



December 1, 2022

Governor Tim Walz (parisa.rouzegar@state.mn.us)

Senator Paul J. Utke, Chair (sen.paul.utke@senate.mn)

Senator Melissa H. Wiklund, Ranking Minority Party Member (sen.melissa.wiklund@senate.mn)
Senate Health and Human Services Finance and Policy Committee

Senator Jim Abeler, Chair (sen.jim.abeler@senate.mn)

Senator John A. Hoffman, Ranking Minority Party Member (sen.john.hoffman@senate.mn)
Senate Human Services Reform Finance and Policy Committee

Senator Michelle R. Benson, Chair (sen.michelle.benson@senate.mn)

Senator Chris A. Eaton, Ranking Minority Party Member (sen.chris.eaton@senate.mn)
Senate Human Services Licensing Policy Committee

Senator Karin Housley, Chair (sen.karin.housley@senate.mn)

Senator Kent Eken, Ranking Minority Party Member (sen.kent.eken@senate.mn)
Senate Aging and Long-Term Care Policy Committee

Representative Jennifer Schultz, Chair (rep.jennifer.schultz@house.mn)

House Human Services Finance and Policy Committee

Representative Peter Fischer, Chair (rep.peter.fischer@house.mn)

Representative Keith Franke, Republican Lead (rep.keith.franke@house.mn)
House Behavioral Health Policy Division Committee

Representative Aisha Gomez, Chair (rep.aisha.gomez@house.mn)

Representative Anne Neu Brindley, Republican Lead (rep.anne.neu@house.mn)
Preventing Homelessness Division

Ryan Inman, Revisor (revisor@revisor.mn.gov)

Office of the Revisor of Statutes

Legislative Coordinating Commission (lcc@lcc.leg.mn)

Legislative Reference Library (reports@lrl.leg.mn)

VIA ELECTRONIC MAIL

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

Dear Governor Walz, Senators, Representatives, Legislative Coordinating Commission, and Revisor Inman:

Minnesota Statutes, section 14.05, subdivision 5, directs state agencies to report to you by December 1 of each year whether any of its rules are obsolete, unnecessary, or duplicative, and to provide an update on the status of such rules identified in the prior year. This letter contains the 2021 report of the Minnesota Department of Human Services.

Last year, the Minnesota Department of Human Services identified the following rules as obsolete:

Minnesota Rules, part 9502.0325, subpart 3. Minnesota Rules, part 9502.0325, subpart 3 lists day care situations that are excluded from family day care licensing requirements. Minnesota Statutes, section 245A.03, subdivision 2 also contains such a list which is more exhaustive and includes the items listed in rule. Therefore, subpart 3 is duplicative and obsolete. **Update:** The Department is still considering whether to repeal this rule part through the process detailed in Minnesota Statutes, section 14.3895, or to include it in a legislative proposal.

Minnesota Rules, part 9502.0435, subpart 8, item B. Minnesota Rules, part 9502.0435 details the sanitation and health requirements for licensed day care facilities. Subpart 8 identifies conditions for emergency preparedness, and item B specifies that emergency phone numbers “must be posted by the telephone.” In 2019, subdivision 5 was added to Minnesota Statutes, section 245A.51, which indicates that a license holder is not required to post a list of emergency numbers and may use a cellular telephone to meet the requirements of subpart 8. Subdivision 5 renders item B obsolete. **Update:** The Department is considering whether to repeal this rule part through the process detailed in Minnesota Statutes, section 14.3895, or to include it in a legislative proposal.

Minnesota Rules, part 9530.6520, subpart 2, item C. Minnesota Rules, part 9530.6520 details the application and licensure requirements for detoxification programs. Item C references an assessment of need that was eliminated when Minnesota Rules, parts 9530.6800 and 9530.6810 were repealed in 2021, making item C obsolete. **Update:** The Department planning to repeal this rule part through the either the good cause exempt rulemaking process detailed in Minnesota Statutes, section 14.388, or the obsolete rule repeal process detailed in 14.3895.

Minnesota Rules, part 9560.0120, subparts 1 and 2; and part 9560.0130, subpart 3. Minnesota Statutes, Chapters 259 and 260C govern adoption, foster care, and juvenile safety and placement. Both contain a number of policy provisions that are consistent with current best practices, including addressing the best interests of a child and preserving a child’s connections in adoptive placements. These statutory chapters also expressly set forth requirements for operating the State Adoption Exchange; family recruitment methods; and post-adoption services. In Minnesota Rules, parts of chapter 9560 govern Child Safety and Permanency programs. Specifically, parts 9560.0120 and 9560.0130 address adoption placement, and the identified subparts are either inconsistent with current practices, redundant with statute, or rendered obsolete by statute. **Update:** The Department

continues work on the substance of the necessary changes to these rules and will likely pursue making amendments to the rule parts with conventional rulemaking.

Minnesota Rules, part 9575.0110, subpart 1; part 9575.0160, item D; part 9575.0450, subpart 3; part 9575.0460; part 9575.0510; part 9575.0580, subpart 2. Minnesota Rules, part 9575 governs the County Welfare Merit System. The Merit System rules were first adopted in 1982 and have not been updated since 2001. Some of the requirements in the rules are obsolete because practices have become electronic; for example, stenographers are no longer necessary to carry out the work of the Merit System, and communication is done by email or posting online rather than by U.S. Mail or telegram or posting physical copies of information. Some of the terms in the rules are obsolete because they are outdated and not person-centered; for example, “disabled persons” rather than “persons with disabilities”. **Update:** The Department is still considering making further updates to these rules and amending accordingly through one of the rulemaking processes identified in Minnesota Statutes, Chapter 14.

Minnesota Rules, part 9575.1500. This part of the Merit System rules contains minimum and maximum salary ranges that change yearly but have not been updated in at least 20 years, rendering obsolete the information currently in this rule part. **Update:** The Department is still considering repealing this rule part in its entirety and replacing it with something that can be easily updated year to year, either through the rule repeal process detailed in Minnesota Statutes, section 14.3895 or conventional rulemaking, depending on the changes that are required.

This year, the Minnesota Department of Human Services has reviewed its rules and identified the rules listed below as obsolete, unnecessary or duplicative:

Minnesota Rules, part 9505.0325, subpart 4, item D. Subpart 4 identifies nutritional products that do not require authorization for medical assistance program coverage, including item D which is “a combined allergy to human milk, cow milk, and soy milk.” This is in direct conflict with Minnesota Statutes, section 256B.0625, subd. 32, which requires authorization for “nutritional products needed for the treatment of a combined “a combined allergy to human milk, cow milk, and soy milk.” The Department intends to repeal this language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9505.0277, subpart 3, item P. Item P identifies transition lenses as an excluded service for eyeglasses with regard to medical assistance program coverage. Item O under the same subpart lists photochromatic lenses. Transition lenses are a brand name for photochromatic lenses; therefore, item P is duplicative and unnecessary. The Department intends to repeal this language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9505.0310, subpart 3, items A and B; and Minnesota Rules, part 9505.0365, subparts 2 and 3. Language in these items and subparts refer to a “performance agreement” for providers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). The Department does not currently use any such agreement, and DMEPOS providers sign the same

provider agreement as other providers. Under Minnesota Rules, part 9505.0175, subpart 32, the definition of “performance agreement” as used in these items and subparts was repealed back in 2015. Therefore, these items and subparts are obsolete. The Department intends to repeal this language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9505.5010, subparts 1 and 2. Subparts 1 and 2 reference forms DHS-3065 and DHS-3066. Both of these forms no longer exist. The Department intends to replace these references with accurate ones using either the good cause exempt rulemaking process identified in Minnesota Statutes, section 14.388, or as part of a larger conventional rulemaking.

Minnesota Rules, part 9505.5005, subpart 9. Subpart 9 references the National Blue Cross and Blue Shield Association Medical Advisory Committee. This committee no longer exists. The Department intends to repeal the obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895, or as part of a larger conventional rulemaking.

Minnesota Rules, part 9505.0335. This rule part governs personal care assistance (PCA) services. Most of the requirements in this rule part are outdated and have been replaced by Minnesota Statutes, section 256B.0659. The Department is considering whether to repeal this rule part through the process detailed in Minnesota Statutes, section 14.3895, or to include it in a legislative proposal.

Minnesota Rules, part 9505.2175, subpart 7, item A. This item states that PCA agencies must document a physician’s initial order for PCA services. However, as a practice the Department does not require documentation of a physician’s order. Therefore, the item is unnecessary. The Department intends to repeal the obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9555.5605, subpart 2. The last sentence of this rule subpart, which reads “A person using a wheelchair must be housed on a level with an exit directly to grade,” is obsolete because it is not consistent with current fire code. The Department intends to repeal this language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, parts 9560.0040, 9560.0450, and 9560.0050. In Minnesota Rules, parts of chapter 9560 govern Child Safety and Permanency programs, including social services, adoption, foster care, and child placement. The identified rule parts and items are either inconsistent with current practices, redundant with statute, or in conflict with statute. The Department continues work on the substance of the necessary changes to the rules governing Child Safety and Permanency Programs generally, and will likely pursue making amendments to the rule parts with conventional rulemaking, or may repeal obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Please let me know if I can provide further information.

Minnesota Department of Human Services
Annual Obsolete Rules Report
December 1, 2022

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa Vogl". The signature is written in a cursive style with a large initial "V".

Vanessa Vogl

Rulemaking Attorney
Administrative Law Office/General Counsel's Office

CC: Karen E. Sullivan Hook, DHS Administrative Law Office Manager
Matthew Burdick, DHS Director of State Legislative Relations