Minnesota Department of **Human Services**

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December 1, 2010

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 Jim Abeler, 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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, part 9505.0325, subpart 4.D. This item is inconsistent with the requirements of Minnesota Statutes, section 256B.0625, subdivision 32. The rule permits coverage of enteral nutritional products for a combined allergy to human milk, cow milk and soy formula without prior authorization. The statute states that prior authorization is required for this condition. The Department will use either the obsolete repeal process established at section 14.3895 to repeal the obsolete language or use the exempt process established at section 14.388 to amend the language.

Minnesota Rules, part 9505.0277, subpart 3.P. This item is redundant. The language of item O already excludes from coverage photochromatic lenses. Transition lenses, a brand of photochromatic lenses, are therefore, already addressed by the rule. The Department will use the process established at section 14.3895 to repeal the obsolete rule item.

Minnesota Rules, parts 9505.0175, subpart 32; 9505.0310, subpart 3.A. and B.; and 9505.0365, subparts 2 and 3. Each of these provisions contains obsolete language regarding "performance agreements" between the Department and providers of nondurable medical supplies or durable medical equipment. The Department no longer enters into special "performance agreements" with this category of providers. Therefore, the language referencing the use of these agreements is obsolete. The Department will use the process established at section 14.3895 to repeal the obsolete rule language.

Status of Rules Identified for Repeal in 2009 Report

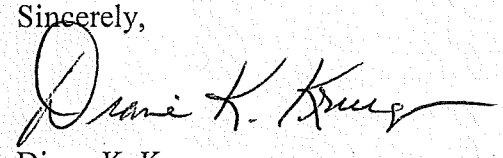
Minnesota Rules, part 9560.0470. This provision contains language that duplicates and partially conflicts with the language in Minnesota Statutes, section 260C.212 and Minnesota Rules, part 9560.0660 governing services available to children after age 18. The Department did not proceed with the repeal of this language because it determined that repealing the language would not appropriately clarify the scope of services available to children under state guardianship. In order to coordinate these rule provisions, more extensive rulemaking activity may be required.

Minnesota Rules, parts 9525.1580 and **Minnesota Rules, Parts 9525.1800, subparts 1a, 1b, 8a, 14, and 19d; 9525.1810, subpart 2; 9525.1820, subpart 1a; 9525.1860, subparts 1 and 4; 9525.1890, subpart 6.** The Department has not yet repealed the obsolete language identified in these rule provisions. We anticipate completing this action in early 2011 using the process established in section 14.3895.

Minnesota Rules, parts 9505.0015, subpart 23 and 9505.5000. These rule parts contain obsolete language citing to repealed rule parts. The Department is engaged in updated additional rule provisions in chapter 9505 and intends to incorporate the repeals of these rule parts into that rulemaking process. This process is expected to be completed in 2011.

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