740.2050, subpart 1, item C with the phrase beginning “The laboratory must supply...”, — MDH is converting the lab certification program’s application to an online form using an electronic signature so this item is superfluous.

4740.2050, subpart 1, item D (1) to (2), — these requirements are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 1, item D (3) to (6) and item E, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.6.

4740.2050, subpart 2, item C with the phrase beginning “With each change in location...”, — the information required here is now included in laboratory documentation required with application under Minnesota Statutes, section 144.98.

4740.2050, subpart 3, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.3a(b).

4740.2050, subpart 7, item B, — the required items are listed in national standards and adopted in Minnesota Statutes, section 144.98.

4740.2050, subpart 7, item D, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.7.

4740.2050, subpart 12, item A with the phrase beginning “Fees include the on-site...”, — these fees and their frequency of payment are requirements that are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 12, item C, — these requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 12, item F, remove the phrase “...except the fee for out-of-state inspection under subpart 16, item D”., — requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 12, item F, remove the last sentence beginning “Only fixed-base laboratories located within...”, — requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 16, item A remove the phrase "..., subdivision 3.", — this change reflects the reference change made in Minnesota Statutes, section 144.98.

4740.2050, subpart 16, item C remove the phrase "..., subdivision 3.", — this change reflects the reference change made in Minnesota Statutes, section 144.99.

4740.2050, subpart 16, item D, — current rule language contradicts Minnesota Statutes, section 144.98.

4740.2060, subpart 2, item C; subpart 3, item C; subpart 4, item C; and subpart 5, item C remove the phrase "...as required under part 4740.2050, subpart 16, item C", — repeal of a prior reference in this rule requires repeal of the references here.

4740.2065, subpart 8, — required items listed in national standard (adopted in Minnesota Statutes, section 144.98)

4740.2070, subpart 2; subpart 3; subparts 5 to 6; and subpart 7, items A, B and D, — the required items are now listed in Minnesota Statutes, section 144.98, eliminating the need for these references.

4740.2070, subpart 8, — the required items here are now listed in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2070, subpart 11, — the required items here are now listed in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2087, subpart 2, items A and C, — this rule language contradicts requirement in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2089, item C, — these required items are listed in the national standard (adopted in Minnesota Statutes, section 144.98).

4740.2091, subpart 3, item E, — these required items are listed in the national standard (adopted Minnesota Statutes, section 144.98).

4740.2100, subpart 4, item A, remove the last two sentences, — not included in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 5, item B remove "...before sample preparation or extraction.", — not included in national standard (adopted in Minnesota Statutes, section 144.98).

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4740.2100, subpart 8, item C, remove the phrase "The percent recovery of the standard must fall within plus or minus 40 percent of the true value." and remove subpart 8, item D, — current language contradicts items required in the national standard and some items that are not included in national standard (adopted in Minnesota Statutes, section 144.98)

2010 4740.2100, subpart 9, item A, — the national standard includes a broader list of technologies affected by selectivity and consequently this item is out of date.

MDH plans to repeal these rule subparts, and any related subparts inadvertently overlooked, in 2011 using the expedited process for repealing obsolete rules under Minn. Stat. § 14.3895.

In the last three years' reports, we identified the following subparts of MDH rules as being obsolete, unnecessary, or duplicative:

2006 (1) Minnesota Rules 4626.2015, subparts 3(c) and 6(b) — Certified Food Manager certification fees are obsolete and duplicative because Minn. Stat. § 157.16 imposes different fees that supersede the rule.

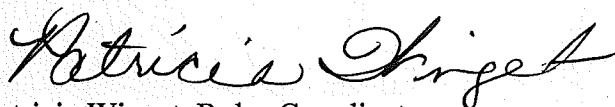
2009 (1) 4668.0012 Subparts 3A (4) 4 D — Class E licenses for assisted living programs are obsolete and duplicative because Minn. Stat. § 144G.01, et seq., established a new regulatory scheme for assisted living establishments. Consequently, Class E licenses no longer exist.

MDH is currently repealing these previously identified obsolete rules using the expedited process for repealing obsolete rules under Minn. Stat. § 14.3895. The sixty-day comment period will end on February 18, 2011.

If you have any questions regarding this report, please contact me at:

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Yours very truly,



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