

1 Department of Human Services

2

3 Adopted Permanent Rules Relating to Second Medical Opinion

4

5 Rules as Adopted

6 9505.0500 DEFINITIONS.

7 [For text of subps 1 to 4, see M.R.]

8 Subp. 4a. [See repealer.]

9 [For text of subps 5 to 17, see M.R.]

10 Subp. 18. **Medical review agent.** "Medical review agent"

11 means the representative of the commissioner who is authorized

12 by the commissioner to make decisions about admission

13 certifications, concurrent reviews, continued stay reviews, and

14 retrospective reviews.

15 [For text of subp 19, see M.R.]

16 Subp. 19a. [See repealer.]

17 [For text of subps 20 to 26, see M.R.]

18 Subp. 27. **Retrospective review.** "Retrospective review"

19 means a review conducted after inpatient hospital services are

20 provided to a recipient. The review is focused on validating

21 the diagnostic category and determining the medical necessity of

22 the admission, the medical necessity of any inpatient hospital

23 services provided, and whether all medically necessary inpatient

24 hospital services were provided.

25 Subp. 28. [See repealer.]

26 [For text of subp 29, see M.R.]

27 9505.0520 INPATIENT ADMISSION CERTIFICATION.

28 [For text of subps 1 and 2, see M.R.]

29 Subp. 3. **Admitting physician responsibilities.** The

30 admitting physician who seeks medical assistance or general

31 assistance medical care program payment for an inpatient

32 hospital service to be provided to a recipient shall:

33 [For text of item A, see M.R.]

34 B. Request admission certification by contacting the

35 medical review agent either by telephone or in writing and

1 providing the information in subitems (1) to (8):

2 [For text of subitems (1) to (7), see M.R.]

3 (8) information from the plan of care and the
4 reason for admission as necessary for the medical review agent
5 to determine if admission is medically necessary.

6 C. Inform the hospital of the certification number.

7 D. For purposes of billing, enter the certification
8 number and any required prior authorization number on invoices
9 submitted to the department for payment.

10 Subp. 4. **Hospital responsibilities.** A hospital that seeks
11 medical assistance or general assistance medical care payment
12 for inpatient hospital services provided to a recipient shall:

13 [For text of item A, see M.R.]

14 B. Within 48 hours after the occurrence of an event
15 described in subitem (1), and within 72 hours of the event
16 described in subitem (2), excluding weekends and holidays,
17 inform, by telephone, the medical review agent of the event and
18 provide the information required in subpart 3, item B, if
19 applicable.

20 (1) An admission that is an emergency admission
21 as specified in subpart 2.

22 (2) The admission of a pregnant woman that does
23 not result in the delivery of a newborn or a stillbirth within
24 24 hours of her admission, as specified in subpart 2, item B.

25 For purposes of this subitem, the time limit for notifying
26 the medical review agent is calculated beginning with the time
27 of the admission of the pregnant woman.

28 If the hospital fails to notify the medical review agent
29 within the required time limit, the hospital shall submit, at
30 its own expense, a copy of the complete medical record to the
31 medical review agent within 30 days after the recipient's
32 discharge. Failure to submit the record within the 30 days
33 shall result in denial of the certification number.

34 C. For billing purposes, enter the certification
35 number and any required prior authorization number on all
36 invoices submitted to the department for payment.

1 [For text of subp 5, see M.R.]

2 Subp. 6. Medical review agent responsibilities. The
3 medical review agent shall:

4 A. obtain and review the information required in
5 subpart 3, item B, if applicable;

6 B. determine within 24 hours of receipt of the
7 information, exclusive of weekends and holidays, whether
8 admission is medically necessary;

9 C. inform the admitting physician and the hospital of
10 the determination, by telephone, within 24 hours of receipt of
11 the information, exclusive of weekends and holidays;

12 [For text of item D, see M.R.]

13 E. determine if admission of a retroactively eligible
14 recipient was medically necessary;

15 [For text of item F, see M.R.]

16 G. provide for a reconsideration of a denial or
17 withdrawal of admission certification;

18 [For text of item H, see M.R.]

19 I. notify the admitting physician and the person
20 responsible for the hospital's utilization review, by telephone,
21 of a reconsideration decision within 24 hours of the decision,
22 exclusive of weekends and holidays;

23 [For text of items J to M, see M.R.]

24 [For text of subp 7, see M.R.]

25 Subp. 8. Procedure for admission certification. The
26 procedure for admission certification shall be as in items A to
27 H.

28 A. Upon receipt of the information requested in
29 subpart 3, item B, if applicable, the clinical evaluator shall
30 review the information and determine whether the admission is
31 medically necessary.

32 B. If the clinical evaluator determines that the
33 admission is medically necessary, the medical review agent shall
34 issue a certification number.

35 C. If the clinical evaluator is unable to determine
36 that the admission is medically necessary, the evaluator shall

1 contact a physician adviser.

2 D. If the physician adviser determines that the
3 admission is medically necessary, the medical review agent shall
4 issue a certification number.

5 E. If the physician adviser is unable to determine
6 that the admission is medically necessary, the physician adviser
7 shall notify the clinical evaluator by telephone, the clinical
8 evaluator shall notify the admitting physician by telephone, and
9 the admitting physician may request a second physician adviser's
10 opinion.

11 F. If the admitting physician does not request a
12 second physician adviser's opinion, the medical review agent
13 shall deny the admission certification, shall not issue a
14 certification number, and shall notify the admitting physician,
15 the hospital, and the recipient of the denial. The notice to
16 the recipient shall be in writing and shall state the reasons
17 for the denial and the recipient's right to appeal under
18 Minnesota Statutes, section 256.045, and part 9505.0522. The
19 notices to the admitting physician and the hospital shall be in
20 writing, shall state the reasons for the denial, and shall state
21 that the admitting physician or the hospital may request
22 reconsideration of the denial under subpart 9 or may directly
23 appeal the denial under Minnesota Statutes, chapter 14.

24 If the admitting physician requests a second physician
25 adviser's opinion about an admission, the clinical evaluator
26 shall contact a second physician adviser.

27 G. If the second physician adviser determines that
28 the admission is medically necessary, the medical review agent
29 shall issue a certification number.

30 H. If the second physician adviser is unable to
31 determine that the admission is medically necessary, the medical
32 review agent shall deny the admission certification, shall not
33 issue a certification number, and shall notify the admitting
34 physician, the hospital, and the recipient of the denial. The
35 notice to the recipient shall be in writing and shall state the
36 reasons for the denial and the recipient's right to appeal under

1 Minnesota Statutes, section 256.045, and part 9505.0522. The
2 notices to the admitting physician and the hospital shall be in
3 writing and shall state the reasons for the denial and shall
4 state that the admitting physician or the hospital may request
5 reconsideration of the denial under subpart 9 or may directly
6 appeal the denial under Minnesota Statutes, chapter 14.

7 Subp. 9. Reconsideration. The admitting physician or the
8 hospital may request reconsideration of a decision to deny or
9 withdraw an admission certification number under subpart 8, item
10 F or subpart 11. The admitting physician or the hospital shall
11 submit the request in writing to the medical review agent
12 together with the recipient's medical record and any additional
13 information within 30 days of the date of receipt of the
14 certified letter denying or withdrawing admission certification
15 number. Upon receipt of the request, the medical record, and
16 any additional information, the medical review agent shall
17 appoint at least three physician advisers, none of whom shall
18 have been involved previously in the procedure for the
19 recipient's admission certification number, to hear the
20 reconsideration. The reconsideration may be conducted by means
21 of a telephone conference call. The physician advisers may seek
22 additional facts and medical advice as necessary to decide
23 whether the admission is medically necessary. The
24 reconsideration shall be completed within 45 days of the receipt
25 of the information necessary to complete the reconsideration.
26 The outcome of the reconsideration shall be the one chosen by
27 the majority of the physician advisers appointed to consider the
28 request. The admitting physician or the hospital may appeal the
29 determination of the physician advisers according to the
30 contested case provisions of Minnesota Statutes, chapter 14, by
31 filing a written notice of appeal with the commissioner within
32 30 days of the date of receipt of the certified letter upholding
33 the denial or withdrawal of admission certification number.
34 However, an admitting physician or hospital that does not
35 request reconsideration or appeal under the contested case
36 procedures of Minnesota Statutes, chapter 14, within 30 days

1 after the denial or withdrawal of admission certification number
2 is not entitled to an appeal under Minnesota Statutes, chapter
3 14.

4 [For text of subp 9a, see M.R.]

5 Subp. 10. **Medical record review and determination.** As
6 specified in the contract between the department and the medical
7 review agent, upon the request of the department, or upon the
8 initiative of the medical review agent, the medical review agent
9 shall conduct a concurrent, continued stay, or retrospective
10 review of a recipient's medical record to validate the
11 diagnostic category and to determine whether the admission was
12 medically necessary, whether the inpatient hospital services
13 were medically necessary, whether a continued stay will be
14 medically necessary, whether all medically necessary services
15 were provided. The procedure for concurrent, continued stay,
16 and retrospective reviews shall be as in items A to F.

17 [For text of items A to E, see M.R.]

18 F. If the clinical evaluator is unable to determine
19 from the documentation in the recipient's medical records the
20 reasons for the recipient's discharge and readmission, the
21 clinical evaluator shall submit the medical records of the
22 recipient's discharge and readmission to a physician adviser.
23 The physician adviser shall review the records and determine the
24 nature of the discharge and readmission according to the
25 criteria in part 9505.0540, subparts 3 to 5, and if the
26 determination of the medical review agent is different from that
27 of the admitting physician or hospital, then the medical review
28 agent shall notify the admitting physician or hospital by
29 certified letter mailed within five days, exclusive of weekends
30 and holidays, of the determination. The notice shall state the
31 right of the admitting physician and hospital to request a
32 reconsideration under subpart 9.

33 Subp. 11. **Consequences of withdrawal of admission**
34 **certification number; general.** The department or the medical
35 review agent shall withdraw the certification number and may
36 take action as specified in items A to E if the medical review

1 agent determines any of the following: (1) that the admission
2 was not medically necessary; (2) that all medically necessary
3 inpatient hospital services were not provided; (3) that some or
4 all of the inpatient hospital services were not medically
5 necessary; or (4) that within 20 days, exclusive of weekends and
6 holidays, the hospital has failed to comply with the
7 department's or the medical review agent's request to submit the
8 medical record or other required information to support that the
9 admission was medically necessary, that all medically necessary
10 inpatient hospital services were provided, or that some or all
11 of the inpatient hospital services provided were medically
12 necessary; or, that the information submitted by the hospital
13 was inadequate to support that the admission was medically
14 necessary, that all medically necessary inpatient hospital
15 services were provided, or that some or all of the inpatient
16 hospital services provided were medically necessary.

17 [For text of items A to D, see M.R.]

18 E. If within 20 days, exclusive of weekends and
19 holidays, the hospital failed to comply with the department's or
20 the medical review agent's request to submit the medical record
21 or other required information to support (1) that the admission
22 was medically necessary; (2) that all medically necessary
23 inpatient hospital services were provided; or (3) that some or
24 all of the inpatient hospital services provided were medically
25 necessary; or, if the information submitted by the hospital was
26 inadequate to support clauses (1) to (3), all or part of the
27 payment shall be denied or recovered as provided in items A to D.

28 Subp. 12. **Reconsideration of denial or withdrawal of**
29 **admission certification number.** The denial or withdrawal of
30 admission certification number may be reconsidered under subpart
31 9.

32 [For text of subp 13, see M.R.]

33 Subp. 14. **Retroactive admission certification.** If the
34 admitting physician fails to request admission certification by
35 contacting the medical review agent prior to an admission for an
36 inpatient hospital service other than a service under subpart 2,

1 the admitting physician may retroactively request admission
2 certification. The admitting physician shall submit at his or
3 her own expense the recipient's complete medical record to the
4 medical review agent within 30 days of the recipient's
5 discharge. The medical record must contain the information
6 required in subpart 3, item B, and any other facts necessary to
7 establish that the recipient's admission was medically
8 necessary. The procedure outlined in subpart 8 shall also be
9 followed in the case of retroactive admission certification.
10 The denial of retroactive admission certification and the
11 withdrawal of retroactive admission certification may be
12 appealed to the medical review agent through the reconsideration
13 process in subpart 9.

14 Subp. 15. **Recovery of payment after withdrawal of**
15 **admission certification number.** An admitting physician or
16 hospital that receives a notice of withdrawal of a certification
17 number and that does not request reconsideration under subpart 9
18 or appeal under Minnesota Statutes, chapter 14, shall be subject
19 to recovery of payment without further notice or right to
20 appeal. If a reconsideration results in the denial or
21 withdrawal of a certification number, and the admitting
22 physician or hospital does not appeal within the time permitted
23 pursuant to other remedies, the department shall recover payment
24 without further notice to the admitting physician and hospital.
25 If an appeal results in the denial or withdrawal of a
26 certification number, the department shall recover the payment
27 without further notice to the admitting physician and the
28 hospital.

29 Recovery of overpayments may be made by:

30 [For text of items A to D, see M.R.]

31 9505.0521 PROHIBITION OF RECOVERY FROM RECIPIENT.

32 The provider may not seek payment from the recipient for
33 inpatient hospital services provided under parts 9505.0500 to
34 9505.0540 if the certification number is not issued or is
35 withdrawn.

1 9505.0522 RECIPIENT'S RIGHT TO APPEAL.

2 A recipient who is denied inpatient hospital services
3 because of the medical review agent's determination that the
4 services are not medically necessary may appeal the medical
5 review agent's determination under Minnesota Statutes, section
6 256.045.

7 9505.0540 CRITERIA TO DETERMINE MEDICAL NECESSITY OR
8 APPROPRIATENESS.

9 Subpart 1. **Determination for admission for purpose other**
10 **than chemical dependency treatment.** The medical review agent
11 shall follow the Appropriateness Evaluation Protocol and
12 Criteria for Inpatient Psychiatric Treatment of Blue Cross and
13 Blue Shield of Minnesota in determining whether a recipient's
14 admission is medically necessary, whether the inpatient hospital
15 services provided to the recipient were medically necessary,
16 whether the recipient's continued stay will be medically
17 necessary, and whether all medically necessary inpatient
18 hospital services were provided to the recipient.

19 [For text of subps 2 to 6, see M.R.]

20 9505.5005 DEFINITIONS.

21 [For text of subps 1 to 11, see M.R.]

22 Subp. 12. **Medical assistance or MA.** "Medical assistance"
23 or "MA" means the Medicaid program established by title XIX of
24 the Social Security Act and Minnesota Statutes, chapter 256B.
25 For purposes of parts 9505.5035 to 9505.5105, medical assistance
26 also refers to general assistance medical care and MinnesotaCare
27 unless otherwise specified.

28 Subp. 12a. **Medical appropriateness or medically**
29 **appropriate.** "Medical appropriateness" or "medically
30 appropriate" refers to a determination, by a medical review
31 agent, that the recipient's need for a surgical procedure
32 requiring a second medical opinion meets the criteria in
33 Minnesota Statutes, section 256B.0625, subdivisions 1, 4a, and
34 24.

1 Subp. 12b. **Medical review agent.** "Medical review agent"
2 means the representative of the commissioner who is authorized
3 by the commissioner to make decisions about second medical
4 opinions under parts 9505.5035 to 9505.5100.

5 [For text of subps 13 and 13a, see M.R.]

6 Subp. 14. **Physician.** "Physician" means a person licensed
7 to provide services within the scope of his or her profession as
8 defined in Minnesota Statutes, chapter 147. For purposes of the
9 second medical opinion requirement in parts 9505.5035 to
10 9505.5105, physician shall also mean a person licensed to
11 provide dental services within the scope of his or her
12 profession as defined in Minnesota Statutes, section 150A.06,
13 subdivision 1.

14 Subp. 14a. **Physician adviser.** "Physician adviser" means a
15 physician who is qualified to render an opinion about the
16 surgical procedure as evidenced by the physician's certification
17 or eligibility for certification from the appropriate specialty
18 board if, according to the community standard, the certification
19 or eligibility for certification is required of physicians
20 performing the surgical procedure.

21 Subp. 14b. **Recipient ID number.** "Recipient ID number"
22 means the unique 8-digit identification number assigned to a
23 recipient who has been determined eligible for MA, GAMC, or
24 MinnesotaCare.

25 [For text of subps 15 to 17, see M.R.]

26 Subp. 17a. **Reconsideration.** "Reconsideration" means a
27 review, as set forth in part 9505.5078, of a second physician
28 adviser's opinion that a surgical procedure is not medically
29 appropriate.

30 [For text of subp 18, see M.R.]

31 Subp. 18a. **Second opinion or second medical opinion.**
32 "Second opinion" or "second medical opinion" means the
33 determination by the medical review agent under parts 9505.5035
34 to 9505.5105 that a surgical procedure requiring a second
35 medical opinion is or is not medically appropriate.

36 Subp. 18b. [See repealer.]

1 [For text of subp 19, see M.R.]

2 9505.5035 SURGICAL PROCEDURES REQUIRING SECOND MEDICAL OPINION.

3 Subpart 1. General requirements. Second medical opinions
4 shall be required for medical assistance, general assistance
5 medical care, and MinnesotaCare recipients for inpatient and
6 outpatient elective surgical procedures according to the list
7 published in the State Register under Minnesota Statutes,
8 section 256B.0625, subdivisions 1, 4a, and 24. Publication
9 shall occur in the last issue of the State Register for the
10 month of October if there has been a revision in the list since
11 the last October. In addition, the department shall publish any
12 revision of the list at least 45 days before the effective date
13 if the revision imposes a second medical opinion requirement.
14 The department shall send each provider a copy of the published
15 list or a revision of the published list.

16 Subp. 2. Requirements prior to eligibility determination.
17 The requirements of parts 9505.5035 to 9505.5105 shall apply to
18 individuals who have applied for MA or GAMC, but whose
19 applications have not yet been approved or denied at the time
20 the surgical procedure is performed.

21 9505.5041 SURGICAL PROCEDURE ELIGIBLE FOR MEDICARE PAYMENT.

22 A provider who performs a surgical service requiring a
23 second medical opinion on a recipient eligible for Medicare must
24 bill Medicare as specified in part 9505.0440. If Medicare
25 denies payment or makes a partial payment for the service, the
26 provider may request the medical review agent to issue an
27 authorization number for medical assistance billing purposes.
28 The provider's claim for medical assistance payment must comply
29 with part 9505.0440 and the time limit specified in part
30 9505.0450, subpart 4, item A.

31 9505.5045 CRITERIA TO DETERMINE WHEN SECOND MEDICAL OPINION IS
32 REQUIRED.

33 The commissioner shall use the criteria in items A to D to
34 determine which surgical procedures shall be subject to the

1 second medical opinion requirement.

2 [For text of items A to D, see M.R.]

3 9505.5046 CRITERIA TO DETERMINE MEDICAL APPROPRIATENESS.

4 The criteria and standards to determine the medical
5 appropriateness of a surgical procedure for which a second
6 medical opinion is required shall be as required in Minnesota
7 Statutes, section 256B.0625, subdivisions 1, 4a, and 24.

8 9505.5075 PHYSICIAN RESPONSIBILITY.

9 When a surgical procedure is subject to a second medical
10 opinion, the physician offering to provide the surgical
11 procedure must contact the medical review agent for a
12 determination of whether the surgical procedure is medically
13 appropriate. The physician must request the determination of
14 whether the surgical service is medically appropriate before
15 submitting a claim for medical assistance payment. The claim
16 for payment must have the authorization number given by the
17 medical review agent and must comply with the requirements of
18 part 9505.0450.

19 The physician must give the medical review agent the
20 following information by telephone:

21 A. the recipient's name, ID number, and date of
22 birth;

23 B. the admitting physician's name and provider
24 number;

25 C. the primary procedure code according to the most
26 recent edition of Physicians' Current Procedural Terminology
27 published by the American Medical Association or the
28 International Classification of Diseases -- Clinical
29 Modification, published by the Commission on Professional and
30 Hospital Activities, Green Road, Ann Arbor, Michigan 48105,
31 which is incorporated by reference and available through the
32 Minitex interlibrary loan system and is subject to change;

33 D. the expected date of the surgical procedure;

34 E. the recipient's diagnosis by diagnostic code
35 according to the most recent edition of the International

1 Classification of Diseases -- Clinical Modification;

2 F. information from the recipient's medical record
3 sufficient to enable the medical review agent to determine if
4 the surgical procedure meets the criteria in part 9505.5046;

5 G. whether the surgical procedure is in response to
6 an emergency;

7 H. whether the surgical procedure is a consequence
8 of, or a customary and accepted practice incident to, a more
9 major surgical procedure; and

10 I. the name and provider number of the inpatient or
11 outpatient hospital where the surgical procedure was or will be
12 performed.

13 9505.5076 MEDICAL REVIEW AGENT DETERMINATION.

14 Subpart 1. **Qualified staff.** The medical review agent
15 shall provide professional and technical expertise to conduct
16 the second medical opinion program for medical assistance,
17 general assistance medical care, and the MinnesotaCare
18 programs. Unless otherwise specified in parts 9505.5035 to
19 9505.5100, the professional and technical expertise shall
20 consist of persons who are physicians or who are registered
21 nurses licensed under Minnesota Statutes, sections 148.171 to
22 148.285, to practice professional nursing and qualified by
23 training and experience to review the appropriateness of
24 surgical procedures.

25 Subp. 2. **Medical review agent's determination upon receipt**
26 **of required information.** The medical review agent must obtain
27 and review the information required from the physician under
28 part 9505.5075. If the medical review agent determines that the
29 requested surgical procedure is medically appropriate, the
30 medical review agent shall certify that the requirements of
31 parts 9505.5035 to 9505.5105 are met and shall issue an
32 authorization number. If the medical review agent determines
33 that the requested surgical procedure is not medically
34 appropriate, the medical review agent shall deny an
35 authorization number. In either event, within 24 hours of

1 receipt of the required information, exclusive of weekends and
2 holidays, the medical review agent shall provide the notices
3 required under part 9505.5082.

4 Subp. 3. Medical review agent unable to determine medical
5 appropriateness. If the medical review agent is unable to
6 determine if a surgical procedure requiring a second opinion is
7 medically appropriate, the medical review agent shall consult a
8 physician adviser as specified in part 9505.5077.

9 Subp. 4. Retrospective review of medical record. The
10 medical review agent may conduct an on-site retrospective review
11 of a recipient's inpatient hospital records on a surgical
12 procedure to obtain information needed to make or verify a
13 determination of medical appropriateness. If, after the review
14 of the medical records, the medical review agent determines that
15 the surgical procedure was not medically appropriate, the
16 medical review agent shall deny an authorization number or, if
17 an authorization number was issued, withdraw the authorization
18 number. Upon completing the review, the medical review agent
19 shall notify the physician as specified in part 9505.5082.

20 9505.5077 DETERMINATION BY PHYSICIAN ADVISER.

21 Subpart 1. Physician adviser opinion. Upon the request of
22 an admitting physician or the medical review agent according to
23 part 9505.5076, subpart 3, a physician adviser shall determine
24 if a surgical procedure requiring a second medical opinion is
25 medically appropriate. If the physician adviser determines that
26 the surgical procedure requiring a second opinion is medically
27 appropriate, the medical review agent shall issue an
28 authorization number and notify the admitting physician and the
29 recipient of the determination. If the physician adviser
30 determines that the surgical procedure requiring a second
31 opinion is not medically appropriate, the medical review agent
32 shall deny an authorization number and notify the admitting
33 physician and the recipient according to part 9505.5082. If the
34 physician adviser is unable to determine if the surgical
35 procedure is medically appropriate, the medical review agent

1 shall notify the admitting physician by telephone, and the
2 admitting physician may request a second physician adviser's
3 opinion. If the admitting physician does not request a second
4 physician adviser's opinion, the medical review agent shall deny
5 the authorization number and shall notify the admitting
6 physician and the recipient of the denial according to part
7 9505.5082.

8 Subp. 2. **Second physician adviser's opinion.** If the
9 admitting physician requests a second physician adviser's
10 opinion under subpart 1, the medical review agent shall contact
11 a second physician adviser. If the second physician adviser
12 determines that the surgical procedure requiring a second
13 medical opinion is medically appropriate, the medical review
14 agent shall issue an authorization number. If the second
15 physician adviser is unable to determine if the surgical
16 procedure is medically appropriate, or determines that the
17 procedure is not medically appropriate, the medical review agent
18 shall deny an authorization number and notify the recipient and
19 the admitting physician of the denial under part 9505.5082.

20 9505.5078 RECONSIDERATION.

21 Subpart 1. **Reconsideration requested by physician.** If a
22 second physician adviser determines a surgical procedure is not
23 medically appropriate, an admitting physician requesting the
24 second medical opinion may request reconsideration. The
25 admitting physician who wants reconsideration must submit a
26 written request to the medical review agent within 30 days of
27 the date of receipt of the notice in part 9505.5077. The
28 request must have the recipient's name and health care program
29 identification number, the disputed surgery, the reason for the
30 dispute, the medical record or part of the medical record needed
31 to make a determination of medical appropriateness, any other
32 relevant information, and the name, address, and telephone
33 number of the physician.

34 Subp. 2. **Reconsideration; three physician advisers.** Upon
35 receipt of a reconsideration requested under subpart 1, the

1 medical review agent shall appoint at least three physician
2 advisers who did not take part in the determination leading to a
3 denial of an authorization number. Each physician adviser shall
4 determine the medical appropriateness of the surgical
5 procedure. The reconsideration decision shall be the opinion of
6 the majority of the physician advisers. The reconsideration
7 must be completed within 60 days of the receipt of the
8 information required under subpart 1.

9 Subp. 3. Reconsideration; medical review agent. Upon
10 completion of the reconsideration, the medical review agent
11 shall notify the admitting physician by telephone within 24
12 hours of the decision, exclusive of weekends and holidays.
13 Additionally, the medical review agent shall send, by certified
14 mail, the admitting physician and the recipient the written
15 notices required under part 9505.5082 no later than ten days
16 following the decision, exclusive of weekends and holidays. The
17 notice to the recipient must state the right of the recipient to
18 appeal under part 9505.5105 and Minnesota Statutes, section
19 256.045. If the admitting physician has already performed the
20 surgery, the notice to the admitting physician must state the
21 right of the admitting physician to appeal under the contested
22 case procedure under Minnesota Statutes, chapter 14.

23 9505.5079 INELIGIBILITY TO SERVE AS PHYSICIAN ADVISER.

24 A physician shall not be eligible to serve as a physician
25 adviser if:

26 A. the physician is the admitting physician or the
27 physician who will provide the surgical procedure;

28 B. during the previous 12 months, the physician
29 issued treatment orders or participated in the formulation or
30 execution of the treatment plan for the recipient for whose
31 surgical procedure a determination of medical appropriateness is
32 required;

33 C. the physician or the physician's spouse, child,
34 grandchild, parent, or grandparent has an ownership interest of
35 five percent or more in the hospital where the surgery was or

1 will be performed; or

2 D. the physician can obtain a financial benefit from
3 the performance of the surgical procedure on the recipient.

4 9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.

5 Subpart 1. Opinion of medical review agent. Failure of
6 the physician who offers to provide a surgical procedure
7 requiring a second opinion to obtain a required second medical
8 opinion from the medical review agent shall result in denial of
9 payment for all costs, direct and indirect, associated with the
10 surgery, including costs attributable to other providers and
11 hospitals.

12 Subp. 2. [See repealer.]

13 Subp. 3. [See repealer.]

14 9505.5082 NOTICE ABOUT DETERMINATION OF MEDICAL APPROPRIATENESS.

15 Subpart 1. Notice approving authorization number. If a
16 surgical procedure requiring a second medical opinion is
17 determined to be medically appropriate and the medical review
18 agent issues an authorization number for the surgical procedure,
19 the medical review agent must inform, by telephone, the
20 physician requesting the procedure and mail the recipient and
21 the physician a notice of the determination within 24 hours of
22 the determination, exclusive of weekends and holidays.

23 Subp. 2. Notice denying authorization number. If a
24 surgical procedure requiring a second medical opinion is
25 determined not to be medically appropriate or a decision about
26 whether the surgical procedure is medically appropriate cannot
27 be reached, the medical review agent shall deny an authorization
28 number for the surgical procedure and notify by telephone within
29 24 hours of the denial the physician requesting the procedure.
30 Additionally, the medical review agent must mail written notices
31 as specified in items A to D within 24 hours of the denial or
32 failure to reach a decision, exclusive of weekends and holidays.

33 A. A notice to a recipient must state that the
34 recipient may appeal the denial of the service under part
35 9505.5105 and Minnesota Statutes, section 256.045.

1 B. A notice to a physician must state the reason for
2 the denial of the authorization number. Additionally, the
3 notice must state that, as appropriate, the physician may
4 request the opinion of a physician adviser under part 9505.5077,
5 subpart 1, a second physician adviser under part 9505.5077,
6 subpart 2, or a reconsideration under part 9505.5078. The
7 notice must also state that the admitting physician who requests
8 the opinion of a physician adviser or a second physician
9 adviser, as appropriate, may submit additional information to
10 document the medical appropriateness of the surgical procedure.

11 C. If on reconsideration a determination is made that
12 the surgical procedure is not medically appropriate, notice to
13 the physician must state the reason for the denial and must
14 state that if the surgery has already been provided, the
15 physician may appeal the denial under the contested case
16 procedure under Minnesota Statutes, chapter 14, unless another
17 procedure is required by statute. The notice must also state
18 that the physician who appeals may submit additional information
19 to document the medical appropriateness of the surgical
20 procedure.

21 D. If the medical review agent withdraws an
22 authorization number under part 9505.5076, subpart 3, the notice
23 must state the reason for the withdrawal and must state that the
24 physician may request the opinion of a physician adviser under
25 part 9505.5077.

26 9505.5085 PROHIBITION OF PAYMENT REQUEST.

27 A physician, hospital, or other provider who is denied
28 payment because of failure to comply with parts 9505.5035 to
29 9505.5105 shall not seek payment from the recipient of the
30 service and the recipient shall not be liable for payment for
31 the service for which payment was denied.

32 9505.5105 FAIR HEARINGS AND APPEALS.

33 Subpart 1. **Appealable actions.** A recipient may appeal any
34 of the following department actions:

35 A. the department has failed to act with reasonable

1 promptness on a request for prior authorization as established
2 under part 9505.5020, subpart 1, or the medical review agent has
3 failed to act on an authorization request under the second
4 medical opinion program, within the time specified in parts
5 9505.5035 to 9505.5091;

6 B. the department has denied a request for prior
7 authorization under part 9505.5020, subpart 1;

8 C. the medical review agent has denied an
9 authorization request under the second medical opinion program
10 subsequent to a reconsideration conducted according to part
11 9505.5078; or

12 D. the department has proposed a reduction in service
13 as an alternative to authorization of a proposed service for
14 which prior authorization under part 9505.5020, subpart 1, was
15 requested.

16 Subp. 2. No right to appeal. The right to appeal shall
17 not apply to the list of surgical procedures established
18 according to Minnesota Statutes, section 256B.0625, subdivisions
19 1, 4a, and 24.

20 Subp. 3. Request for fair hearing. When a recipient
21 requests assistance from a local agency in filing an appeal with
22 the department, the local agency shall provide the assistance.

23 The request for a hearing must be submitted in writing by
24 the recipient to the appeals unit of the department. The
25 request must be filed either:

26 A. within 30 days of the date notice of denial of the
27 request for prior authorization under part 9505.5020, subpart 1,
28 or request for authorization of a surgical procedure was
29 received; or

30 [For text of item B, see M.R.]

31 [For text of subps 4 and 5, see M.R.]

32

33 RENUMBERER. Minnesota Rules, part 9505.5060, is renumbered as
34 9505.5091.

35 REPEALER. Minnesota Rules, parts 9505.0500, subparts 4a, 19a,

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- 1 and 28; 9505.5005, subpart 18b; 9505.5040; 9505.5050; 9505.5055;
- 2 9505.5065; 9505.5070; 9505.5080, subparts 2 and 3; 9505.5090;
- 3 9505.5096; and 9505.5100, are repealed.