

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1086

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-5-84
DATE FOR REVIEW
DATE DUE 10-19-84

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved 10/19/84 (COS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10/22/84 Revisor approved 10/5/84 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 10.4.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
8.29.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
9.3/4.84 At least ~~30/20~~ 25 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

Statement of Need and Reasonableness

Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Human Services

Office Memorandum

TO: Attorney General-Administration

DATE: 10/5/84

FROM: Eleanor Weber
Rulemaking Unit

PHONE: 297-4301

SUBJECT: Parts 9505.5000 to 9505.5030. (Emergency)

Please address any questions you may have concerning program decisions to Ann Grossman, 297-2380.

Eleanor Weber

RECEIVED
OCT 05 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine, Commissioner
Department of Human Services

DATE: October 22, 1984

ATTN: Elizabeth Cutter
Special Assistant Attorney General

FROM : Larry D. Starns LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for MA and GAMC Reimbursement, Minnesota Rules, Parts 9505.5000 - 9505.5030 (Emergency).

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

LDS:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Department of Human Services

Adopted Emergency Rules Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for MA and GAMC Reimbursement

Emergency Rules as Adopted

9505.5000 [Emergency] APPLICABILITY.

Parts 9505.5000 to 9505.5030 [Emergency] establish the procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care.

These parts shall be read in conjunction with title XIX of the Social Security Act, Code of Federal Regulations, title 42, sections 430.00 to 482.57; Minnesota Statutes, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.40; and Minnesota Rules, parts 9500.0750 to 9500.1100.

9505.5010 [Emergency] DEFINITIONS.

Subpart 1. **Definitions.** The terms used in parts 9505.5000 to 9505.5030 [Emergency] have the meanings given them in subparts 2 to 17.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or an authorized designee.

Subp. 3. **Consultant.** "Consultant" means an individual who is licensed or registered according to state law or meets the credentials established by the respective professional organization in an area of health care or medical service; is endorsed by a professional organization; FF2. under contract with the Department of Human Services; advises the department whether to approve, deny, or modify prior authorization requests in his or her area of expertise; advises and recommends about policies on health services; and performs other duties as assigned.

Subp. 4. **Department.** "Department" means the Minnesota

Department of Human Services.

Subp. 5. **Emergency.** "Emergency" means a medical condition that, if not immediately diagnosed and treated, could cause a recipient serious physical or mental disability, continuation of severe pain, or death.

Subp. 6. **Fair hearing.** "Fair hearing" means an administrative review under Minnesota Statutes, section 256.045 and as provided in part 9505.5020 [Emergency], subpart 7, to examine facts concerning the matter in dispute and to advise the commissioner whether the department's decision to reduce or deny benefits was correct.

Subp. 7. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" means the health services provided to a recipient under the general assistance medical care program according to Minnesota Statutes, section 256D.03.

Subp. 8. **Health services.** "Health services" means the services and supplies furnished to a recipient by a provider as defined in subpart 15.

Subp. 9. **Investigative.** "Investigative" means:

A. A health service procedure which has progressed to limited human application and trial, which lacks wide recognition as a proven and effective procedure in clinical medicine as determined by the United States Department of Health and Human Services in the administration of the Medicare program.

B. A drug or device that the United States Food and Drug Administration has not yet declared safe and effective for the use prescribed. For purposes of this definition, drugs and devices shall be the same as in the Food and Drug Act.

Subp. 10. **Local agency.** "Local agency" means a county or a multicounty agency that is authorized under Minnesota Statutes as the agency responsible for the administration of the medical assistance and general assistance medical care programs.

Subp. 11. **Local trade area.** "Local trade area" means the geographic area surrounding the recipient's residence which the local agency identifies as commonly used by other persons in the

same area to obtain necessary goods and services.

Subp. 12. **Medical assistance or MA.** "Medical assistance" or "MA" means the program under title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.

Subp. 13. **Physician.** "Physician" means a person licensed to provide services within the scope of his or her profession as defined in Minnesota Statutes, chapter 147. For purposes of the second surgical opinion requirement in part 9505.5030 [Emergency], "physician" shall also mean a person providing dental services within the scope of his or her profession as defined in Minnesota Statutes, chapter 150A.

Subp. 14. **Prior authorization.** "Prior authorization" means the written authorization issued by the department to a provider for the provision of a covered service specified under part 9500.5020 [Emergency].

Subp. 15. **Provider.** "Provider" means an individual or organization furnishing health services to persons eligible for the medical assistance or general assistance medical care programs under an agreement with the department.

Subp. 16. **Recipient.** "Recipient" means a person who is eligible for and receiving benefits from the medical assistance or general assistance medical care program.

Subp. 17. **Referee.** "Referee" means an individual who conducts fair hearings under Minnesota Statutes, section 256.045 and recommends rulings to the commissioner.

9505.5020 [Emergency] PRIOR AUTHORIZATION CRITERIA, REQUIREMENTS, AND RESPONSIBILITIES.

Subpart 1. **Prior authorization required.** Except as provided in subpart 2, a provider shall obtain prior authorization as a condition of medical assistance and general assistance medical care program reimbursement for health services designated in subpart 4. A provider who ~~offers~~ furnishes health services without complying with the prior authorization requirements of parts 9505.5000 to 9505.5020 [Emergency] shall not be reimbursed. A physician, hospital, or other provider who is denied reimbursement because of failure to comply with parts

9505.5000 to 9505.5020 [Emergency] shall not seek payment from the recipient and the recipient shall not be liable for payment of the service for which reimbursement is denied. Prior authorization shall assure the provider reimbursement for the approved health service only if the service is given during a time the person is a recipient and if the provider meets the requirements of other rules applicable to the medical assistance and general assistance medical care programs.

Subp. 2. **Retroactive authorization.** As provided in items A and B, medical assistance or general assistance medical care programs reimbursement shall be given for a health service for which the required authorization was requested after the health service was delivered to the recipient.

A. A health service requiring prior authorization shall be reimbursed without prior authorization in an emergency if the provider submits the prior authorization form, DPW-1855, no later than three working days after providing the initial service and the provider documents the emergency by submitting materials, reports, progress notes, admission histories, and other information necessary to substantiate the characterization of the service as necessary to the condition of the recipient.

B. When the health service was provided on or after the date on which the recipient's eligibility began, but before the date the case was opened, a health service requiring prior authorization shall be authorized retroactively if the health service meets the criteria in subpart 6, and if an authorization request is submitted to the department within 20 working days of the date the case was opened. The request for retroactive authorization must be submitted to the department in the manner set in subpart 3.

Subp. 3. **Provider responsibilities.** The provider shall submit to the department a prior authorization form, DPW-1855, which has been completed according to instructions in the appropriate provider handbook and such other information necessary to substantiate the characterization of the service or supply. The provider shall bear the burden of proving an

emergency for the purpose of the retroactive authorization in subpart 2. Further, the provider shall bear the burden of establishing compliance with the criteria in subpart 6 and shall submit information which demonstrates that the criteria in subpart 6 are met. The provider who administers or supervises the recipient's care shall personally sign the form and any attached documentation.

Subp. 4. **Department responsibilities.** If the information submitted by the provider does not meet the requirements of subpart 6, the department shall notify the provider of what is necessary to complete the request and the time limit for its submission. If the department does not receive the requested information within 15 working days of the postmarked date on which the notice was sent to the provider, the request for prior authorization shall be denied. The department shall send the provider, within 15 working days of receipt of all the information required in subpart 3, a notice of the action taken on the request for prior authorization. If the prior authorization request is denied, the department shall send the recipient within the same time period a copy of the notice sent to the provider and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

The department shall annually publish in the last issue of the State Register for October a list of health services that require prior authorization. In addition, the department shall publish any revision of the list at least ~~30~~ 45 days before the effective date if the revision imposes a prior authorization requirement on a health service. When a list is published, the department shall send each provider a copy of the list. FF4

In addition to the list published in the State Register, prior authorization is required for health services to be provided outside of Minnesota~~.~~, ~~for health services which are considered investigative, for newly-developed or modified medical supplies or equipment, and for health services which are comparable to services provided in a skilled nursing or other facility, but which are provided in a recipient's home.~~ A FF6

health service that is provided to a Minnesota resident outside of Minnesota but within the recipient's local trade area and that does not require prior authorization when it is provided to a Minnesota resident within Minnesota shall be exempt from the prior authorization requirement.

Subp. 5. **Criteria for selecting health services subject to the prior authorization requirement.** The commissioner shall use the criteria in items A to ~~G~~ H to determine which health services shall be subject to the prior authorization requirement.

A. The health service is of questionable medical necessity as determined by consultants to the department.

B. The department determines use of the health service needs monitoring in order to control the expenditure of program funds.

C. Less costly appropriate alternatives to the health service are generally available.

D. The health service is investigative.

E. The health service is newly developed or modified.

F. The department determines that monitoring a health service of a continuing nature is necessary to prevent the continuation of the service when it ceases to be beneficial.

G. The health service is determined to be obsolete by the commissioner after consultation with the consultant.

H. The health service is comparable to a service provided in a skilled nursing or other facility but which is provided in a recipient's home.

Subp. 6. **Criteria for approval of prior authorization request.** Prior authorization required under subpart 4 shall be evaluated using the criteria given in items A to E. The health service shall:

A. be medically necessary as determined by prevailing community standards or customary practice and usage;

B. safeguard against inappropriate expenditures of program funds;

C. meet the standards for quality and timeliness of health service;

D. be evaluated to determine whether a less expensive appropriate alternative health service is available; and

E. promote the most effective and appropriate use of

the available health service.

Subp. 7. **Fair hearings.** A recipient who disagrees with the department's action may request a fair hearing. When a recipient requests assistance from a local agency in filing an appeal with the department, the local agency shall provide the assistance. The hearing shall comply with the requirements of Code of Federal Regulations, title 42, section 431.244(f) or its successors. The request for a hearing must be submitted in writing by the recipient to the appeals unit of the department. A request for a fair hearing must be filed within 30 days of the date the prior authorization request was denied or no later than 90 days from the date of denial if the appeals referee finds there was good cause for the delay. A referee shall conduct the hearing according to Minnesota Statutes, section 256.045. Within 90 days of the date of receipt of the recipient's request, the commissioner shall make a ruling to uphold, reverse, or modify the action or decision of the department. The commissioner's ruling shall be binding upon the department and the recipient unless an appeal is filed pursuant to Minnesota Statutes, section 256.045.

Subp. 8. **Retention of information submitted by provider.** The department shall have the right to retain information submitted to the department by the provider in accordance with subpart 3.

9505.5030 [Emergency] SECOND OPINION SURGERY REQUIREMENT.

Subpart 1. **Surgical procedures requiring second opinion.** Except as provided in subpart 2, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient surgical procedures according to the list published in the State Register under Minnesota Statutes, section 256B.02, subdivision 8. Publication shall occur annually in the last issue of the State Register for the month of October. In addition, the department shall publish any revision of the list at least ~~30~~ 45 days before the effective date if the revision imposes a second surgical opinion requirement. The department shall send each provider a

FF 4

copy of the published list or a revision of the published list.

Subp. 2. **Exemptions.** The circumstances in items A to E are exempt from the requirement of a second surgical opinion provided that the requirements of subpart 11 are met.

A. The surgical procedure is approved for reimbursement by Medicare.

B. The surgical procedure is a consequence of, or a customary and accepted practice as an incident to a more major surgical procedure which is subject to the second opinion requirement.

C. The procedure is an emergency. For an emergency, the provider shall submit substantiating documentation, consisting of reports, progress notes, admission history, or any other pertinent information which substantiates the characterization of the surgical procedure as an emergency.

D. A visit to another practitioner to obtain a second opinion requires travel outside the local trade area.

E. The recipient has good cause for not obtaining a second opinion. Good cause refers to circumstances beyond the recipient's control. Examples are illness of the recipient, illness of a family member requiring the presence of the recipient, weather conditions that prohibit safe travel, FF 3 or the unavailability of transportation.

Subp. 3. **Criteria to determine when second opinion is required.** The commissioner shall use the criteria given in items A to F to determine the surgical procedures that shall be subject to the second surgical opinion requirement.

A. Authoritative medical literature identifies the surgical procedure as being overutilized.

B. A surgical procedure is shown to be utilized to a greater degree within the Medicaid population than in a non-medicaid population.

C. A surgical procedure is frequently utilized as demonstrated by department statistical reports.

D. A surgical procedure and associated care has ~~s~~ve costs that are demonstrated by statistical evidence to exceed the average.

E. Another surgical procedure that uses less intrusive measures could be employed.

F. The surgical procedure has at least a five percent rate of failure to obtain the requisite two physician's approvals, as determined by the Minnesota Medicaid Second Surgical Opinion Program or a similar second surgical opinion program.

Subp. 4. **Third surgical opinion.** When a second surgical opinion fails to substantiate the initial surgical opinion, a third surgical opinion shall be obtained if the recipient still wants the surgery. No opinion beyond the third opinion shall be considered in meeting the requirements of this part. The cost of an opinion beyond the third opinion shall not be reimbursed under the medical assistance or general assistance medical care program.

Subp. 5. **Second or third opinion by a physician.** The physician who initially recommends surgery shall provide to the recipient in need of a second or third surgical opinion, the names of at least two other physicians who are qualified to render a second or third opinion, or the name of an appropriate medical referral resource service, and information about the consequences of failing to obtain a second or third opinion. The recommending physician shall have no common financial interest ~~with~~ or referral relationship resulting in a financial gain. ~~to the physician named to render a second or third opinion, or the medical referral resource service.~~ The physican who gives a second or third opinion must be a provider.

FF5

Subp. 6. **Penalties.** The commissioner shall have the right to suspend, restrict, or terminate a physician's participation in the medical assistance or general assistance medical care program, or to deny payment for an opinion when the commissioner determines the physician who rendered the opinion has a financial interest with or referral relationship to a physician rendering an opinion relative to the proposed surgery or the medical referral resource service. The penalties of this subpart shall also apply when the commissioner determines a physician has rendered a fraudulent opinion.

Subp. 7. **Reimbursement of cost of second and third**

and the physician named to render a second or third opinion or the medical referral resource service

surgical opinions. Reimbursement of the cost of second and third surgical opinions under the medical assistance and general assistance medical care programs shall be permitted up to the allowable fee maximums as maintained by the department. When the physician who provides the second or third surgical opinion also performs the surgery, reimbursement for the surgery shall be denied.

Subp. 8. **Time limits; second and third opinions; surgery.** The second surgical opinion shall be obtained within 90 days of the date of the initial opinion; the third opinion, if required, shall be obtained within 45 days of the date of the second opinion; approved surgery, if not performed within 180 days of the initial opinion, and if the recipient still wants the surgery, shall require repetition of the second surgical opinion process as described in this part.

Subp. 9. **Physician surgical services.** The physician offering the surgical service shall ensure that the required second opinion and, when required, third opinion, are obtained.

Subp. 10. **Prohibition of payment request.** A physician, hospital, or other provider who is denied reimbursement because of failure to comply with this part shall not seek payment from the recipient of the service for which reimbursement was denied.

Subp. 11. **Physician responsibility.** The physician who provides a second or third opinion shall indicate his approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered by the commissioner necessary to substantiate the second opinion, shall be personally signed by each physician providing an opinion, shall be attached to a completed and signed prior authorization form, and shall be submitted to the department. If two of the three physicians concur that the requested surgical procedure is appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 15 working days of the department's receipt of the necessary information and forms. Failure to obtain a required second or third

surgical opinion shall be grounds for denying reimbursement for any costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals except for the providers who rendered the second or third opinion. If the physican is unable to secure the required second or third opinions to support the surgical procedure, the second surgical opinion form shall be submitted to the department within 135 days of the date of the first opinion. Failure to comply with this subpart may result in termination of the provider's agreement with the department. The department shall send the recipient a copy of the notice of a denial of the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

Subp. 12. **Documentation of exemptions.** When the surgical procedure is exempt under subpart 2 from the second or third opinion requirement, the provider shall submit documentation to support the basis of the exemption with the claim for payment. In the alternative, approval of the exemption may be requested. The request shall be submitted on a form supplied by the department and attached to a prior authorization form. If the requests are approved, an authorization number will be assigned.

Subp. 13. **Independent physician evaluation.** The commissioner shall have the right to order an independent evaluation by a physician selected by the commissioner when the commissioner has reason to believe the requested surgical procedure is not necessary. If the selected physician determines the procedure is not necessary, the commissioner shall deny approval.

Subp. 14. **Fair hearings; appeals.** A recipient who disagrees with the department's action may request a fair hearing as provided in part 9505.5020 [Emergency], subpart 7. The right to appeal under Minnesota Statutes, sections 14.57 to 14.62 shall not apply to the list of surgical procedures established according to Minnesota Statutes, section 256B.02, subdivision 8.

APPLICATION. Notwithstanding any rule or law to the contrary, upon the expiration of the emergency amendments to Minnesota Rules, parts 9500.0980; 9500.1070, subparts 4, items A, and B, subitems (1) and (5); 6, items A, subitem (3); B, subitem (3); C, subitem (1); D, subitem (1), and that part of subitem (2) which reads: "The medical assistance program will pay for multiple family group-psychotherapy or group-psychotherapy for up to two hours per week for a ten-week period"; 7, item A; 10, item E, subitems (1), (2), (3), and (4); 16, item A; and 18, item B; and that part of subpart 19, item D, which reads: "Prior authorization must be obtained on any services for which payment is claimed under this section,"; and 9505.1020, subpart 4, items Q and R, the permanent parts amended are reinstated.

APPROVED AS TO LEGALITY

October 19, 1984

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 22 1984
Joan Anderson Growe
Secretary of State

Subp. 11. Procedural changes. Any changes in the procedure must be consistent with the provisions in this part and must be reported to the recipient at least two weeks before implementation. The process and the written material shall be approved by the Department of Human Services prior to implementation.

Subp. 12. Medicaid health plan grievance procedures. Each Medicaid health plan shall record all complaints, actions, and results and report to the Department of Human Services semi-annually.

If a Medicaid health plan is dissatisfied with the actions of an enrollee they may notify the Department of Human Services. It shall be explained to the enrollee in writing, with a copy given to the enrollee, that this notification shall not result in a loss of eligibility or removal from the Medicaid health plan.

The Medicaid health plan must provide for a second medical opinion when requested by the enrollee or the Department of Human Services within the plan and comply with any recommendations made by the professional advisory committee of the Department of Human Services and the appeals referee in response to the external formal grievance procedure.

Subp. 13. Case management. At the time of contracting with the Department of Human Services, Medicaid health plans must demonstrate a case management system that shall contain:

A. individual needs assessment;

B. individual care plan development and implementation; and

C. evaluation, monitoring, and revision of individual care plans.

9500.1473 [Emergency] DOCUMENTATION.

Local agencies shall document the completion of requirements in parts 9500.1450 to 9500.1475 [Emergency] on forms prescribed by the Department of Human Services.

9500.1474 [Emergency] INTERAGENCY COORDINATION.

Local agencies, including local nursing services, local head start agencies, and local school districts, shall cooperate with other agencies which provide health services to children so that duplication of services is avoided.

Department of Human Services

Proposed Emergency Rules Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for MA and GAMC Reimbursement

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Minnesota Statutes, section 256.991, supp. 1983.

Persons interested in these rules have until 4:30 p.m. on September 28, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Ann Grossman
Department of Human Services
Professional Services Section
Second Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-2380

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in

effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

Minnesota Rules, part 9505.5000 [Emergency] establishes the applicability of parts 9505.5000 to 9505.5030 (Emergency) to procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care. Part 9505.5010 (Emergency) defines the terms used in parts 9505.5000 to 9505.5030 (Emergency). Part 9505.5020 (Emergency) establishes prior authorization criteria, requirements, and responsibilities. Part 9505.5030 (Emergency) establishes the requirements, procedures, and responsibilities for a second surgical opinion.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the Legislature.

A free copy of the proposed emergency rule may be obtained by contacting Ann Grossman, Department of Human Services, Professional Services Section, Second Floor, Space Center Building, 444 Lafayette Road, St. Paul, MN 55101, 612/297-2380.

Leonard W. Levine
Commissioner of Human Services

Emergency Rules as Proposed (all new material)

9505.5000 [Emergency] APPLICABILITY.

Parts 9505.5000 to 9505.5030 [Emergency] establish the procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care.

These parts shall be read in conjunction with title XIX of the Social Security Act, Code of Federal Regulations, title 42, sections 430.00 to 482.57; Minnesota Statutes, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.40; and Minnesota Rules, parts 9500.0750 to 9500.1100.

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Subpart 1. Definitions. The terms used in parts 9505.5000 to 9505.5030 [Emergency] have the meanings given them in subparts 2 to 17.

Subp. 2. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or an authorized designee.

Subp. 3. Consultant. "Consultant" means an individual who is licensed or registered according to state law or meets the credentials established by the respective professional organization in an area of health care or medical service; is under contract with the Department of Human Services; advises the department whether to approve, deny, or modify prior authorization requests in his or her area of expertise; advises and recommends about policies on health services; and performs other duties as assigned.

Subp. 4. Department. "Department" means the Minnesota Department of Human Services.

Subp. 5. Emergency. "Emergency" means a medical condition that, if not immediately diagnosed and treated, could cause a recipient serious physical or mental disability, continuation of severe pain, or death.

Subp. 6. Fair hearing. "Fair hearing" means an administrative review under Minnesota Statutes, section 256.045 and as provided in part 9505.5020 [Emergency], subpart 7, to examine facts concerning the matter in dispute and to advise the commissioner whether the department's decision to reduce or deny benefits was correct.

Subp. 7. General assistance medical care or GAMC. "General assistance medical care" or "GAMC" means the health services provided to a recipient under the general assistance medical care program according to Minnesote Statutes, section 256D.03.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 8. Health services. "Health services" means the services and supplies furnished to a recipient by a provider as defined in subpart 15.

Subp. 9. Investigative. "Investigative" means:

A. A health service procedure which has progressed to limited human application and trial, which lacks wide recognition as a proven and effective procedure in clinical medicine as determined by the United States Department of Health and Human Services in the administration of the Medicare program.

B. A drug or device that the United States Food and Drug Administration has not yet declared safe and effective for the use prescribed. For purposes of this definition, drugs and devices shall be the same as in the Food and Drug Act.

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Subp. 13. Physician. "Physician" means a person licensed to provide services within the scope of his or her profession as defined in Minnesota Statutes, chapter 147. For purposes of the second surgical opinion requirement in part 9505.5030 [Emergency], "physician" shall also mean a person providing dental services within the scope of his or her profession as defined in Minnesota Statutes, chapter 150A.

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Subp. 17. Referee. "Referee" means an individual who conducts fair hearings under Minnesota Statutes, section 256.045 and recommends rulings to the commissioner.

9505.5020 [Emergency] PRIOR AUTHORIZATION CRITERIA, REQUIREMENTS, AND RESPONSIBILITIES.

Subpart 1. Prior authorization required. Except as provided in subpart 2, a provider shall obtain prior authorization as a condition of medical assistance and general assistance medical care program reimbursement for health services designated in subpart 4. A provider who offers health services without complying with the prior authorization requirements of parts 9505.5000 to 9505.5020 [Emergency] shall not be reimbursed. A physician, hospital, or other provider who is denied reimbursement because of failure to comply with parts 9505.5000 to 9505.5020 [Emergency] shall not seek payment from the recipient and the recipient shall not be liable for payment of the service for which reimbursement is denied. Prior authorization shall assure the provider reimbursement for the approved health service only if the service is given during a time the person is a recipient and if the provider meets the requirements of other rules applicable to the medical assistance and general assistance medical care programs.

Subp. 2. Retroactive authorization. As provided in items A and B, medical assistance or general assistance medical care programs reimbursement shall be given for a health service for which the required authorization was requested after the health service was delivered to the recipient.

A. A health service requiring prior authorization shall be reimbursed without prior authorization in an emergency if the provider submits the prior authorization form, DPW-1855, no later than three working days after providing the initial service and the provider documents the emergency by submitting materials, reports, progress notes, admission histories, and other information necessary to substantiate the characterization of the service as necessary to the condition of the recipient.

B. When the health service was provided on or after the date on which the recipient's eligibility began, but before the date the case was opened, a health service requiring prior authorization shall be authorized retroactively if the health service meets the criteria in subpart 6, and if an authorization request is submitted to the department within 20 working days of the date the case was opened. The request for retroactive authorization must be submitted to the department in the manner set in subpart 3.

Subp. 3. Provider responsibilities. The provider shall submit to the department a prior authorization form, DPW-1855,

which has been completed according to instructions in the appropriate provider handbook and such other information necessary to substantiate the characterization of the service or supply. The provider shall bear the burden of proving an emergency for the purpose of the retroactive authorization in subpart 2. Further, the provider shall bear the burden of establishing compliance with the criteria in subpart 6 and shall submit information which demonstrates that the criteria in subpart 6 are met. The provider who administers or supervises the recipient's care shall personally sign the form and any attached documentation.

Subp. 4. Department responsibilities. If the information submitted by the provider does not meet the requirements of subpart 6, the department shall notify the provider of what is necessary to complete the request and the time limit for its submission. If the department does not receive the requested information within 15 working days of the postmarked date on which the notice was sent to the provider, the request for prior authorization shall be denied. The department shall send the provider, within 15 working days of receipt of all the information required in subpart 3, a notice of the action taken on the request for prior authorization. If the prior authorization request is denied, the department shall send the recipient within the same time period a copy of the notice sent to the provider and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

The department shall annually publish in the last issue of the *State Register* for October a list of health services that require prior authorization. In addition, the department shall publish any revision of the list at least 30 days before the effective date if the revision imposes a prior authorization requirement on a health service. When a list is published, the department shall send each provider a copy of the list.

In addition to the list published in the *State Register*, prior authorization is required for health services to be provided outside of Minnesota, for health services which are considered investigative, for newly-developed or modified medical supplies or equipment, and for health services which are comparable to services provided in a skilled nursing or other facility, but which are provided in a recipient's home. A health service that is provided to a Minnesota resident outside of Minnesota but within the recipient's local trade area and that does not require prior authorization when it is provided to a Minnesota resident within Minnesota shall be exempt from the prior authorization requirement.

Subp. 5. Criteria for selecting health services subject to the prior authorization requirement. The commissioner shall use the criteria in items A to G to determine which health services shall be subject to the prior authorization requirement.

A. The health service is of questionable medical necessity as determined by consultants to the department.

B. The department determines use of the health service needs monitoring in order to control the expenditure of program funds.

C. Less costly appropriate alternatives to the health service are generally available.

D. The health service is investigative.

E. The health service is newly developed or modified.

F. The department determines that monitoring a health service of a continuing nature is necessary to prevent the continuation of the service when it ceases to be beneficial.

G. The health service is determined to be obsolete by the commissioner after consultation with the consultant.

Subp. 6. Criteria for approval of prior authorization request. Prior authorization required under subpart 4 shall be evaluated using the criteria given in items A to E. The health service shall:

A. be medically necessary as determined by prevailing community standards or customary practice and usage;

B. safeguard against inappropriate expenditures of program funds;

C. meet the standards for quality and timeliness of health service;

D. be evaluated to determine whether a loss expensive appropriate alternative health service is available; and

E. promote the most effective and appropriate use of the available health service.

Subp. 7. Fair hearings. A recipient who disagrees with the department's action may request a fair hearing. When a recipient requests assistance from a local agency in filing an appeal with the department, the local agency shall provide the assistance. The hearing shall comply with the requirements of Code of Federal Regulations, title 42, section 431.244(f) or its successors.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The request for a hearing must be submitted in writing by the recipient to the appeals unit of the department. A request for a fair hearing must be filed within 30 days of the date the prior authorization request was denied or no later than 90 days from the date of denial if the appeals referee finds there was good cause for the delay. A referee shall conduct the hearing according to Minnesota Statutes, section 256.045. Within 90 days of the date of receipt of the recipient's request, the commissioner shall make a ruling to uphold, reverse, or modify the action or decision of the department. The commissioner's ruling shall be binding upon the department and the recipient unless an appeal is filed pursuant to Minnesota Statutes, section 256.045.

Subp. 8. Retention of information submitted by provider. The department shall have the right to retain information submitted to the department by the provider in accordance with subpart 3.

9505.5030 [Emergency] SECOND OPINION SURGERY REQUIREMENT.

Subpart 1. Surgical procedures requiring second opinion. Except as provided in subpart 2, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient surgical procedures according to the list published in the *State Register* under Minnesota Statutes, section 256B.02, subdivision 8. Publication shall occur annually in the last issue of the *State Register* for the month of October. In addition, the department shall publish any revision of the list at least 30 days before the effective date if the revision imposes a second surgical opinion requirement. The department shall send each provider a copy of the published list or a revision of the published list.

Subp. 2. Exemptions. The circumstances in items A to E are exempt from the requirement of a second surgical opinion provided that the requirements of subpart 11 are met.

A. The surgical procedure is approved for reimbursement by Medicare.

B. The surgical procedure is a consequence of, or a customary and accepted practice as an incident to a more major surgical procedure which is subject to the second opinion requirement.

C. The procedure is an emergency. For an emergency, the provider shall submit substantiating documentation, consisting of reports, progress notes, admission history, or any other pertinent information which substantiates the characterization of the surgical procedure as an emergency.

D. A visit to another practitioner to obtain a second opinion requires travel outside the local trade area.

E. The recipient has good cause for not obtaining a second opinion. Good cause refers to circumstances beyond the recipient's control. Examples are illness of the recipient, illness of a family member requiring the presence of the recipient, or the unavailability of transportation.

Subp. 3. Criteria to determine when second opinion is required. The commissioner shall use the criteria given in items A to F to determine the surgical procedures that shall be subject to the second surgical opinion requirement.

A. Authoritative medical literature identifies the surgical procedure as being overutilized.

B. A surgical procedure is shown to be utilized to a greater degree within the Medicaid population than in a non-medicaid population.

C. A surgical procedure is frequently utilized as demonstrated by department statistical reports.

D. A surgical procedure and associated care has costs that are demonstrated by statistical evidence to exceed the average.

E. Another surgical procedure that uses less intrusive measures could be employed.

F. The surgical procedure has at least a five percent rate of failure to obtain the requisite two physician's approvals, as determined by the Minnesota Medicaid Second Surgical Opinion Program or a similar second surgical opinion program.

Subp. 4. Third surgical opinion. When a second surgical opinion fails to substantiate the initial surgical opinion, a third surgical opinion shall be obtained if the recipient still wants the surgery. No opinion beyond the third opinion shall be considered in meeting the requirements of this part. The cost of an opinion beyond the third opinion shall not be reimbursed under the medical assistance or general assistance medical care program.

Subp. 5. Second or third opinion by a physician. The physician who initially recommends surgery shall provide to the recipient in need of a second or third surgical opinion, the names of at least two other physicians who are qualified to render a second or third opinion, or the name of an appropriate medical referral resource service. The recommending physician shall have no financial interest with or referral relationship to the physician named to render a second or third opinion, or the medical referral resource service. The physician who gives a second or third opinion must be a provider.

Subp. 6. Penalties. The commissioner shall have the right to suspend, restrict, or terminate a physician's participation in the medical assistance or general assistance medical care program, or to deny payment for an opinion when the commissioner determines the physician who rendered the opinion has a financial interest with or referral relationship to a

physician rendering an opinion relative to the proposed surgery or the medical referral resource service. The penalties of this subpart shall also supply when the commissioner determines a physician has rendered a fraudulent opinion.

Subp. 7. Reimbursement of cost of second and third surgical opinions. Reimbursement of the cost of second and third surgical opinions under the medical assistance and general assistance medical care programs shall be permitted up to the allowable fee maximums as maintained by the department. When the physician who provides the second or third surgical opinion also performs the surgery, reimbursement for the surgery shall be denied.

Subp. 8. Time limits; second and third opinions; surgery. The second surgical opinion shall be obtained within 90 days of the date of the initial opinion; the third opinion, if required, shall be obtained within 45 days of the date of the second opinion; approved surgery, if not performed within 180 days of the initial opinion, and if the recipient still wants the surgery, shall require repetition of the second surgical opinion process as described in this part.

Subp. 9. Physician surgical services. The physician offering the surgical service shall ensure that the required second opinion and, when required, third opinion, are obtained.

Subp. 10. Prohibition of payment request. A physician, hospital, or other provider who is denied reimbursement because of failure to comply with this part shall not seek payment from the recipient of the service for which reimbursement was denied.

Subp. 11. Physician responsibility. The physician who provides a second or third opinion shall indicate his approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered by the commissioner necessary to substantiate the second opinion, shall be personally signed by each physician providing an opinion, shall be attached to a completed and signed prior authorization form, and shall be submitted to the department. If two of the three physicians concur that the requested surgical procedure is appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 15 working days of the department's receipt of the necessary information and forms. Failure to obtain a required second or third surgical opinion shall be grounds for denying reimbursement for any costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals except for the providers who rendered the second or third opinion. If the physician is unable to secure the required second or third opinions to support the surgical procedure, the second surgical opinion form shall be submitted to the department within 135 days of the date of the first opinion. Failure to comply with this subpart may result in termination of the provider's agreement with the department. The department shall send the recipient a copy of the notice of a denial of the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

Subp. 12. Documentation of exemptions. When the surgical procedure is exempt under subpart 2 from the second or third opinion requirement, the provider shall submit documentation to support the basis of the exemption with the claim for payment. In the alternative, approval of the exemption may be requested. The request shall be submitted on a form supplied by the department and attached to a prior authorization form. If the requests are approved, an authorization number will be assigned.

Subp. 13. Independent physician evaluation. The commissioner shall have the right to order an independent evaluation by a physician selected by the commissioner when the commissioner has reason to believe the requested surgical procedure is not necessary. If the selected physician determines the procedure is not necessary, the commissioner shall deny approval.

Subp. 14. Fair hearings; appeals. A recipient who disagrees with the department's action may request a fair hearing as provided in part 9505.5020 [Emergency], subpart 7. The right to appeal under Minnesota Statutes, sections 14.57 to 14.62 shall not apply to the list of surgical procedures established according to Minnesota Statutes, section 256B.02, subdivision 8.

APPLICATION. Notwithstanding any rule or law to the contrary, upon the expiration of the emergency amendments to Minnesota Rules, parts 9500.0980; 9500.1070, subparts 4, items A, and B, subitems (1) and (5); 6, items A, subitem (3); B, subitem (3); C, subitem (1); D, subitem (1), and that part of subitem (2) which reads: "The medical assistance program will pay for multiple family group-psychotherapy or group-psychotherapy for up to two hours per week for a ten-week period"; 7, item A; 10, item E, subitems (1), (2), (3), and (4); 16, item A; and 18, item B; and that part of subpart 19, item D, which reads: "Prior authorization must be obtained on any services for which payment is claimed under this section,"; and 9505.1020, subpart 4, items Q and R, the permanent parts amended are reinstated.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULES GOVERNING THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING PRIOR AUTHORIZATION FOR HEALTH SERVICES AND SECOND SURGICAL OPINION AS A CONDITION FOR MA AND GAMC REIMBURSEMENT, MINNESOTA RULES, PARTS 9505.5000 - 9505.5030 (EMERGENCY).

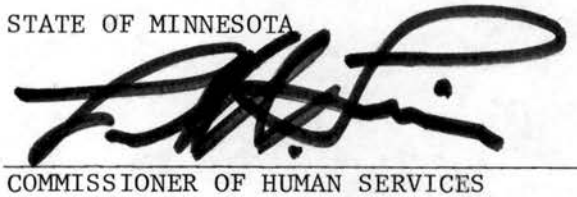
ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register On September 3, 1984 as a proposed emergency rule pursuant to Minnesota Statutes, sections 14.29 - 14.36.

After affording interested and affected persons an opportunity to submit written data and views within 25 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for Medical Assistance and General Assistance Medical Care Reimbursement, Minnesota Rules, Parts 9505.5000 to 9505.5030 (Emergency) are adopted this 4 day of October, 1984, pursuant to authority vested in me by Minnesota Statutes, section 256.991, supp. 1983.

STATE OF MINNESOTA



COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
Prior Authorization and Second Surgical Opinion
Requirements Under the Medical Assistance
and General Assistance Medical Care
Programs, Minnesota Rules, parts 9505.5000
to 9505.5030 [Emergency]

NOTICE OF INTENT TO ADOPT
EMERGENCY RULES

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Minnesota Statutes, section 256.991, supp. 1983.

Persons interested in these rules have until 4:30 p.m. on September 28, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Ann Grossman
Department of Human Services
Professional Services Section
Second Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-2380

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the Attorney General will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the State Register and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

Minnesota Rules, part 9505.5000 (Emergency) establishes the applicability of parts 9505.5000 to 9505.5030 (Emergency) to procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care. Part 9505.5010 (Emergency) defines the terms used in parts 9505.5000 to 9505.5030 (Emergency). Part 9505.5020 (Emergency) establishes prior authorization criteria, requirements, and responsibilities. Part 9505.5030 (Emergency) establishes the requirements, procedures, and responsibilities for a second surgical opinion.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the Legislature.

A free copy of the proposed emergency rule may be obtained by contacting Ann Grossman, Department of Human Services, Professional Services Section, Second Floor, Space Center Building, 444 Lafayette Road, St. Paul, MN 55101, 612/297-2380.



LEONARD W. LEVINE
Commissioner of Human Services

EW-13

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rules of the State Prior Authorization and Second Surgical Opinion Governing Requirements Under the Medical Assistance and General Assistance Medical Care Programs, Minnesota Rules, parts 9505.5000 to 9505.5030 [Emergency]

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 17 day of August 1984 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

EW-15

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING PRIOR AUTHORIZATION AND SECOND SURGICAL OPINION REQUIREMENTS UNDER THE MEDICAL ASSISTANCE AND GENERAL ASSISTANCE MEDICAL CARE PROGRAMS, MINNESOTA RULES, PARTS 9505.5000 to 9505.5030 (Emergency)

AFFIDAVIT OF MAILING

Wendy Johnson , being first duly sworn, deposes and says:

That on the 29 day of August , 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Emergency Rules by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 30 day of August, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING PRIOR AUTHORIZATION AND SECOND SURGICAL OPINION REQUIREMENTS UNDER THE MEDICAL ASSISTANCE AND GENERAL ASSISTANCE MEDICAL CARE PROGRAMS, MINNESOTA RULES, PARTS 9505.5000 to 9505.5030

AFFIDAVIT OF ADDITIONAL MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 29 day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Emergency Rules to all persons and associations who have requested that their names be placed on file with for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

Advisory Committee on Proposed Rule 48
Medical Assistance Advisory Committee

Wendy Johnson

Subscribed and sworn to before me
this 30 day of August, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1989

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF TEMPORARY RULES
RELATING TO THE PRIOR AUTHORIZATION
AND SECOND SURGICAL OPINION
PROCESSES AND REQUIREMENTS
UNDER THE TITLE XIX PROGRAM
(9505.5000 to 9505.5030)

FINDINGS OF FACT
AND CONCLUSIONS

The Commissioner published notice of proposed Temporary rules on the above entitled matter in the State Register on September 4, 1984. Notice was also sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, on August 31, 1984. After affording all interested and affected persons an opportunity to submit comments for 20 days after the notice and reviewing and considering the comments, I find the following:

1. In 9505.50.20, Subpart 1 (Emergency) of the proposed rule, (page 3, line 26) the Department used the term "offers" to refer to providers who provide health services. One commentator, the Minnesota Psychologists in Private Practice (MPPP), suggested that the verb "offers" was vague and over-inclusive. The Commissioner agrees that the word "offers" needs clarifying and is substituting the word "furnishes" as it is a clearer and more precise term.

2. In 9505.5010, Subpart 3 (Emergency), (page 1, lines 20-28), "consultant" is defined as an individual who is licensed or registered according to state law or meets the credentials established by the respective professional organization in an area of health care or medical service and who is under contract with the Department of Human Services. The Minnesota Psychiatric Society commented that this definition assumed that a health care provider licensed or registered somehow possesses abilities to do case review and/or render decisions or recommendations concerning the appropriateness of reimbursement. The commentator suggested that this may be an erroneous assumption and that it would be more appropriate to solicit nominees from the respective professional organizations. The Commissioner agrees that it is important to employ consultants who are professionally qualified and respected by their peers and that input from a professional organization would be valuable. However this input can be obtained through endorsement as well as through the method the commentator suggests. The rule will be amended to require that consultants must be licensed or registered according to state law or meet the credentials established by the respective professional organization, under contract with DHS, and endorsed by a professional organization.

3. In 9505, Subpart 2, (page 8, line 16) (Emergency), circumstances under which the second surgical opinion requirement shall be waived are listed. One of the circumstances (Item E) allows waiver of the requirement when the recipient has good cause for not obtaining a second opinion. Good cause is defined as circumstances beyond the recipient's control. Examples given are illness of the recipient, illness of a family member requiring the presence of the recipient, or the unavailability of transportation. One commentator, the Legal Aid Society of Minneapolis, Inc., suggested that the examples of curcumstances beyond the recipient's control be expanded to include inclement weather. The commissioner agrees that because, especially for senior citizens who are MA or GAMC recipients, it may be impossible to keep appointments during winter months, severe "weather conditions that prohibit safe travel" should be included as an example of circumstances outside the recipient's control. p.8

4. In 9505.5020 Subp. 4 and 0505.5030 Subp. 1 (Emergency) of the proposed rule (page 5, line 20 and page 7, line 28), the Department specified that it would publish any revisions to the prior authorization and second surgical opinion lists at least 30 days before the effective date if the revision imposed a prior authorization or second surgical opinion requirement. One commentator, the Minnesota Psychiatric Society, suggested that the Department allow 60 days notice instead. The Commissioner agrees that 30 days may not provide, in all cases, adequate time for providers to establish mechanisms for compliance with new requirements. Therefore, the Commissioner believes that a compromise of 45 days will best serve the interests of providers as well as the Department. p.5,7

5. In 9505.5030 Subp. 5 (Emergency) (page 9, line 15), a commentator, the Legal Aid Society of Minneapolis, Inc. suggested that provision be made for informing recipients of the consequences of their failure to obtain the required second or third opinion. The Commissioner agrees that such notification is desirable and appropriate. Therefore, the following language was added at the above cited area: After <u>service</u>, on page 9, line 15, insert ....and information about the consequences of failing to obtain a second or third opinion. In addition, lines 14-18 were mentioned by one commentator, the Minnesota Psychiatric Association as being confusing and difficult to understand what was meant by financial interest. Upon review, the Commissioner agrees that this might be confusing and added the following underlined terms to clarify: The recommending physician <u>and the physician named to render a second or third opinion</u> shall have no <u>common</u> financial interest (strike with) or referral relationship <u>resulting in a financial gain</u>. p.9

6. As a result of the Department's review of the comments received and the proposed rules, the Department has made numerous minor changes to correct problems of grammar, spelling or lack of clarity at the proposed rules. Such changes did not change the substance of the rules. These changes are as follows:

9505.5030 Subp. 3 (D)	(Emergency)	p.4
9505.5020 Subp. 4	(Emergency)	p.5
9505.5020 Subp. 5	(Emergency)	p.6

7. All Comments concerning the proposed temporary rules received within the period allowed by law were considered by the Department.

8. The changes made to the proposed temporary rule are not substantial changes.

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these rules.

2. Proper notice of the Department's intent to adopt the proposed above-captioned emergency rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed emergency rules.

3. All modifications made to the proposed emergency rule are supported by the data and views submitted to the Department, and are not substantial changes.

4. The emergency rules, as modified, are necessary and reasonable.

5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

Dated: October 4, 1984

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF HUMAN SERVICES GOVERNING PRIOR AUTHORIZATION FOR HEALTH SERVICES AND SECOND SURGICAL OPINION AS A CONDITION FOR MA AND GAMC REIMBURSEMENT, MINNESOTA RULES PARTS 9505.5000 - 9505.5030 (EMERGENCY).

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Elizabeth Cutter do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Elizabeth V Cutter

Special Assistant Attorney General

Dated: October 5, 1984

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGNEYC RULES GOVERNING THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING PRIOR AUTHORIZATION FOR HEALTH SERVICES AND SECOND SURGICAL OPINION AS A CONDITION FOR MA AND GAMC REIMBURSEMENT, MINNESOTA RULES, PARTS 9505.5000 - 9505.5030 (EMERGENCY).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Eleanor E. Weber , being first duly sworn, deposes and says:

That on the 5 day of October , 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Eleanor E Weber

Subscribed and sworn to before me

this 5th day of October , 1984.

Jacqueline Sue Wierstad

JACQUELINE SUE WIERSTAD
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 12, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING PRIOR AUTHORIZATION FOR HEALTH SERVICES AND SECOND SURGICAL OPINION AS A CONDITION FOR MA AND GAMC REIMBURSEMENT, MINNESOTA RULES, PARTS 9505.5000 - 9505.5030 (EMERGENCY).

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes 1984, section 14.30 and 14.32:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, October 5, 1984 for review for form and legality.

The attorney general shall review the proposed emergency rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, Room 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612)296-7030.

The proposed emergency rule has been modified. A free copy of the proposed emergency rule, as modified, is available upon request from:

Ann Grossman
Department of Human Services
2nd Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101