

74-1800-11695-1

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES**

**In the Matter of the Adoption of
the Rules of the Department of
Human Services Relating to
Hospital Admission Certification,
Minn. R., Chapter 9505.**

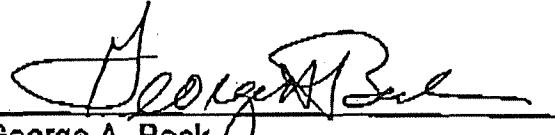
**ORDER ON REVIEW OF
RULES UNDER MINN.
STAT. § 14.26**

The Minnesota Department of Human Services (agency, Department) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26. On May 6, 1998, the Office of Administrative Hearings (OAH) received the documents from the agency required to be filed under Minn. Stat. § 14.26 and Minn. R. 1400.2310. Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED:

1. The agency has the statutory authority to adopt the rule.
2. The rules were adopted in compliance with the procedural requirements of Minn. Stat., chapter 14 and Minn. R., chapter 1400, except that the Statement of Need and Reasonableness did not contain information regarding the probable costs to the Department and to any other agencies on the implementation and enforcement of the proposed rule as required by Minn. Stat. § 14.131(2).
The Administrative Law Judge concludes that the omission did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process and therefore constitutes harmless error under Minn. Stat. § 14.26(3)(d)(1).
3. The adopted rules are not substantially different from the rule as originally proposed.
4. The record for the adopted rules demonstrates a rational basis for the need for and reasonableness of the proposed rule.
5. Minn. R. 9505.0520, subp. 11, item C, of the adopted rules is being **DISAPPROVED** as not meeting the legal standards of Minn. R. 1400. 2100, item D. (See Memorandum.)

Dated this 19th day of May, 1998.



George A. Beck
Administrative Law Judge

MEMORANDUM

Pursuant to Minn. Stat. § 14.26, the agency has submitted these rules to the Administrative Law Judge for a review of their legality. As stated in the above order, the rules meet the statutory authority, procedural, substantial difference, and rational basis requirements of Minn. Stat. § 14.26 and Minn. R. 1400.2100. However, Minn. R. 9505.0520, subp. 11, item C is being disapproved as not meeting the standards under Minn. R. 1400.2100, item D, because of excessive agency discretion.

Minn. R. 9505.0520, subp. 11, item C, provides as follows:

9505.0520 INPATIENT ADMISSION CERTIFICATION.

Subp. 11. Payment adjustments.

...C. If the diagnostic category validation indicates a discrepancy between the diagnostic category assigned to the claim and the diagnostic category established from the medical record, the department *may* adjust the payment as applicable to the diagnostic category that is accurate for the recipient's condition according to the medical record. (Emphasis added.)

The use of the word "may" in item C, allows for excessive discretion by the Department without adequate criteria as to when the Department will adjust the payment. On page 38 of the Statement of Need and Reasonableness, the Department indicates that the substance for this provision is transferred from part 9505.0520, subp. 10, item E of the current rule. However, the current rule, item E, uses the word "shall" instead of the word "may," as follows: "...the department *shall* adjust the reimbursement as applicable to the diagnostic category that is accurate for the recipient's condition." (Emphasis added.) In the SONAR, the Department does not give an explanation as to why the change was made from "shall" to "may."

To correct the excessive agency discretion contained in proposed item C, the Administrative Law Judge recommends that the word "may" in the above part be changed to either "shall" or "must." By removing the unbridled discretion, the affected parties will know that, if there is a discrepancy between the diagnostic category assigned to the claim and the diagnostic category established from the medical record, the department must adjust the payment as required.

Pursuant to Minn. Stat. § 14.26, subd. 3(b) and Minn. R. 1400.2300, subp. 6, this order will be submitted to the Chief Administrative Law Judge for approval. Under Minn. R. 1400.2300, subp. 8, the agency may resubmit the rule to the chief judge for review after changing it and may request that the chief judge reconsider the disapproval.

G. A. B.