

Minnesota Department of **Human Services**

December 1, 2008

Governor Tim Pawlenty

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons, Revisor of Statutes

Senator John Marty, Chair
Senator Paul E. Koering, Ranking Republican
Senate Health, Housing and Family Security Committee

Senator Linda Berglin, Chair
Senator Michelle L. Fischbach, Ranking Minority Member
Senate Health, Human Services Budget Division

Representative Thomas Huntley, Chair
Representative Matt Dean, Lead GOP
House Health Care and Human Services Finance Committee

Representative Paul Thissen, Chair
Representative Laura Brod, Lead GOP
House Health and Human Services Committee

Re: Annual Report from Minnesota Department of Human Services 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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."

The Department of Human Services has identified the following rules as obsolete.

Minnesota Rules, Parts 9525.0750; 9525.0760; 9525.0770; 9525.0780; 9525.0790; 9525.0800; 9525.0810; 9525.0820; and 9525.0830. The provisions governed the Department's grants to entities formerly known as licensed daytime activity centers for persons with developmental disabilities. In 2007, the legislature repealed the statutory provisions governing these entities, including the statutory authority for the rules. 2007 Chapter 147, Article 7, Section 76. The legislature also passed new laws that deemed the entities formerly known as daytime activity centers to become day training and habilitation services, and these are now governed by Minnesota Rules, parts 9525.1200 to 9525.1330. The rules governing daytime activity centers are thus rendered obsolete and unnecessary. In 2009, the Department will repeal the rule parts using the obsolete rule repeal process under Minnesota Statutes, section 14.3895.

Minnesota Rules, Part 9503.0075. The rule part governs requirements for licensed drop-in and school age child care programs. Because Minnesota Statutes, § 245A.14, subd. 6 also sets forth these requirements, the rule part is duplicative. In 2009, the Department will repeal the obsolete rule language using the obsolete rule repeal process under Minnesota Statutes, section 14.3895.

Minnesota Rules, Part 9505.0175, subpart 18. The rule subpart contains a definition for a licensed consulting psychologist. This classification of practitioner is no longer recognized; indeed, the statutory definition that the rule incorporates by reference has been repealed. The rule subpart is thus obsolete. In 2009, the Department will repeal the rule part using the obsolete rule repeal process under Minnesota Statutes, section 14.3895.

Minnesota Rules, Parts 9500.1450, subpart 3; 9500.1452, subparts 2 and 3; 9500.1456; and 9500.1460, subparts 4 and 5. The above provisions relate to eligibility and enrollment requirements in the prepaid medical assistance program (PMAP). Parts 9500.1450, subpart 3; 9500.1452, subpart 3 and 9500.1456 relate to the implementation of PMAP. PMAP is now statewide and implementation is complete; therefore this language is obsolete. Part 9500.1452, subpart 2 contains a number of exclusions that are no longer applicable. Part 9500.1460, subparts 4 and 5 are inconsistent with state law. The Department will repeal this obsolete rule language using the obsolete rule repeal process under Minnesota Statutes, section 14.3895.

Status of Rules Identified for Repeal in 2007 Report

Minnesota Rules, part 9505.0335, subpart 1, item F and subparts 3, 4, 6, and 7. These provisions were identified in 2007 and are in the process of being repealed using the good cause exemption process

to incorporate specific changes in applicable statutes into rule language when no interpretation is required under Minnesota Statutes, section 14.388, subdivision 1 (3).

Minnesota Rules, part 9500.1261, subpart 3, items D and E; and subparts 4, 5 and 6. These provisions relating to Emergency General Assistance were identified in 2007 for repeal using the process established in Minnesota Statutes, section 14.3895. The Department solicited input regarding repeal of the provisions using that approach and encountered concerns. Upon careful consideration of the rationale underlying the concerns, the Department decided not to repeal the provisions.

Minnesota Rules, part 9555.7700, subpart 3. This provision was identified in 2007 for repeal in 2008. During 2008, the Department sought to repeal this obsolete provision using the good cause exemption process to incorporate specific changes in applicable statutes into rule language when no interpretation is required under Minnesota Statutes, section 14.388, subdivision 1 (3). An administrative law judge disapproved the use of that process based on the legal analysis submitted. Consistent with the options stated in the ALJ's decision, the Department will refine its legal analysis and use the good cause exemption to repeal the rule in 2009.

Minnesota Rules, part 9505.0345, subpart 3. On May 1, 2008, the Department amended the obsolete rule report that had been submitted on November 30, 2007, to add this rule provision. The Department will repeal the physician review and signature requirement in the last paragraph of the rule part during 2009 using the obsolete rule repeal process under Minnesota Statutes, section 14.3895.

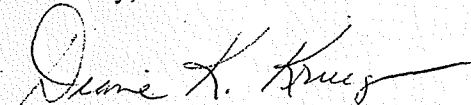
Status of Other, Previously-Identified Rules

Minnesota Rules, part 9500.1126. This provision regarding the recapture of depreciation that is apportioned to medical assistance was identified in 2006 and reported in that year's and last year's report. The Department will repeal the provision in 2009 using the process for repealing obsolete rules under Minnesota Statutes, section 14.3895.

Minnesota Rules, Parts 9505.1696, subpart 10 and 9505.1709. These parts that pertain to early and periodic screening, diagnosis and treatment programs were also identified in 2006 and reported in that year's and last year's report. The Department is considering how to proceed in 2009.

If you have any questions about this report, please call me at (651)431-3611.

Sincerely,



Diane K. Krueger
Administrative Law Manager
Appeals and Regulations Division