



December 1, 2023

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

Senator Melissa H. Wiklund, Chair (sen.melissa.wiklund@senate.mn)
Senator Paul J. Utke, Ranking Minority Party Member (sen.paul.utke@senate.mn)
Senate Health and Human Services Committee

Senator John A. Hoffman, Chair (sen.john.hoffman@state.mn.us)
Senator Jim Abeler, Ranking Minority Party Member (sen.jim.abeler@senate.mn)
Senate Human Services Committee

Representative Dave Pinto, Chair (rep.dave.pinto@house.mn)
Representative Brian Daniels, Republican Lead (rep.brian.daniels@house.mn)
House Children and Families Finance and Policy Committee

Representative Tina Liebling, Chair (rep.tina.liebling@house.mn)
Representative Joe Schomacker, Republican Lead (rep.joe.schomacker@house.mn)
House Health Finance and Policy Committee

Representative Mohamud Noor, Chair (rep.mohamud.noor@house.mn)
Representative Anne Neu Brindley, Republican Lead (rep.anne.neu@house.mn)
House Human Services Finance Committee

Representative Peter Fischer, Chair (rep.peter.fischer@house.mn)
Representative Debra Kiel, Republican Lead (rep.deb.kiel@house.mn)
House Human Services Policy Committee

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.

Last year, in 2022, the Minnesota Department of Human Services identified the following rules as obsolete:

Minnesota Rules, part 9505.0325, subpart 4, item D. Subpart 4 identifies conditions that do not require authorization for medical assistance program coverage for the nutritional products to treat them, 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 allergy to human milk, cow milk, and soy milk.” **Update:** The Department is still considering repealing 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. **Update:** The Department is still considering repealing 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. **Update:** The Department is still considering repealing 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. **Update:** The Department is still considering replacing 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. **Update:** The Department is still considering repealing 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. **Update:** The Department has repealed the obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895. The Notice of Adoption was published in the Nov. 20, 2023 edition of the State Register.

Minnesota Rules, part 9505.2175, subpart 7. Item A of this subpart 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. The documentation requirements for health care service records maintained by a personal care provider identified in items B-L of this subpart have been updated and included in Minnesota Statutes, section 256B.0659. Therefore, these items are unnecessary and duplicative. **Update:** The Department has repealed the obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895. The Notice of Adoption was published in the Nov. 20, 2023 edition of the State Register.

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. **Update:** The Department is still considering repealing the obsolete language using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, parts 9560.0040, 9560.0450, 9560.0050, and 9560.0440, subpart 3, item D. 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. **Update:** 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. The Department will likely refrain from making these changes until the new Department of Children, Youth, and Families is officially launched.

This year, for 2023, the Minnesota Department of Human Services has reviewed its rules and identified the rules listed below as obsolete, unnecessary or duplicative:

Minnesota Rules, parts 9500.1221, 9500.1223, 9500.1225, and 9500.1226. These rule parts govern general assistance. The rules parts are outdated and have been superseded by Minnesota Statutes, sections 256P.01 – 256P.06. The Department intends to repeal these rule parts using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9505.0530, subpart 2. In order to determine whether an inpatient admission is “medically necessary” for purposes of eligibility for medical assistance payment, part 9505.0530, subparts 1-2 directs that “[t]he medical review agent shall follow the medical necessity criteria specified in subparts 2 and 3 in determining . . . whether a recipient’s admission is medically

necessary . . .” Subpart 2 specifies the criteria for inpatient hospital admission, incorporating by reference a book published in 1984. However, the Department’s medical review agents no longer rely on this book, and instead apply a “prevailing community standard” approach under Minnesota Rules, part 9505.0210. Therefore, part 9505.0530, subpart 2 is obsolete. The Department is considering repealing this subpart using the using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, parts 9505.2200, subpart 1; and 9505.2215, subpart 1, item B. Part 9505, subpart 1 references “recipient error” as a basis for investigating health services recipients for program compliance. Part 9505.2215, subpart 1, item B gives the Department authority to seek monetary recovery if payment for a health service provided under a program was the result of “recipient error.” In 2022 the Department received guidance from the Center for Medicaid and Medicare Services that states cannot recover or recoup the cost of services from a beneficiary. The Department further clarified with CMS that this same analysis applies to Medicaid client error overpayments. Therefore, references to “recipient error” in rule are unnecessary and against CMS policy. The Department intends to repeal the references to “recipient error” using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Minnesota Rules, parts 9555.7100, 9555.7200, 9555.7300, and 9555.7600. These rule parts govern protective services to vulnerable adults. The rules parts are duplicative of Minnesota Statutes, sections 626.557 and 626.5572. The Department intends to repeal these rule parts using the rule repeal process identified in Minnesota Statutes, section 14.3895.

Please let me know if I can provide further information by contacting me by email (vanessa.vogl@state.mn.us) or phone (651-431-3168).

Sincerely,



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