



Minnesota Department of **Human Services**

November 30, 2012

Governor Mark Dayton

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons, Revisor of Statutes

Senator David W. Hamm, Chair
Senator Tony Lourey, Ranking Minority Member
Senate Health and Human Services Committee

Representative Jim Abeler, Chair
Representative Thomas Huntley, DFL Lead
House Health and Human Services Finance Committee

Representative Steve Gottwalt, Chair
Representative Tina Liebling, DFL Lead
House Health and Human Services Reform 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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

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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 9500.1090; 9500.1100, subparts 9, 20, 22, and 29; 9500.1121, subpart 1; 9500.1123; 9500.1127, subparts 1 and 2; 9500.1128, subpart 2; and 9500.1129, subpart 1. The rule refers to a program that no longer exists. Chapter 9500 of Minnesota Rules governs assistance payments programs. Parts 9500.1090 to 9500.1140 previously established a prospective payment system for inpatient hospital services provided under the medical assistance and general assistance medical care programs. While all of the provisions remain applicable with respect to medical assistance, the general assistance medical care program was eliminated in 2009. Accordingly, the numerous references throughout the chapter to general assistance medical care need to be removed. The Department plans to update the rule part by repealing the obsolete references using the obsolete repeal process established at section 14.3895. The Department will also explore with the Revisor's Office whether that office alternatively has authority to make the changes in the scope of its editorial authority.

Minnesota Rules, parts 9502.0325, 9502.0341, 9502.0405, and 9502.0435. Provisions conflict with statute. The cited provisions govern family child care. Certain provisions in Minnesota Statutes, Chapters 245A (the Human Services Licensing Act) and various other statutory provisions, including section 144.414 governing posting of a notice about smoking, and 169.685 regarding child passenger restraint systems, conflict with rule. The Department plans to update the rule by repealing the conflicting rule language using the obsolete process established at section 14.3895. The Department will also consider whether it could alternatively use the exempt process established at 14.388.

Minnesota Rules, part 9555.6145, subparts 1 and 2. The rule contains language redundant with statute. The rule parts define negative actions (licensing sanctions) and procedures for negative actions. The Human Services Licensing Act in Minnesota Statutes, Chapter 245A contains complete provisions for license sanctions. Accordingly, the rule provisions are duplicative, and will be repealed using the obsolete process established at section 14.3895.

Minnesota Rules, parts 9543.0050, subpart 3, and 9543.0060, subpart 5. The rule parts contain language inconsistent with statute or practices being used. Part 9543.0050 allows the county to orally request a capacity variance for foster care from the Department, but is obsolete because Minnesota Statutes, section 245A.16 now permits the county issue these variances. Part 9543.0060 requires the county to provide the license holder a copy of the annual licensing report, however, after the first year of licensure, the license can now be granted up to two years. Therefore, the word "annual" should be repealed. The Department is planning to repeal the obsolete rule language using the obsolete repeal process established at section 14.3895.

Minnesota Rules, parts 9505.0015, subpart 16; 9505.0501; 9505.0505, subparts 3, 13, 16, 27, 30, 31 and 32; 9505.0515; 9505.2165, subpart 8; 9505.5000; 9505.5005, subparts 7, 10, 12, 16, and 17; 9505.5010, subpart 1; 9505.5030; 9505.5035, subparts 1 and 2; 9505.5045; 9505.5076, subpart 1; 9505.5200; 9505.5210, subparts 5 and 7; and 9505.5305, subpart 13. Obsolete references to a program that no longer exists are present in these rule parts. Chapter 9505 governs department health

care program requirements. It contains many references to general assistance medical care. In 2009, however, funding was discontinued for general assistance medical care and the program no longer exists. Accordingly, the department plans to repeal the obsolete references in Chapter 9505 to general assistance medical care. The Department will also explore with the Revisor's Office whether that office could make these changes within the scope of its editorial authority instead.

Minnesota Rules, part 9505.2240, subpart 1, item B. A process described in the rule is not in use. The rule part describes how the department notifies the general public about action taken regarding a vendor when the department's investigation under the Surveillance and Integrity Review Program determines the presence of fraud, theft, abuse, or error in connection with a program, or if the vendor refuses to grant access to records as required. The language in item B states that the department will do so "by publishing the notice in a general circulation newspaper in the geographic area of Minnesota generally served by the vendor in the majority of its health services to Minnesota program recipients." The first half of the sentence in item B and the second sentence in item B will remain unchanged. The Department is planning to repeal the obsolete rule language using the obsolete repeal process established at section 14.3895.

Minnesota Rules, part 9505.5005, subpart 9. A process described in the rule is not in use. The rule part contains definitions that relate to parts governing conditions of payment to providers of health services for recipients of medical assistance. Subpart 9 defines investigative, which describes health treatments that are largely untested and not widely used. Previously, the Department relied on determinations made by the National Blue Cross and Blue Shield Association Medical Advisory Committee that were used by BCBS Minnesota in its program administration to determine what treatments met the rule criteria for an investigative treatment. The advisory committee no longer exists and the practice is no longer being used; currently, the determination regarding whether the definitional criteria are met is made by the Department. The Department plans to repeal the obsolete language using the obsolete repeal process established at section 14.3895.

9506.0100, subparts 3, 7, 12, and 16; 9506.0020, subparts 1, 2, and 7; 9506.0030, subparts 2 and 3; 9506.0050; 9506.0060, subpart 1; 9506.0080, subpart 2; 9506.0090, subpart 1; and 9506.0200, subpart 2. A number of provisions are no longer consistent with statute. Minnesota Rules, Chapter 9506 governs MinnesotaCare. Statutory changes in 1998 and 2003 amended or repealed some definitions, so that definitions which no longer conform to statute should be repealed. Some eligibility requirements in the rule are outdated because they are based on MinnesotaCare when it was state-funded, prior to federal financial participation; and other parts conform to previous versions of MinnesotaCare, before changes made by the 1998 and 1999 Legislatures. Accordingly, the Department plans to repeal all provisions that are no longer consistent with statute, using the obsolete process established at section 14.3895.

Minnesota Rules, part 9535.2000 to 9535.3000. The processes and requirements are no longer in use. The rule governed the granting and use of funds to pay for residential services for adults with mental illness. The funding grants for these services have been transferred to an integrated fund. As a result, the county processes and requirements associated with these dollars are no longer applicable. The Department plans to repeal the obsolete rule using the obsolete repeal process established at section 14.3895.

Minnesota Rules, parts 9555.7400 and 9555.7500. Rule provisions are either redundant or conflict with governing statute. These rule parts govern protective services to vulnerable adults. Part 9555.7400 is obsolete because it addresses emergency protective services, which is now governed by the Vulnerable Adult Act, Minnesota Statutes, section 626.557, subdivision 10. Part 9555.7500 is obsolete because it references timelines for classification of complaints that are now governed by the Vulnerable Adult Act. Accordingly, the Department plans to repeal obsolete provision using either the obsolete repeal process established at section 14.3895, or the exempt process established at 14.388.

Minnesota Rules, part 9560.0450, subpart 2. Requirements described in the rule are inconsistent with statute or current practices. Minnesota Rules, part 9560.0410, et seq., govern the administration of local agency responsibilities for children under state guardianship in need of protection or services. Part 9560.0450 governs the authority delegated to local agencies or reserved to the commissioner to grant consents on behalf of children under state guardianship. Recent child welfare legislation changed statute so that the commissioner is no longer required to consent to adoptions or sibling separations for children under guardianship because these functions are now performed by the court. Further, some items for which the commissioner previously granted consent have become outmoded and no longer in current use. The Department plans to update the rule part by repealing the obsolete provisions using the obsolete repeal process established at section 14.3895.

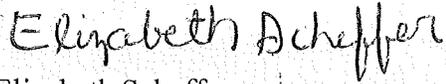
Minnesota Rules, part 9560.0020, subparts 3 and 3a; 9560.0030 to 9560.0060; 9560.0110; 9560.0160; 9560.0180; 9560.0460; 9560.0470; 9560.0475; and 9560.0485. Provisions are either redundant with statute, or rendered obsolete by statute. Minnesota Statutes, Chapters 259 and 260C, govern adoption, and juvenile safety and placement, respectively. Both contain a number of policy provisions that are consistent with current best practices, such as addressing the best interests of a child in foster or residential care, and preserving a child's connections. These statutory chapters also expressly set forth requirements for operating the State Adoption Exchange; family recruitment methods; and post-adoption services. Minnesota Rules, Chapter 9560, governs social services for children, including the Minnesota adoption program, protective services for children, and interstate placement of children for foster care. The rule is redundant with the statutes in numerous places, or contains language that has been rendered obsolete by the statutes. Accordingly, the Department plans to update the chapter by repealing the obsolete provisions using the obsolete repeal process established at section 14.3895.

Status of Rules Identified for Repeal in 2010 Report

Minnesota Rules, parts 9550.0300, 9550.0310, 9550.0320, 9550.0330, 9550.0340, 9550.0350, 9550.0360, and 9550.0370. The process described in the rule parts is no longer in use. The rule parts describe a manner of distributing federal dollars received under Titles IV-E and XIX of the Social Securities Act to counties based on the portion of local agency staff time spent on various social services activities to determine what portion of administrative costs are federally reimbursable. This process and the related formulas are no longer used by the Department to allocate funds and the provisions will therefore be repealed using the obsolete repeal process established at section 14.3895. The Department is working with the Revisor's Office and is evaluating various methods of providing notice to repeal the rule using the obsolete process established at section 14.3895. The Department anticipates completing the repeal in early 2013.

If you have any questions about this report, please call me at (651)431-4336.

Sincerely,

Handwritten signature of Elizabeth Scheffer in cursive script.

Elizabeth Scheffer
Acting Administrative Law Manager
Appeals and Regulations Division