MINNESOTA MDH DEPARTMENT OF HEALTH

Protecting, maintaining and improving the health of all Minnesotans

November 26, 2013

Governor Mark Dayton

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons
Revisor of Statutes

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REVISOR OF STATUTES

Policy and Funding Committees and Divisions with
Jurisdiction over the Minnesota Department of Health

[A complete list of addressees is at the end of the letter.]

Subject: Annual Report 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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.

Minnesota Department of Health (MDH) has identified the following MDH rules that govern tuberculosis testing of employees and residents in health care facilities as being obsolete, unnecessary, or duplicative, because in 2013 the Legislature enacted Minnesota Laws, chapter 45, which included new statutes that supersede them:

2013 (1) 4640.4400–4640.6000 — these hospital licensing and operation rules, which govern staff of TB hospitals, are superfluous because Minnesota has no TB hospitals.

4640.0100, subpart 12, and other specific phrases listed below — these definitions for hospital licensing and operation rules refer to TB hospitals, but there are no TB hospitals in Minnesota:

"with tuberculosis or" in subpart 3;
"a tuberculosis hospital" in subpart 10;
"tuberculosis" in subpart 11;

4655.3000 — these requirements for specific tests for nursing and boarding care home employees are now outdated because of Minnesota Statutes, sections 144A.04 and 144.56, subdivision 2c, new statutes passed in 2013.

4655.4700, subpart 1 — the following specific language for a physical exam of boarding care home residents at admission requires a now-obsolete testing method:

"a report of a standard Mantoux tuberculin test or, if the Mantoux test is positive or contraindicated, a chest X-ray within three months in advance of admission and as indicated thereafter; reports of appropriate laboratory examinations".

4658.0810 — nursing home providers need no longer use this resident tuberculosis program since Minnesota Statutes, section 144A.04, a new statute passed in 2013, makes this language obsolete.

4658.0815 — nursing home providers need no longer use this employee tuberculosis program since Minnesota Statutes, section 144A.04, a new statute passed in 2013, makes this language obsolete.

4664.0290 — hospice providers need no longer use these infection control requirements because Minnesota Statutes, section 144A.752, subdivision 4, a new statute passed in 2013, makes this language obsolete.

4665.1200, item A — supervised living facilities need no longer follow this staff health provision because a new statute passed in 2013, Minnesota Statutes, section 144.50, subdivision 6a, makes this language obsolete.

4675.0500, item I — governs outpatient surgical centers medical staff. Minnesota Statutes, section 144.55, subdivision 3, a new statute passed in 2013, makes this language obsolete.

In 2010, we identified obsolete rules in Minnesota Rules, Chapter 4740, which governs accrediting environmental laboratories. In 2009, the Legislature amended Minnesota Statutes, sections 144.98 and .99, requiring the commissioner to accredit labs according to national laboratory standards and

charging the fees stated in the amended statute. Consequently, the following subparts are duplicative or obsolete for the reasons stated:

2010 (1)

4740.2010, subpart 39 — "Method detection limit" or "MDL" are defined terms that are no longer used in Minnesota Rules 4740.2050, subpart 1 but are defined in statutes elsewhere.

4740.2050, subpart 1, item C with the phrase beginning "The laboratory must supply…", — MDH is converting the lab certification program's application to an online form using an electronic signature so this item is superfluous.

4740.2050, subpart 1, item D (1) to (2), — these requirements are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 1, item D (3) to (6) and item E, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.6.

4740.2050, subpart 2, item C with the phrase beginning "With each change in location…", — the information required here is now included in laboratory documentation required with application under Minnesota Statutes, section 144.98.

4740.2050, subpart 3, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.3a(b).

4740.2050, subpart 7, item B, — the required items are listed in national standards and adopted in Minnesota Statutes, section 144.98.

4740.2050, subpart 7, item D, — these requirements are superseded by Minnesota Statutes, section 144.98, subd.7.

4740.2050, subpart 12, item A with the phrase beginning "Fees include the on-site…", — these fees and their frequency of payment are requirements that are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 12, item C, — these requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 12, item F, remove the phrase "…except the fee for out-of-state inspection under subpart 16, item D"., — requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 12, item F, remove the last sentence beginning "Only fixed-base laboratories located within…", — requirements for approval of reciprocal

agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subd.6(d).

4740.2050, subpart 16, item A remove the phrase "..., subdivision 3.", — this change reflects the reference change made in Minnesota Statutes, section 144.98.

4740.2050, subpart 16, item C remove the phrase "..., subdivision 3.", — this change reflects the reference change made in Minnesota Statutes, section 144.99.

4740.2050, subpart 16, item D, — current rule language contradicts Minnesota Statutes, section 144.98.

4740.2060, subpart 2, item C; subpart 3, item C; subpart 4, item C; and subpart 5, item C remove the phrase "...as required under part 4740.2050, subpart 16, item C", — repeal of a prior reference in this rule requires repeal of the references here.

4740.2065, subpart 8, — required items listed in national standard (adopted in Minnesota Statutes, section 144.98)

4740.2070, subpart 2; subpart 3; subparts 5 to 6; and subpart 7, items A, B and D, — the required items are now listed in Minnesota Statutes, section 144.98, eliminating the need for these references.

4740.2070, subpart 8, — the required items here are now listed in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2070, subpart 11, — the required items here are now listed in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2087, subpart 2, items A and C, — this rule language contradicts requirement in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2089, item C, — these required items are listed in the national standard (adopted in Minnesota Statutes, section 144.98).

4740.2091, subpart 3, item E, — these required items are listed in the national standard (adopted Minnesota Statutes, section 144.98).

4740.2100, subpart 4, item A, remove the last two sentences, — not included in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 5, item B remove "..before sample preparation or extraction.", — not included in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 8, item C, remove the phrase "The percent recovery of the standard must fall within plus or minus 40 percent of the true value." and remove subpart 8, item D, — current language contradicts items required in the national standard and some items that are not included in national standard (adopted in Minnesota Statutes, section 144.98)

4740.2100, subpart 9, item A, — the national standard includes a broader list of technologies affected by selectivity and consequently this item is out of date.

MDH's previously reported plans to repeal these chapter 4740 subparts again met with other Department priorities in 2013. MDH decided, in its judgment, that no harm would befall the public if this project were postponed further. With the additional rules identified in 2013 for repeal, MDH will repeal these rule subparts, and any related subparts inadvertently overlooked, plus the rules superseded by statute in Minnesota Laws, chapter 45, using the expedited process for repealing obsolete rules under Minn. Stat. § 14.3895 early in 2014.

Furthermore, as reported in the its 2012 report, MDH is currently repealing these previously identified obsolete rules using the expedited process for repealing obsolete rules under Minn. Stat. § 14.3895. The 60-day comment period ended on February 18, 2011. The Department deemed this again in 2013 to be less of a priority compared to other time demands but will conclude this project shortly. MDH's next step is to submit these rules to the Office of Administrative Hearings for legal review, which it will do at its earliest convenience in December of 2013 or in the beginning of 2014.

2006 (1) Minnesota Rules 4626.2015, subparts 3(c) and 6(b) — Certified Food Manager certification fees are obsolete and duplicative because Minn. Stat. § 157.16 imposes different fees that supersede the rule.

2009 (1) 4668.0012 Subparts 3A (4) 4 D — Class E licenses for assisted living programs are obsolete and duplicative because Minn. Stat. § 144G.01, et seq., established a new regulatory scheme for assisted living establishments. Consequently, Class E licenses no longer exist.

If you have any questions regarding this report, please contact me at:

Patricia Winget
Department of Health
Orville L. Freeman Building
625 Robert Street North
Saint Paul, Minnesota 55164-0975
651.201.5748
patricia.winget@state.mn.us

Yours very truly,

Patricia Winget

Patricia Winget, Rules Coordinator
Minnesota Department of Health

This is a complete list of addressees for MDH's 2013 Obsolete Rules Report

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

Senate Environment and Natural Resources Committee
Senator Bill G. Ingebrigtsen, Chair
Senator Linda Higgins, Ranking Minority Party Member

Senate State Government Innovation and Veterans Committee
Senator Mike Parry, Chair
Senator Charles W. Wiger, Ranking Minority Party Member

Senate Finance Committee
Senator Claire A. Robling, Chair
Senator Richard J. Cohen Ranking Minority Party Member

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

House Health and Human Services Reform Committee
Representative Steve Gottwalt, Chair
Representative Tina Leibling, DFL Lead

House Environment, Energy and Natural Resources Policy and Finance Committee
Representative Denny McNamara, Chair
Representative Jean Wagenius, DFL Lead

House Government Operations and Elections Division Committee
Representative Joyce Peppin, Chair
Representative Michael V. Nelson, DFL Lead

House State Government Finance Committee
Representative Lanning, Chair
Representative Phyllis Kahn, DFL Lead

House Agriculture and Rural Development Policy and Finance Committee
Representative Rod Hamilton, Chair
Representative Kent Eken, DFL Lead

House Commerce and Regulatory Reform Committee
Representative Joe Hoppe, Chair
Representative Joe Atkins, DFL Lead

House Ways and Means Committee
Mary Liz Holberg, Chair
Representative Lyndon Carlson Sr., DFL Lead

Senator David W. Hann
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 328
St. Paul, MN 55155-1606
[No E-Mail]

Senator Tony Lourey
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 125
St. Paul, MN 55155-1206
651.296.0293
E-Mail: sen.tony.lourey@senate.mn

Senator Bill G. Ingebrigtsen
100 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 303
St. Paul, MN 55155-1206
E-Mail: sen.bill.ingebrigtsen@senate.mn

Senator Linda Higgins
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 113
St. Paul, MN 55155-1206
E-Mail: sen.linda.higgins@senate.mn

Senator Mike Parry
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 309
St. Paul, MN 55155-1606
E-Mail: sen.mike.parry@senate.mn

Senator Charles W. Wiger
Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 141
St. Paul, MN 55155-1206
E-Mail: sen.chuck.wiger@senate.mn

Senator Claire A. Robling
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 226
St. Paul, MN 55155-1606
E-Mail: sen.claire.robling@senate.mn

Senator Richard J. Cohen
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 109
St. Paul, MN 55155-1206
[no e-mail]

Representative Jim Abeler
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 479
St. Paul, MN 55155-1206
E-Mail: rep.jim.abeler@house.mn

Representative Thomas Huntley
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 351
St. Paul, MN 55155-1206
E-Mail: rep.thomas.huntley@house.mn

Representative Steve Gottwalt
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 485
St. Paul, MN 55155-1206
E-Mail: rep.steve.gottwalt@house.mn

Representative Tina Leibling
100 Rev. Dr. Martin Luther King Jr. Blvd.
357 State Office Building
Saint Paul, Minnesota 55155
E-Mail: rep.tina.liebling@house.mn

Representative Denny McNamara
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 375
St. Paul, MN 55155-1206
E-Mail: rep.denny.mcnamara@house.mn

Representative Jean Wagenius
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 251
St. Paul, MN 55155-1206
E-Mail: rep.jean.wagenius@house.mn

Representative Joyce Peppin
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 503
St. Paul, MN 55155-1206
E-Mail: rep.joyce.peppin@house.mn

Representative Michael V. Nelson
229 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155
E-Mail: rep.michael.nelson@house.mn

Representative Morrie Lanning
379 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, MN 55155
E-Mail: rep.morrie.lanning@house.mn

Representative Phyllis Kahn
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 353
St. Paul, MN 55155-1206
E-Mail: rep.phyllis.kahn@house.mn

Representative Rod Hamilton
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 559
St. Paul, MN 55155-1206
E-Mail: rep.rod.hamilton@house.mn

Representative Kent Eken
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 243
St. Paul, MN 55155-1206
E-Mail: rep.kent.eken@house.mn

Representative Joe Hoppe
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 563
St. Paul, MN 55155-1206
E-Mail: rep.joe.hoppe@house.mn

Representative Joe Atkins
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 209
St. Paul, MN 55155-1206
E-Mail: rep.joe.atkins@house.mn

Mary Liz Holberg
453 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, MN 55155
E-Mail: rep.maryliz.holberg@house.mn

Lyndon Carlson Sr.
283 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, MN 55155
E-Mail: rep.lyndon.carlson@house.mn

Governor Mark Dayton
Office of the Governor
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Greg Hubinger, Director
Legislative Coordinating Commission
72 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Michele Timmons
c/o Paul Marinac
Revisor of Statutes
700 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155