Minnesota Department of **Human Services**

November 30, 2005

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Senate Health, Human Services, and Corrections Budget Division

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Representative Mary Ellen Otremba, DFL Lead Policy
House Health and Human Services Policy and Finance 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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

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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 3400.0020, subpart 27; 3400.0100, subparts 1, 3, 3a, and 4; and 3400.0130, subpart 2a. These rules govern the Child Care Assistance Program. Parts 3400.0020, subpart 27, and part 3400.0130, subpart 2a, are obsolete because the Child Care Assistance Program no longer has the statutory authority to pay rates on a half-day basis or to pay the accreditation bonus. *See* 2003 Minn. Laws, 1st Spec. Sess., ch. 14, art. 9, § 22 (adding reference to allowed payment rates); § 38 (repealing authorization for accreditation bonus). Part 3400.0100, subparts 1, 3, 3a, and 4 are obsolete because the copayment fee schedule established in these parts for the Child Care Assistance Program has been replaced by a statutory fee schedule. *See* 2005 Minn. Laws, 1st Spec. Sess., ch. 4, art. 3, § 19 (2005 copayment fee schedule); 2003 Minn. Laws, 1st Spec. Sess., ch. 14, art. 9, § 36 (2003 copayment fee schedule). The Department will repeal these obsolete provisions using the process established in Minnesota Statutes, section 14.3895.

Minnesota Rules, part 9505.1696, subpart 6. This rule governs the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDTP). Part 9505.1696, subpart 6, defines the term "early and periodic screening clinic or EPS clinic" as a facility approved by the Department of Health under Minnesota Rules, parts 4615.0900 to 4615.2000. The Department of Health, however, has repealed those rules parts and no longer has an EPS clinic designation. Consequently, the Department of Human Service's definition of "EPS clinic" is obsolete. The Department of Human Services will repeal part 9505.1696, subpart 6, using the process established in Minnesota Statutes, section 14.3895, or as part of a larger rulemaking project involving the EPSDTP.

Minnesota Rules, parts 9525.1800, subpart 1b; 9525.1820, subpart 1a; 9525.1860 subpart 4, (D); and 9525.1890, subpart 6. The commissioner of human services must apply to the federal government for waivers to the federal laws governing medical assistance so that medical assistance funds can be used to pay for services provided to eligible recipients in their homes and communities. *See e.g.* Minn. Stat. § 256B.092, subd. 5 (ordering commissioner to apply for waivers for home and community-based services). The home and community-based services must be provided in accordance with the terms of the approved waiver application and any amendments. *See id.*, subd. 4 (a) (services must be provided according to federal requirements, including requirements in approved waiver application and amendments). Minnesota Rules,

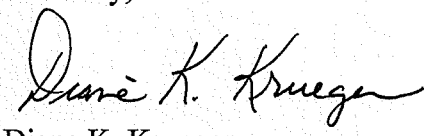
parts 9525.1800 through 9525.1930, govern the provision of services under two waivers obtained by the commissioner. Minnesota Rules, parts 9525.1800, subpart 1b, and 9525.1820, subpart 1a, are obsolete because they provide the definition of and criteria for the Alternative Community Services Waiver Plan, which no longer exists. Minnesota Rules, part 9525.1860 subpart 4 (D), provides information on reimbursing leave days for supported living services for children or adults through a waiver. This part is obsolete because leave days no longer can be reimbursed through a waiver. Instead, the costs for leave days are negotiated between the county and the provider as part of the provider rates. Finally, Minnesota Rules, part 9525.1890, subpart 6, governs funding for special projects. The federal government, however, has approved budget methodology amendments to the state's MR/RC waiver application that make the funding provisions in part 9525.1890, subpart 6, obsolete. The Department will repeal these obsolete parts using the process established in Minnesota Statutes, section 14.3895, or as part of a larger rulemaking project involving the waiver rules.

Status of Rules Identified for Repeal in 2004

The amendment to the December 1, 2004 report identified portions of Minnesota Rules, part 9505.0353, subparts 2 and 3, as obsolete. The Department is repealing the obsolete provisions of these subparts using the process specified in Minnesota Statutes, section 14.3895.

If you have any questions about this report, please call me at (651)296-5571.

Sincerely,



Diane K. Krueger
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Appeals and Regulations Division