

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ATTORNEY GENERAL

December 15, 1988

ANU SEAM
Department of Human Services

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Medical Assistance and General Assistance Reimbursement

The above-referenced rule has been approved as to its legality by the Attorney General on December 12, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. §14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. §14.34.

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

JAL:rer

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

File No. 15 Docket No. 05-0009-0866

DATE RECEIVED 12/1/88 ADOPTED W/O HEARING N

REVIEW DATE 12/10/88 EMERGENCY RULE _____

DUE DATE 12/15/88 REVISOR APPROVED _____

APPROVED 12/12/88 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

10/26/87 Date published in State Register
none Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~

_____ ~~Date adopted~~

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
256D.03 sb 7(b)
256.991 Statutory Authority
no Small Business Statement
yes Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)

no Small Business Statement
no Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

9/28/88 Date 30/25 days before adoption
yes Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

10/3/88 Date 30/25 days before adoption

_____ 180-day deadline from:

11/3/88 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority~~ (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~

_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

12/1/88 Date

✓ Written requests, submissions or comments (1)

✓ Declaration of attorney

N. Scott Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

Goal

Rush
Approve 12/12 if possible
If approved needs to be at Revisor on 12/12
Dan Lipschultz

AG Copy

Department of Human Services

Adopted Permanent Rules Relating to Medical Assistance and General Assistance Reimbursement

Rules as Adopted

9505.5000 APPLICABILITY.

Parts 9505.5000 to 9505.5105 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 489.57; Minnesota Statutes, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.22; parts 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; 9505.0500 to 9505.0540; 9505.1000 to 9505.1040; and 9505.1750 to 9505.2150, and with rules adopted by the commissioner under Minnesota Statutes, sections 256.991 and 256D.03, subdivision 7, clause (b).

9505.5005 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Authorization number.** "Authorization number" means the number issued by the medical review agent that establishes that the surgical procedure requiring a second surgical opinion is medically appropriate.

Subp. 1b. **Certification number.** "Certification number" means the number issued by the medical review agent that establishes that all or part of a recipient's inpatient hospital services are medically necessary.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Medical appropriateness or medically appropriate.** "Medical appropriateness" or "medically appropriate" refers to a determination, by a medical review

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agent or the department, that the recipient's need for a surgical procedure requiring a second surgical opinion meets the criteria in part 9505.0540 or that a second or third surgical opinion has substantiated the need for the procedure.

Subp. 12b. **Medical review agent.** "Medical review agent" means the representative of the department who is authorized in parts 9505.0500 to 9505.0540 to determine the medical appropriateness of procedures requiring second surgical opinions.

Subp. 13. to 18. [Unchanged.]

Subp. 18a. **Second opinion or second surgical opinion.** "Second opinion" or "second surgical opinion" means the determination by the medical review agent under part 9505.5050, subpart 1, or by a second physician under part 9505.5050, subpart 2, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Subp. 18b. **Third opinion or third surgical opinion.** "Third opinion" or "third surgical opinion" means the determination by a third physician under part 9505.5050, subpart 3, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Third?

Subp. 19. [Unchanged.]

9505.5010 PRIOR AUTHORIZATION REQUIREMENT.

Subpart 1. **Provider requirements.** Except as provided in part 9505.5015, a provider shall obtain prior authorization as a condition of reimbursement under the medical assistance and general assistance medical care programs for health services designated under parts 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; and 9505.5025; and Minnesota Statutes, section 256B.02, subdivision 8y. 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 the provider meets all requirements of the medical assistance or general assistance medical care programs.

Subp. 2. to 4. [Unchanged.]

9505.5015 AFTER THE FACT AUTHORIZATION.

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by Revisor _____

Subpart 1. **Exceptions.** As provided in subparts 2 to 4, 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. The provider of the health service shall submit the request on form DHS-1855 as required in part 9505.5010, subpart 3, and shall submit materials, reports, progress notes, admission histories, or other information that substantiates that the service was necessary to treat the recipient.

Subp. 2. **Emergencies.** A health service requiring prior authorization shall retroactively receive prior authorization in an emergency if the provider submits the request for authorization no later than five working days after providing the initial service and the provider documents the emergency.

Subp. 3. **Retroactive eligibility.** 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 part 9505.5030, and if an authorization request is submitted to the department within 20 working days of the date the case was opened.

Subp. 4. **Third party liability.** A provider of a health service originally billed to Medicare or a third party payer as defined in part 9505.0015, subpart 46, for which Medicare or the third party payer denied payment or made a partial payment may retroactively submit a request for authorization if the provider wants to receive payment of the difference between the medical assistance or general assistance medical care payment rate for the service and the payment by the third party payer. The service is eligible for medical assistance or general assistance medical care reimbursement if it meets the criteria in part 9505.5030 and if the authorization request is submitted to the department along with a copy of the notice explaining the denial or partial payment within 20 working days of the date of the

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notice.

9505.5035 SURGICAL PROCEDURES REQUIRING SECOND OPINION.

Subpart 1. **General requirements.** Except as provided in part 9505.5040, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient elective surgical procedures according to the list published in the State Register under Minnesota Statutes, section 256B.02, subdivisions 8a and 8d. Publication shall occur in the last issue of the State Register for the month of October if there has been a revision in the list since the last October. In addition, the department shall publish any revision of the list at least 45 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. [Unchanged.]

9505.5040 EXEMPTIONS TO SECOND SURGICAL OPINION REQUIREMENTS.

If the requirements of part 9505.5096 are met and the surgical procedure is medically appropriate as defined in part 9505.5005, subpart 12a, a second surgical opinion is not required in the circumstances set out in items A to F:

A. to F. [Unchanged.]

9505.5050 SECOND AND THIRD SURGICAL OPINIONS.

Subpart 1. **Second surgical opinion by medical review agent.** Except as provided in subpart 2, a second surgical opinion must be obtained from the medical review agent as specified in parts 9505.0520, subparts 6 and 8, and 9505.0540.

Subp. 2. **Second surgical opinion by a second physician.** If the department does not have a contract with the medical review agent to provide a second surgical opinion, a second surgical opinion must be obtained from a second physician.

Subp. 3. **Third surgical opinion.** If a second surgical opinion obtained under subpart 1 or 2 fails to substantiate the initial surgical opinion and the recipient still wants the

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surgery, a third surgical opinion shall be obtained from a third physician. 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.

9505.5055 SECOND OR THIRD OPINION BY A PHYSICIAN.

Subpart 1. **Duties of physician offering to provide the surgical service.** If the recipient requires the opinion of a second physician under part 9505.5050, subpart 2, or if the medical review agent or the second physician determines that the surgical procedure requiring a second surgical opinion is medically inappropriate and the recipient needs a third opinion under part 9505.5050, subpart 3, the physician offering to provide the surgical service shall provide to the recipient in need of the second or third surgical opinion the names of at least two other physicians who are qualified to render the surgical 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 physician offering the surgical service shall ensure that the required second opinion or third opinion is obtained.

Subp. 2. **Qualifications of physician offering second or third opinions.** The physician offering the surgical service and the physician named to render a second or third opinion or the medical referral resource service shall have no direct shared financial interest or referral relationship resulting in a shared financial gain. The physician who gives a second or third opinion must be a provider and must meet the criteria on experience in treating and diagnosing the condition that requires a second or third surgical opinion as published in the State Register under part 9505.5035.

9505.5060 PENALTIES.

The penalties for failure to comply with parts 9505.5000 to 9505.5100 shall be imposed in accordance with parts 9505.1750 to

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9505.2150 in addition to parts 9505.0145, 9505.0465, and 9505.0475.

9505.5065 REIMBURSEMENT OF COST OF SECOND AND THIRD SURGICAL OPINIONS.

Reimbursement of the cost of a second or third surgical opinion 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.

9505.5070 TIME LIMITS; SECOND AND THIRD OPINIONS; SURGERY.

The second surgical opinion from the medical review agent or a second physician shall be obtained within 90 days of the date of the initial opinion. The surgical opinion from a third physician, if required, shall be obtained within 45 days of the date of the opinion of the medical review agent or the second physician. Approved surgery, if not performed within 180 days of the initial opinion, and if still requested by the recipient, shall require repetition of the second surgical opinion process as described in this part.

9505.5075 PHYSICIAN RESPONSIBILITY.

The physician who provides a second or third opinion shall indicate his or her approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered necessary by the commissioner to substantiate the second opinion, shall be personally signed by each physician providing an opinion, and shall be attached to a completed and signed prior authorization form. The completed form must be returned to the physician offering to provide the surgical service and must be retained and made available, for at least five years, by the physician to the department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department.

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9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.

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

Subp. 2. **Opinion of second or third physician.** Failure of a physician who offers to provide a surgical procedure requiring a second opinion to obtain the required surgical opinion from a second or third physician shall result in denial of reimbursement for all costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals except the providers who rendered the second or third surgical opinion.

Subp. 3. **Submission of completed form to department.** If the second or third opinion by a physician does not substantiate the need for the surgical procedure and if the department does not have a contract with a medical review agent, then the physician offering to provide the surgical procedure shall submit the completed form 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.

9505.5090 MEDICAL REVIEW AGENT AND DEPARTMENT RESPONSIBILITY.

Subpart 1. **Medical review agent responsibility.** Except as provided in subpart 2, if the medical review agent agrees that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the information, and shall issue a hospital admission certification number if the procedure requires inpatient hospital admission.

If the third physician, consulted according to part

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9505.5050, subpart 3, agrees with the physician offering to provide the surgical service that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the necessary information and forms, and shall issue a hospital certification number.

If the third physician agrees with the second opinion provided by the medical review agent that the requested surgical procedure is not medically appropriate, then the medical review agent shall deny an authorization number and a certification number and the department shall deny authorization of reimbursement for the requested surgical procedure. The medical review agent shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

Subp. 2. If no medical review agent. The department shall assign or deny an authorization number when the department does not have a contract with a medical review agent to determine the medical appropriateness of procedures requiring second surgical opinions.

If two of the three physicians agree that the requested surgical procedure is medically appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 30 working days of the department's receipt of the necessary information and forms.

If two of the three physicians agree that the requested surgical procedure is inappropriate, then the department shall deny authorization of reimbursement for the requested surgical procedure. The department shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

9505.5096 REQUEST FOR EXEMPTION FROM SECOND SURGICAL OPINION.

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Subpart 1. **Request for exemption; general.** A provider who believes a surgical procedure is exempt under part 9505.5040 from the second or third opinion requirement shall request approval of the exemption from the medical review agent or the department before carrying out the surgical procedure, except for exemptions under part 9505.5040, items B, C, and F, which may be requested after performing the surgical procedure.

Subp. 2. **Request for exemption before carrying out surgical procedure.** A provider shall request approval of the exemption either under item A or B.

A. If the department has a contract with a medical review agent, the provider shall call the medical review agent and provide the information required in parts 9505.5000 to 9505.5030.

B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the prior authorization procedures in part 9505.5010.

Subp. 3. **Request for exemption after performing the surgical procedure.** If a provider chooses to carry out the surgical procedure before requesting approval of the exemption, the provider shall request approval of the exemption under item A or B.

A. If the department has a contract with a medical review agent, the provider shall submit to the medical review agent the medical records related to the recipient's medical condition, diagnosis, and treatment.

B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the procedures in part 9505.5015.

Subp. 4. **Retroactive eligibility.** A hospital may seek an authorization number for a person found retroactively eligible for medical assistance or general assistance medical care program benefits after the date of admission. The hospital shall inform the physician offering to provide the surgical service of the authorization number of a retroactively eligible

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recipient. The physician offering to provide the surgical service and the hospital shall not seek an authorization number for a person whose application for the medical assistance or general assistance medical care program is pending. The medical review agent may require the hospital to submit, at its own expense, a copy of the complete medical record to substantiate the medical appropriateness of the surgical procedure. Failure to submit a requested record within 30 days of the request shall result in denial of the authorization number.

Subp. 5. **Documentation required.** A provider who believes a surgical procedure is exempt from the second and third opinion requirement under part 9505.5040 must submit supporting documentation with the request for exemption. If the provider requests approval of the exemption before performing the procedure, the department or medical review agent, as appropriate, may withhold approval of the exemption until the provider has submitted the documentation.

9505.5100 INDEPENDENT PHYSICIAN EVALUATION.

The commissioner shall have the right to order an independent evaluation by a physician selected by the recipient and approved by the commissioner when the commissioner has reason to believe, based on parts 9505.1750 to 9505.2150, that the requested surgical procedure is not medically appropriate. If the recipient needs assistance locating an appropriate physician, the services of the local county medical society, or any other physician referral resource may be used. If the selected physician determines the procedure is not medically appropriate, the commissioner shall deny authorization.

9505.5105 FAIR HEARINGS AND APPEALS.

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

A. the department's failure to act with reasonable promptness on a request for prior authorization or on an authorization request under the second surgical opinion program, as established under parts 9505.5020, subpart 1, and 9505.5090;

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B. the department's denial of a request for prior authorization;

C. the department's denial of an authorization request under the second surgical opinion program; or

D. the department's proposed reduction in service as an alternative to authorization of a proposed service for which prior authorization was requested.

Subp. 2. to 4. [Unchanged.]

Subp. 5. **Commissioner's ruling.** Within 90 days of the date of receipt of the recipient's request for a hearing, the commissioner shall make a ruling to uphold, reverse, or modify the action or decision of the department or the medical review agent. The commissioner's ruling shall be binding upon the department and the recipient unless a request for judicial review is filed pursuant to Minnesota Statutes, section 256.045, subdivision 7.

REPEALER. Minnesota Rules, part 9505.5095, is repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 14 1988
Secretary of State

Approved
by Revisor _____

2:55 PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 14 1988
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
December 12 19 88
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Human Services

Health Care Programs Division

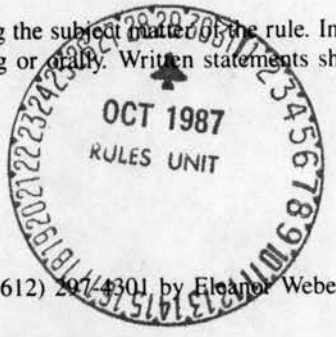
Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rules Governing Second Surgical Opinion Requirement as a Condition for Medical Assistance and General Assistance Medical Care Reimbursement

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose amendments to the rules governing the requirement of a second surgical opinion as a condition for medical assistance and general assistance medical care reimbursement, *Minnesota Rules*, parts 9505.5000, 9505.5005, 9505.5035 to 9505.5105.

The adoption of the rule is authorized by *Minnesota Statutes*, Section 256.991, which requires the agency to establish standards and criteria for deciding whether a second surgical opinion is required for an elective surgery and by *Minnesota Statutes*, Section 256D.03, Subdivision 7(b) which requires the agency to establish standards for utilization review in the general assistance medical care program that conform to the procedures established for the medical assistance program.

The proposed amendments establish procedures to coordinate the second surgical opinion requirements with the required procedures for obtaining hospital admission certification as set forth in *Minnesota Rules*, parts 9505.0500 to 9505.0540. (*Minnesota Rules*, parts 9505.0500 to 9505.0540, are being amended concurrently with the amendments to *Minnesota Rules*, parts 9505.5000, 9505.5005, 9505.5035 to 9505.5105.)

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:



Eleanor Weber
Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 297-4301 by Eleanor Weber and in person at the above address.

All statements of information and opinions shall be accepted until further notice. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Department of Public Safety

Driver and Vehicle Services

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to the Rules of the State Department of Public Safety Governing License Revocation for Alcohol and Controlled Substance Related Incidents

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to amend rules governing license revocation for alcohol and controlled substance related incidents, specifically part 7503.0800, Subp. 3 and part 7503.1700, Subp. 6.

The promulgation of these rules is authorized by *Minnesota Statutes* section 169.128, which permits the agency to promulgate rules to carry out the provisions of *Minnesota Statutes*, sections 169.121 and 169.123.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance and General Assistance Reimbursement

Rules as Proposed

9505.5000 APPLICABILITY.

Parts 9505.5000 to 9505.5105 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 489.57; Minnesota Statutes, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.22; ~~and~~ parts ~~9500.0750 to 9500.1100~~ 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; 9505.0500 to 9505.0540; 9505.1000 to 9505.1040; and 9505.1750 to 9505.2150, and with rules adopted by the commissioner under Minnesota Statutes, sections 256.991 and 256D.03, subdivision 7, clause (b).

9505.5005 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Authorization number.** "Authorization number" means the number issued by the medical review agent that establishes that the surgical procedure requiring a second surgical opinion is medically appropriate.

Subp. 1b. **Certification number.** "Certification number" means the number issued by the medical review agent that establishes that all or part of a recipient's inpatient hospital services are medically necessary.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Medical appropriateness or medically appropriate.** "Medical appropriateness" or "medically appropriate" refers to a determination, by a medical review

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agent or the department, that the recipient's need for a surgical procedure requiring a second surgical opinion meets the criteria in part 9505.0540 or that a second or third surgical opinion has substantiated the need for the procedure.

Subp. 12b. **Medical review agent.** "Medical review agent" means the representative of the department who is authorized in parts 9505.0500 to 9505.0540 to determine the medical appropriateness of procedures requiring second surgical opinions.

Subp. 13. to 18. [Unchanged.]

Subp. 18a. **Second opinion or second surgical opinion.** "Second opinion" or "second surgical opinion" means the determination by the medical review agent under part 9505.5050, subpart 1, or by a second physician under part 9505.5050, subpart 2, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Subp. 18b. **Third opinion or third surgical opinion.** "Third opinion" or "third surgical opinion" means the determination by a third physician under part 9505.5050, subpart 3, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Subp. 19. [Unchanged.]

9505.5010 PRIOR AUTHORIZATION REQUIREMENT.

Subpart 1. **Provider requirements.** Except as provided in part 9505.5015, a provider shall obtain prior authorization as a condition of reimbursement under the medical assistance and general assistance medical care programs for health services designated under parts 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; and 9505.5025; and Minnesota Statutes, section 256B.02, subdivision 8y. 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 the provider meets all requirements of the medical assistance or general assistance medical care programs.

Subp. 2. to 4. [Unchanged.]

9505.5015 ~~RETROACTIVE~~ AFTER THE FACT AUTHORIZATION.

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by Revisor _____

Subpart 1. **Exceptions.** As provided in subparts 2 to 4, 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. The provider of the health service shall submit the request on form DHS-1855 as required in part 9505.5010, subpart 3, and shall submit materials, reports, progress notes, admission histories, or other information that substantiates that the service was necessary to treat the recipient.

Subp. 2. **Emergencies.** A health service requiring prior authorization shall ~~be reimbursed without~~ retroactively receive prior authorization in an emergency if the provider submits the ~~prior~~ request for authorization ~~form, DPW-1855,~~ no later than five working days after providing the initial service and the provider documents the emergency ~~by submitting materials, reports, progress notes, admission histories, or other information which substantiates that the service was necessary to treat the recipient.~~

Subp. 3. **Retroactive eligibility.** 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 part 9505.5030, 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 part 9505.5010.~~

Subp. 4. ~~**Medicare denial**~~ **Third party liability.** ~~A health service originally billed to Medicare for which reimbursement was denied shall be reimbursed without prior authorization if the service meets the criteria of part 9505.5030 and if the authorization request is submitted to the department along with a copy of the explanation of Medicare benefits (EOMB), within 20 working days of the date of the EOMB~~ A provider of a health service originally billed to Medicare or a third party payer as

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defined in part 9505.0015, subpart 46, for which Medicare or the third party payer denied payment or made a partial payment may retroactively submit a request for authorization if the provider wants to receive payment of the difference between the medical assistance or general assistance medical care payment rate for the service and the payment by the third party payer. The service is eligible for medical assistance or general assistance medical care reimbursement if it meets the criteria in part 9505.5030 and if the authorization request is submitted to the department along with a copy of the notice explaining the denial or partial payment within 20 working days of the date of the notice.

9505.5035 SURGICAL PROCEDURES REQUIRING SECOND OPINION.

Subpart 1. **General requirements.** Except as provided in part 9505.5040, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient elective surgical procedures according to the list published in the State Register under Minnesota Statutes, section 256B.02, ~~subdivision 8~~ subdivisions 8a and 8d. Publication shall occur ~~annually~~ in the last issue of the State Register for the month of October if there has been a revision in the list since the last October. In addition, the department shall publish any revision of the list at least 45 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. [Unchanged.]

9505.5040 EXEMPTIONS TO SECOND SURGICAL OPINION REQUIREMENTS.

~~Provided~~ If the requirements of part ~~9505.5095~~ 9505.5096 are met and the surgical procedure is medically appropriate as defined in part 9505.5005, subpart 12a, a second surgical opinion is not required ~~when~~ in the circumstances set out in items A to F:

A. to F. [Unchanged.]

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9505.5050 SECOND AND THIRD SURGICAL ~~OPINION~~ OPINIONS.

Subpart 1. **Second surgical opinion by medical review agent.** Except as provided in subpart 2, a second surgical opinion must be obtained from the medical review agent as specified in parts 9505.0520, subparts 6 and 8, and 9505.0540.

Subp. 2. **Second surgical opinion by a second physician.** If the department does not have a contract with the medical review agent to provide a second surgical opinion, a second surgical opinion must be obtained from a second physician.

Subp. 3. **Third surgical opinion.** ~~When~~ If a second surgical opinion obtained under subpart 1 or 2 fails to substantiate the initial surgical opinion and the recipient still wants the surgery, a third surgical opinion shall be obtained ~~if the recipient still wants the surgery~~ from a third physician. 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 ~~programs~~ program.

9505.5055 SECOND OR THIRD OPINION BY A PHYSICIAN.

Subpart 1. **~~Requirements~~ Duties of ~~recommending~~ physician offering to provide the surgical service.** ~~The physician offering to provide the surgical service~~ If the recipient requires the opinion of a second physician under part 9505.5050, subpart 2, or if the medical review agent or the second physician determines that the surgical procedure requiring a second surgical opinion is medically inappropriate and the recipient needs a third opinion under part 9505.5050, subpart 3, the physician offering to provide the surgical service shall provide to the recipient in need of ~~a~~ the second or third surgical opinion, the names of at least two other physicians who are qualified to render ~~a second or third~~ the surgical 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 physician offering the surgical

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service shall ensure that the required second opinion ~~and, when required,~~ or third opinion~~, are~~ is obtained.

Subp. 2. **Qualifications of physician offering second or third opinions.** The physician offering the surgical service and the physician named to render a second or third opinion or the medical referral resource service shall have no direct shared financial interest or referral relationship resulting in a shared financial gain. The physician who gives a second or third opinion must be a provider and must meet the criteria on experience in treating and diagnosing the condition that requires a second or third surgical opinion as published in the State Register under part 9505.5035.

9505.5060 PENALTIES.

The penalties for failure to comply with parts 9505.5000 to 9505.5100 shall be imposed in accordance with parts 9505.1750 to 9505.2150 in addition to parts ~~9500.0960 and 9500.1080~~ 9505.0145, 9505.0465, and 9505.0475.

9505.5065 REIMBURSEMENT OF COST OF SECOND AND THIRD SURGICAL OPINIONS.

Reimbursement of the cost of a second ~~and~~ or third surgical ~~opinions~~ opinion 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.

9505.5070 TIME LIMITS; SECOND AND THIRD OPINIONS; SURGERY.

The second surgical opinion from the medical review agent or a second physician shall be obtained within 90 days of the date of the initial opinion. The ~~third~~ surgical opinion from a third physician, if required, shall be obtained within 45 days of the date of the ~~second~~ opinion of the medical review agent or the second physician. Approved surgery, if not performed within 180 days of the initial opinion, and if still requested by the

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recipient, shall require repetition of the second surgical opinion process as described in this part.

9505.5075 PHYSICIAN RESPONSIBILITY.

The physician who provides a second or third opinion shall indicate his or her approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered necessary by the commissioner to substantiate the second opinion, shall be personally signed by each physician providing an opinion, and shall be attached to a completed and signed prior authorization form~~, and shall be submitted to the department by the physician who is offering to provide the surgical service~~. The completed form must be returned to the physician offering to provide the surgical service and must be made available by the physician to the department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department.

9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.

Subpart 1. **Opinion of medical review agent.** Failure of the physician who offers to provide a surgical procedure requiring a second opinion to obtain a required ~~second or third~~ surgical opinion from the medical review agent shall result in denial of reimbursement for all costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals.

Subp. 2. **Opinion of second or third physician.** Failure of a physician who offers to provide a surgical procedure requiring a second opinion to obtain the required surgical opinion from a second or third physician shall result in denial of reimbursement for all 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 surgical opinion. ~~If the physician is unable to secure the required second or third opinions to support the surgical procedure, the second surgical opinion form~~

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~~shall be submitted~~

Subp. 3. **Submission of completed form to department.** If the second or third opinion by a physician does not substantiate the need for the surgical procedure and if the department does not have a contract with a medical review agent, then the physician offering to provide the surgical procedure shall submit the completed form 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.

9505.5090 MEDICAL REVIEW AGENT AND DEPARTMENT RESPONSIBILITY.

Subpart 1. **Medical review agent responsibility.** Except as provided in subpart 2, if the medical review agent agrees that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the information, and shall issue a hospital admission certification number if the procedure requires inpatient hospital admission.

If the third physician, consulted according to part 9505.5050, subpart 3, agrees with the physician offering to provide the surgical service that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the necessary information and forms, and shall issue a hospital certification number.

If the third physician agrees with the second opinion provided by the medical review agent that the requested surgical procedure is not medically appropriate, then the medical review agent shall deny an authorization number and a certification number and the department shall deny authorization of reimbursement for the requested surgical procedure. The medical review agent shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the

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recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

Subp. 2. **If no medical review agent.** The department shall assign or deny an authorization number when the department does not have a contract with a medical review agent to determine the medical appropriateness of procedures requiring second surgical opinions.

If two of the three physicians ~~concur~~ agree that the requested surgical procedure is medically appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 30 working days of the department's receipt of the necessary information and forms.

If two of the three physicians ~~concur~~ agree that the requested surgical procedure is inappropriate, then the department shall deny authorization of reimbursement for the requested surgical procedure. The department shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

9505.5096 REQUEST FOR EXEMPTION FROM SECOND SURGICAL OPINION.

Subpart 1. **Request for exemption; general.** A provider who believes a surgical procedure is exempt under part 9505.5040 from the second or third opinion requirement shall request approval of the exemption from the medical review agent or the department before carrying out the surgical procedure, except for exemptions under part 9505.5040, items B, C, and F, which may be requested after performing the surgical procedure.

Subp. 2. **Request for exemption before carrying out surgical procedure.** A provider shall request approval of the exemption either under item A or B.

A. If the department has a contract with a medical review agent, the provider shall call the medical review agent and provide the information required in parts 9505.5000 to 9505.5030.

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B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the prior authorization procedures in part 9505.5010.

Subp. 3. **Request for exemption after performing the surgical procedure.** If a provider chooses to carry out the surgical procedure before requesting approval of the exemption, the provider shall request approval of the exemption under item A or B.

A. If the department has a contract with a medical review agent, the provider shall submit to the medical review agent the medical records related to the recipient's medical condition, diagnosis, and treatment.

B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the procedures in part 9505.5015.

Subp. 4. **Retroactive eligibility.** A hospital may seek an authorization number for a person found retroactively eligible for medical assistance or general assistance medical care program benefits after the date of admission. The hospital shall inform the physician offering to provide the surgical service of the authorization number of a retroactively eligible recipient. The physician offering to provide the surgical service and the hospital shall not seek an authorization number for a person whose application for the medical assistance or general assistance medical care program is pending. The medical review agent may require the hospital to submit, at its own expense, a copy of the complete medical record to substantiate the medical appropriateness of the surgical procedure. Failure to submit a requested record within 30 days of the request shall result in denial of the authorization number.

Subp. 5. **Documentation required.** A provider who believes a surgical procedure is exempt from the second and third opinion requirement under part 9505.5040 must submit supporting documentation with the request for exemption. If the provider requests approval of the exemption before performing the

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procedure, the department or medical review agent, as appropriate, may withhold approval of the exemption until the provider has submitted the documentation.

9505.5100 INDEPENDENT PHYSICIAN EVALUATION.

The commissioner shall have the right to order an independent evaluation by a physician selected by the recipient and approved by the commissioner when the commissioner has reason to believe, based on parts 9505.1750 to 9505.2150, that the requested surgical procedure is not ~~necessary~~ medically appropriate. If the recipient needs assistance locating an appropriate physician, the services of the local county medical society, or any other physician referral resource may be ~~utilized~~ used. If the selected physician determines the procedure is not ~~necessary~~ medically appropriate, the commissioner shall deny authorization.

9505.5105 FAIR HEARINGS AND APPEALS.

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

A. the ~~department has failed~~ department's failure to act with reasonable promptness on a request for prior authorization or on an authorization request under the second surgical opinion program, as established under parts 9505.5020, subpart 1, and 9505.5090;

B. the ~~department has denied~~ department's denial of a request for prior authorization;

C. the ~~department has denied~~ department's denial of an authorization request under the second surgical opinion program; or

D. the ~~department has~~ department's proposed ~~a~~ reduction in service as an alternative to authorization of a proposed service for which prior authorization was requested.

Subp. 2. to 4. [Unchanged.]

Subp. 5. **Commissioner's ruling.** Within 90 days of the date of receipt of the recipient's request for a hearing, the commissioner shall make a ruling to uphold, reverse, or modify

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the action or decision of the department or the medical review agent. The commissioner's ruling shall be binding upon the department and the recipient unless a request for judicial review is filed pursuant to Minnesota Statutes, section 256.045, subdivision 7.

REPEALER. Minnesota Rules, part 9505.5095, is repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Medical Assistance and General Assistance Reimbursement

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Rules of the Department of Human Services Governing the procedures for Prior Authorization of Health Services and the requirements of a Second Surgical Opinion as conditions of reimbursement to providers of health services for recipients of Medical Assistance and General Assistance Medical Care Minnesota Rules, Parts, 9505.5000 to 9505.5105

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256.991 and section 256D.03, subdivision 7(b).

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON MONDAY, NOVEMBER 14, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 297-4997.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on November 2, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the proposed amended rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion , when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

The Second Surgical Opinion system ensures that certain elective surgical procedures are not reimbursed under Medical Assistance or General Assistance Medical Care unless a confirming opinion of medical appropriateness is obtained from a physician in the same specialty area as the physician offering to provide the surgery. This rule affects providers of Medical Assistance and General Assistance Medical Care (inpatient and outpatient hospitals, physicians, and vendors of other health services), physicians who will provide a second or third opinion on the medical appropriateness of a surgical procedure, the medical review agent, and recipients of Medical Assistance and General Assistance Medical Care.

The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment.

It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments clarify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854, upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816.

State of Minnesota

for Jule Brunner

SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/84

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Department of Human Services Rules Governing the procedures for Prior Authorization of Health Services and the requirements of a Second Surgical Opinion as conditions of reimbursement to providers of health services for recipients of Medical Assistance and General Assistance Medical Care, Parts, 9505.5000 to 9505.5105

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 2A and 2B, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, on November 14, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business

days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion , when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

The Second Surgical Opinion system ensures that certain elective surgical procedures are not reimbursed under Medical Assistance or General Assistance Medical Care unless a confirming opinion of medical appropriateness is obtained from a physician in the same specialty area as the physician offering to provide the surgery. This rule affects providers of Medical Assistance and General Assistance Medical Care (inpatient and outpatient hospitals, physicians, and vendors of other health services), physicians who will provide a second or third opinion on the medical appropriateness of a surgical procedure, the medical review agent, and recipients of Medical Assistance and General Assistance Medical Care.

The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment. It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments c fy definitions and qualificat s for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256.991, and section 256D.03 subdivision 7(b). Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 297-4997.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statute chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

for Julie Brunner
SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO
MINNESOTA RULES, PARTS 9505.5000 TO
9505.5105, ESTABLISHING THE PROCEDURES
FOR PRIOR AUTHORIZATION OF HEALTH
SERVICES AND THE REQUIREMENTS OF A
SECOND SURGICAL OPINION AS CONDITIONS
OF REIMBURSEMENT TO PROVIDERS OF HEALTH
SERVICES FOR RECIPIENTS OF MEDICAL
ASSISTANCE AND GENERAL ASSISTANCE MEDICAL
CARE

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION AND BACKGROUND

Minnesota Rules, parts 9505.5000 to 9505.5105 govern the operation of the Prior Authorization (PA) and Second Surgical Opinion (SSO) Programs. This rule was originally promulgated in October 1985 in response to a legislative mandate for the Medical Assistance (MA) and General Assistance Medical Care (GAMC) Programs to operate a Second Surgical Opinion Program. Prior to that time, the Department had an emergency rule that was effective in December 1984.

This rule (Rule 68) defines the process and requirements that are applicable to the Second Surgical Opinion and Prior Authorization Programs. The process and requirements set forth in this rule have worked well and have served to meet the needs of Department of Human Services (DHS) recipients and providers. However, as the program has evolved, it has become evident that there are more efficient and cost effective ways in which the Second Surgical Opinion Program could be operated. Hence, the Department of Human Services (the department) is proposing amendments to this rule that will have the following beneficial impact.

First, the Second Surgical Opinion authorization process will be combined with the certification for admission process. (See Minnesota Rules, parts 9505.0500 through 9505.0540.) This will mean that a provider calling to obtain a certification number will simultaneously, in the majority of cases, be able to obtain an authorization number authorizing the procedure requiring a second surgical opinion. Likewise, a substantially similar process will apply for surgical procedures requiring a Second Surgical Opinion that are to be performed on an outpatient basis.

The Medical Review Agent will utilize criteria developed by the department or the medical review agent to screen requests for authorization numbers for procedures requiring a Second Surgical Opinion. If a procedure meets the

criteria it will be authorized; if it does not, the existing process of obtaining a "hands-on" third opinion will be required if the recipient wishes to have the surgery.

The result of these amendments should be greater convenience and a less time consuming process for both the recipient and provider. In addition, the strain on existing resources in DHS should be somewhat alleviated by the implementation of these amendments.

The proposed amendments to Minnesota Rules, parts 9505.5000 to 9505.5105 are hereby affirmatively presented by the Department as required by Minnesota Statutes, section 256.991 and section 256D.03, subdivision 7(b), and in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings.

9505.5000 APPLICABILITY.

This amendment is necessary because some provisions in parts 9500.0750 to 9500.1100 have been repealed. The remaining provisions which apply to Rule 68 are : 9500.1070, subparts 1, 4, 6, 12 to 15, and 23. The new rule parts which govern MA and GAMC services are parts 9505.0170 to 9505.0475. The amendment is reasonable because part 9500.1070 refers to services covered under the MA Program. Minnesota Rules, parts 9505.5000 to 9505.5105 govern the policy and procedures to be followed for obtaining a second surgical opinion for certain MA and GAMC services. These rule parts should therefore be read in conjunction with the description of MA services provided in part 9505.1070 subparts 1, 4, 6, 12 to 15, and 23 and with parts 9505.0170 to 9505.0475.

It is also necessary and reasonable that this rule be read in conjunction with parts 9505.0500 through 9505.0540 (Rule 48), the admission certification rule. One of the benefits of amending the present rule is that there will be one common process for obtaining the inpatient admission certification number and the authorization number for a procedure requiring a second surgical opinion. The process is set out in detail in the admission certification rule, parts 9505.0500 to 9505.0540 (Rule 48), and the present rule contains references to Rule 48. It is therefore reasonable to read this rule in conjunction with Rule 48.

9505.5005 DEFINITIONS.

Subp.1a. Authorization number. This definition is necessary to clarify a term used in this rule and in the associated admission certification rule (Rule 48). It is reasonable to have such a number so that providers and the Department can identify which surgical procedures have been determined to be medically appropriate, and to eliminate any confusion at the time of reimbursement for surgical procedures requiring a second surgical opinion.

It is also necessary to distinguish the term authorization number from the term certification number. The authorization number is the number issued by the medical review agent that establishes that the recipient needs a surgical procedure requiring a second surgical opinion, i.e., that the surgical procedure is medically appropriate. The certification number is the number

issued by the medical review agent that establishes that the recipient needs the inpatient hospital services, i.e., that inpatient hospital services are medically necessary.

The authorization number will be required for any surgical procedure requiring a second surgical opinion, regardless of whether the surgical service is to be provided on an inpatient or an outpatient basis. However, if the physician offering to provide the surgical service recommends that the surgical service should be provided on an inpatient basis, then the provider is required to obtain a certification number in addition to the authorization number, to establish the need of inpatient hospital services.

Subp.1b. Certification number. This definition is used only to describe and identify the number issued by the Medical Review Agent to indicate that the admission is medically necessary, i.e. that the recipient needs inpatient hospital services. It is necessary to define this term to distinguish it from the authorization number which is the number issued by the medical review agent to establish that the surgical procedure is medically appropriate. It is reasonable and necessary to have such a number so that providers and the Department can identify which cases have been approved when submitting claims and processing them for reimbursement.

Subp.12a. Medical appropriateness or medically appropriate. The term medical appropriateness or medically appropriate is defined to indicate the standard that providers must meet in order to be reimbursed for a procedure requiring a Second Surgical Opinion. The definition is reasonable because the standard is defined with reference to the criteria developed to screen for the necessity of such surgical procedures, or the opinion of a second or third physician who is an expert on the subject and has reviewed the recipient's case.

Subp.12b. Medical Review Agent. The term "medical review agent" is defined to clarify that the commissioner may delegate the responsibility for making admission determinations, conducting concurrent reviews, continued stay reviews, retrospective reviews, and for determining the appropriateness of procedures requiring a Second Surgical Opinion as specified in the contract between the Department and the medical review agent.

This definition is reasonable because the commissioner is authorized by the Health Care Financing Administration to contract out the utilization review and medical review functions (See section 1902(d) Social Security Act (42 U S C); 42 C F R 433.15; and 42 CFR 456.1 to 456.145). In the absence of the medical review agent, the Department would have to employ physicians and equipment and develop the expertise to be able to perform an effective review. It is therefore more cost effective for the Department to delegate the utilization review function to a medical review agent.

Subp.18a. Second opinion or second surgical opinion. It is necessary to clarify that the second opinion is the opinion of the medical review agent on the medical appropriateness of the surgical procedure requiring a second surgical opinion. In case there is no contract between the Department and the medical review agent, then the second opinion is the opinion of the second physician.

This definition is reasonable because it is possible to have different opinions on whether certain surgical procedures are necessary or whether less invasive procedures should be tried first. A second surgical opinion is therefore required for certain elective surgeries where disagreement is possible.

Subp.18b. Third opinion or third surgical opinion. This definition is necessary because it clarifies that the third opinion is the opinion by a third physician after the medical review agent or the second physician have made their determination. It is also necessary to define this term to eliminate any confusion between the second opinion and the third opinion. The definition is reasonable, because if the medical review agent or the second physician does not agree with the physician offering to provide the surgical service, then there should be a third expert opinion on the medical appropriateness of the surgical procedure. In case of a split decision, the majority opinion will determine the medical appropriateness of the surgical procedure.

9505.5010 PRIOR AUTHORIZATION REQUIREMENTS

This amendment is necessary because it informs providers of the services for which they must obtain prior authorization. It is reasonable because it is consistent with the purpose of Minnesota Statutes, section 256.02 subd.8(y).

9505.5015 AFTER THE FACT AUTHORIZATION

Subp.1. Exceptions. It is necessary to specify that a health service for which reimbursement is sought after the delivery of the service, must still meet the standard of medical necessity and appropriateness set forth in parts 9505.5030.

All MA and GAMC services that require prior authorization are subject to the requirements of part 9505.5030. It is reasonable to require that authorization being requested after the delivery of service should meet the same criteria. This ensures consistency in the evaluation of all prior and later authorization requests for the same services. It also promotes the integrity of the prior authorization procedure and requires uniformity of treatment and review of both types of requests.

Subp. 2 Emergencies. This amendment is necessary because it clarifies that the process of requiring authorization before reimbursement will be the same even though the authorization is received retroactively. The procedure for submitting requests for authorization is specified in subpart 1.

The amendment is reasonable because a recipient should not have to wait for prior authorization before he receives health services in an emergency situation. At the same time the Department needs a mechanism to confirm that there was an emergency and that the treatment accorded to the recipient was medically appropriate. The retroactive prior authorization process meets both needs.

Subp. 3. Retroactive eligibility. This amendment is necessary and reasonable because the procedure for submitting requests for retroactive "prior authorization" is specified in subp. 1.

Subp. 4. Third party liability. This provision covers situations when a provider has insurance coverage or when health services are eligible for payment under Medicare.

It is necessary to inform providers that they are exempt from obtaining prior authorization before provision of service in some circumstances. This is reasonable because Minnesota Rules, particularly part 9505.0070 and federal regulations (42 C.F.R.433.135 to 433.148), require the provider to bill all available third-party payors and to obtain either payment or a denial of payment before billing the MA Program. These provisions also provide that MA payment can only be made up to the applicable MA/GAMC rate.

It is thus necessary and reasonable to provide for a mechanism by which providers can obtain MA/GAMC reimbursement if the third party either denies payment or pays less than what MA would pay. In such cases, the provider may retroactively submit a request for authorization of the health services provided, if the services are eligible for reimbursement according to part 9505.5030 and if the authorization request is made according to procedures specified for all other retroactive authorization requests. This mechanism prevents the possibility of nonpayment for appropriate services.

9505.5035 SURGICAL PROCEDURES REQUIRING SECOND OPINION

This amendment is necessary to clarify that the second surgical opinion is required for both inpatient and outpatient surgical procedures. The amendment is reasonable because Minnesota Statutes, section 256B.02, subd. 8(a) and (d) require a second surgical opinion prior to reimbursement for inpatient and outpatient elective surgeries.

It is necessary to inform providers that the Department will publish the list of elective surgeries requiring a second surgical opinion if the list has been revised since the last publication.

This provision is reasonable because providers should be aware of any change to the list of surgical procedures requiring a second opinion. However, there is no need to republish the same list each year unless it is revised, because providers are kept informed of current procedures through manuals and updates issued by the Department, and new providers are always notified and sent a list of the procedures by the Department after they are enrolled in the MA program.

9505.5040 EXEMPTIONS TO SECOND SURGICAL OPINION REQUIREMENTS

It is necessary to amend this provision to clarify that a surgical procedure must be medically appropriate, and, in addition, must meet the documentation requirements of part 9505.5096 before it is exempt from a second surgical opinion. This provision is reasonable because any surgical procedure requiring a second surgical opinion must also be determined to be necessary for the recipient according to the criteria developed by the Department. The provider is exempt from obtaining a second surgical opinion before providing the surgery. The medical review agent shall verify, by retrospective review, whether the surgical procedure was medically appropriate and whether the exemption was appropriate. This is reasonable because the department has been directed by the Legislature (Minnesota Statutes, section 256B.04 subd.15), to

establish a program to safeguard against the unnecessary use of medical assistance services. Therefore, it is the department's responsibility to determine if surgical procedures paid for by MA or GAMC funds are medically appropriate.

9505.5050 SECOND AND THIRD SURGICAL OPINIONS

Subpart 1. The Code of Federal Regulations, (42 C.F.R. 433.15) gives the commissioner the authority to contract out the utilization review function to a medical review agent. This subpart specifies that if the Department contracts with the medical review agent, and requires the medical review agent to determine the medical appropriateness of a surgical procedure requiring a second surgical opinion, then the recipient must obtain a second surgical opinion from the medical review agent. This provision is reasonable because the commissioner is authorized to delegate this review function to the medical review agent. It is also more efficient and cost effective for the Department because the medical review agent has the knowledge and the expertise to review the medical appropriateness of the surgical procedure.

Subp. 2. It is necessary to inform providers and recipients that if the review of the medical appropriateness of a surgical procedure requiring a second opinion is not part of the contract between the medical review agent and the Department, then the recipient must obtain the second surgical opinion from a second physician.

This provision is reasonable because physician providers have the necessary medical expertise and knowledge of the criteria for determining the medical appropriateness of the surgical procedure requiring a second surgical opinion.

Subp. 3. This amendment clarifies that the third surgical opinion is the opinion obtained after the medical review agent or the second physician have failed to substantiate the initial opinion. It is necessary and reasonable because in case of a split decision, there should be another opinion so that the determination of medical appropriateness is made according to the majority opinion.

9505.5055 SECOND OR THIRD OPINION BY A PHYSICIAN

Subp.1. This amendment is necessary to clarify the referral responsibilities of the physician who offers to provide the surgery. Part 9505.5050, subparts 2 and 3 specify the circumstances under which a second or third opinion is required. This provision specifies that if the recipient requires a second or third surgical opinion, the physician offering to provide the surgical service shall provide the recipient with names of appropriate physicians and with information regarding the consequences of not obtaining the required second or third surgical opinion.

The amendment is reasonable because physician providers are knowledgeable about which surgical procedures require a second or third opinion and who is qualified to render that opinion. Also, since the physician providing the surgical service will seek reimbursement for performing the surgery, it is reasonable to assign the responsibility of meeting the conditions of reimbursement to the same physician.

Subp. 2. It is necessary and reasonable to clarify that the physician who provides the second or third surgical procedure must be an expert in the condition that requires the surgical opinion. The criteria developed by the department relate to the experience of the physician in diagnosing and treating the condition which requires a second or third surgical opinion. This ensures that the opinion is provided by a physician with expert knowledge. It is also reasonable that such criteria are published in the State Register pursuant to the authority given to the Department in Minnesota Statutes, section 256B.02, subd.8. The State Register is the official public notification document for the state and has wide circulation.

9505.5060 PENALTIES

It is necessary and reasonable to amend this provision because parts 9500.0960 and 9500.1080 have been repealed, and the provisions regarding penalties for providers in case of noncompliance with the rules have been moved to parts 9505.0145, 9505.0465, and 9505.0475.

9505.5065 REIMBURSEMENT OF COST OF SECOND AND THIRD SURGICAL OPINIONS

The amendment is necessary and reasonable to clarify that this provision refers to two different reimbursements: (1) The cost of the second surgical opinion; and (2) The cost of the third surgical opinion.

Reimbursement for physician services in providing the second or third surgical opinion is covered under Minnesota Statutes, sections 256B.02, subdivision 8 and 256D.03, subdivision 4.

9505.5070 TIME LIMITS; SECOND AND THIRD OPINIONS; SURGERY

The amendments to this part clarify that the second surgical opinion is the opinion of the medical review agent required under part 9505.5050, subpart 1 or of the second physician required under part 9505.5050, subpart 2. This opinion must be obtained within 90 days of the initial opinion. If the second surgical opinion fails to substantiate the initial surgical opinion, and the recipient still wants the surgery, then the third surgical opinion must be obtained from a third physician under part 9505.5050, subpart 3. This opinion must be obtained within 45 days of the second opinion.

The amendments are reasonable because they allow recipients sufficient time to obtain required opinions and still ensure that the second opinions, third opinion, and the surgery are based, as much as possible, on the condition of the recipient at the time the surgery was first recommended.

9505.5075 PHYSICIAN RESPONSIBILITY

It is necessary to inform physicians providing the second or third surgical opinion that the completed form on which they have indicated their opinion must be submitted to the physician offering to provide the surgery and must be made available to the Department or the medical review agent on request. This requirement is reasonable because it permits the Department or the medical review agent to verify that a second or third surgical opinion was in

fact obtained, and that the provisions of the rule have been complied with. The Department needs this information to provide a meaningful review of utilization of medical services as it is required to do by Minnesota Statutes, section 256B.04 subd.15, and by federal regulations at 42 C.F.R. 456.1 to 456.145.

9505.5080. FAILURE TO OBTAIN REQUIRED OPINIONS

These amendments clarify what opinions the physician offering to provide the surgical service must obtain and what procedural requirements must be met before the Department reimburses costs associated with the surgery.

Subpart 1. The amendments to this subpart clarify that if the physician offering to provide the surgical procedure fails to obtain the second surgical opinion from the medical review agent (as required under part 9505.5050, subpart 1), then the Department will deny reimbursement for all costs associated with the surgery. This provision is necessary to comply with the the requirements of Minnesota Statutes, section 256B.04, subdivision 2 that MA/GAMC programs should be administered in an economical and efficient manner, and of section 256B.04, subdivision 15 that procedures should be medically appropriate.

Subp. 2. This subpart refers to situations when the physician offering to provide the surgical service fails to obtain the opinion of a second physician (as required under part 9505.5050, subpart 2) or of the third physician (required under part 9505.5050, subpart 3). The amendments clarify that in such situations the Department will deny all costs associated with the surgery, including costs incurred by other providers and hospitals.

This provision is necessary to comply with the statutory requirements that MA/GAMC programs should be administered in an economical and efficient manner, and that procedures should be medically appropriate. It is reasonable because all providers of services relating to the surgery are both in a position to and under an obligation to ascertain compliance with the requirements of these rules. Costs attributable to providers other than the physician performing the surgery, such as the hospital and anesthesiologist, are substantial. It is reasonable that those providers, who stand to benefit substantially, should be held responsible for verifying compliance before providing the services.

Subp. 3. This subpart also covers situations where a recipient requires a second surgical opinion under part 9505.5050, subpart 2, or a third surgical opinion under part 9505.5050, subpart 3.

If the second or third surgical opinion does not substantiate the need for a surgical procedure, then the physician offering to provide the surgical procedure shall submit the form completed by the second or third physician to the Department within 135 days of the initial opinion.

These amendments are reasonable because they are consistent with other parts of the rule which require the physician offering the surgical procedure to obtain the second and third opinions and to submit the requisite forms to the Department. It is also reasonable to require that second or third opinion

forms be submitted to the Department even if the surgery is not approved, because it enables the Department to compile statistics as to the effectiveness and cost benefits of the second surgical opinion requirement.

9505.5090 MEDICAL REVIEW AGENT AND DEPARTMENT RESPONSIBILITY

Subpart 1. Medical review agent responsibility. It is necessary to describe the obligations of the medical review agent in case of a contract between the Department and the medical review agent which requires the medical review agent to determine the medical appropriateness of surgical procedures requiring a second surgical opinion.

The medical review agent must issue an authorization number within one working day of the receipt of necessary information if the medical review agent determines that the recommended surgical procedure meets the criteria of medical appropriateness or if a third physician determines that the surgical procedure is medically appropriate. The medical review agent must also issue a certification number if the surgical procedure requires an inpatient hospitalization. This provision is reasonable because MA/GAMC payment can be made only if a procedure meets the criteria for medical appropriateness. The issuance of an authorization number is the mechanism used by the Department to ensure that the surgical procedure is medically appropriate and can be reimbursed. The medical review agent can review the information and make the determination within one working day. This is the time frame being used at present and it is also consistent with the time given to the medical review agent to make a determination of admission certification for inpatient hospital services under parts 9505.0500 to 9505.0540.

If the medical review agent determines that the surgical procedure is not medically appropriate, but the third physician determines that the procedure is medically appropriate, then the medical review agent shall assign an authorization number within one working day of receipt of information. This is consistent with the time given to the medical review agent to assign an authorization number in subpart 1. If the third physician agrees with the medical review agent that the surgical procedure is not medically appropriate, then the medical review agent must deny the authorization number and inform the recipient of his or her right to appeal.

This provision is necessary and reasonable because if there is a difference of opinion regarding whether the surgical procedure is medically appropriate or not, then the third surgical opinion should be the determining factor. If, however, two out of three physicians determine that the surgical procedure does not meet the criteria of medical appropriateness, then the procedure is not necessary, based on the information provided. The medical review agent and the opinion of the third physician are relevant indicators of the medical appropriateness of the requested surgical service.

Subp. 2. If no medical review agent. It is necessary to describe the responsibility of the Department and the procedures that the Department shall follow if there is no contract between the Department and the medical review agent. Minnesota Statutes, section 256.991 requires the Department to establish the methods and standards for determining inappropriate utilization of MA services requiring second surgical opinions.

It is reasonable that in the absence of a medical review agent, the Department will determine the medical appropriateness of the surgical procedure and assign or deny the authorization number. The procedure to be followed by the Department is consistent with the procedure that the medical review agent is required to follow.

9505.5096 REQUEST FOR EXEMPTION FROM SECOND SURGICAL OPINION

Subpart 1. Request for exemption; general. It is necessary to inform providers that if they believe that a surgical procedure is exempt from the second or third opinion requirement, they must obtain approval of that exemption from the medical review agent or the Department. This is reasonable because the Department has established criteria according to which certain elective surgeries require a second opinion before providers are reimbursed for services from MA funds. The exemptions are meant to cover circumstances when the requirement of a second medical opinion would endanger the health of a recipient, fail to be cost effective for the Department, or present an unreasonable burden for providers or recipients. The Department must have the authority to verify that the surgical procedure is exempt from the second surgical opinion to be able to ensure proper utilization of MA services. It is necessary to distinguish between circumstances when the exemption must be obtained before carrying out the surgical procedure, and circumstances when it may not be possible for the provider to obtain exemption before the surgery. It is reasonable that in the latter case, providers should have the option to obtain exemption after the surgery.

Subp. 2. Request for exemption before carrying out surgical procedure. In the case of an emergency, a surgery which is incidental to a major surgery or a surgery performed before the date of the recipient's application for MA/GAMC benefits, the provider can choose between the alternatives of providing the service first and attaching documentation of exemption to the prior authorization form later, or seeking approval of the exemption through the prior authorization form before providing service. In all other cases the provider must obtain an exemption either from the Department or from the medical review agent before providing the service.

It is necessary and reasonable to describe the process that a provider must follow to obtain an exemption before carrying out the surgical procedure. It is also necessary to specify how the process differs depending on whether or not the Department contracts with the medical review agent to review the medical appropriateness of a surgical procedure.

If the Department has a contract with the medical review agent, then the provider must call the medical review agent and provide all information necessary for the medical review agent to verify the facts and make a determination of the request for exemption. This is reasonable because if a contract does exist, then the medical review agent has the authority to review the medical appropriateness of surgical procedures. It is efficient and more convenient to give the medical review agent additional authority to review exemptions as well. This mechanism has been used for the last three years and has served the needs of the provider and the Department.

If the Department does not have a contract with the medical review agent, then the provider must use the prior authorization process detailed in part 9505.5010. This is reasonable because prior authorization is a condition of reimbursement for health services covered by the MA and GAMC Programs. It is more efficient and cost effective for the provider to follow the same procedure to be reimbursed for providing a surgical procedure that is exempt from the second surgical opinion requirement.

Subp. 3. Request for exemption after performing the surgical procedure. If a provider performs the surgical procedure and then requests an exemption, the medical review agent or the Department shall follow the same procedures as detailed in subpart 2.

This exemption applies only for surgical procedures provided during emergency, surgical procedures which are incidental to another major surgery, or surgical procedures performed before the date of the recipient's application for MA/GAMC benefits, which application is approved retroactively. It is necessary and reasonable to provide for exemptions after the surgical procedure so that emergency and incidental services are not delayed while the recipient awaits an authorization number. It is also reasonable that the Department or medical review agent should verify the need for the exemption later and use procedures consistent with procedures used in approving exemptions before performing the surgical procedure in order to apply the same standards and criteria of medical appropriateness which are used for reviewing surgical procedures that are not exempt.

Subp.4. Retroactive eligibility. Medical assistance may be granted retroactively for up to three months prior to the month of application (42 C.F.R. 435.914). Therefore, there may be instances in which a person is admitted, treated and discharged from hospital before the time that application for MA or GAMC benefits is made and eligibility granted. This provision is necessary to establish a process for providers to obtain payment for medically appropriate services provided to a person who had not made the application for MA and GAMC benefits and was not eligible at the time the surgery was performed, but who subsequently became retroactively eligible for the period of the surgery. It is reasonable to require the hospital to submit a copy of the medical record to the medical review agent in order for the medical review agent to make a determination of whether the surgical procedure was medically appropriate.

Subp. 5. Documentation required. It is necessary to inform providers of the documentation required to substantiate an exemption and of the Department's authority to withhold approval of the exemption until the documentation is submitted.

This provision is reasonable because it gives providers a financial incentive to comply with the documentation requirements. If the provider fails to comply, MA payment will be denied. It is also reasonable to require documentation from providers so that the Department or the medical review agent can determine the medical appropriateness of the surgical procedure and the need for an exemption. The reviewing authority should have all the information necessary in order to use the same standards and criteria of medical appropriateness which are used for reviewing surgical procedures without a request for exemption.

9505.5100 INDEPENDENT PHYSICIAN EVALUATION

It is necessary and reasonable to use the word "medically appropriate" instead of the word "necessary" so that there is no confusion between the terms medically appropriate used with reference to the second surgical opinion, and the term medically necessary used with reference to inpatient hospital certification.

9505.5105 FAIR HEARING AND APPEALS

Subp.1. It is necessary and reasonable to amend the sentence structure to clarify what actions of the Department the recipient can appeal from. There is no change in the substance of this provision.

Subp.5. It is necessary and reasonable to clarify that the commissioner shall make a ruling to uphold, reverse or modify the action of the medical review agent if the Department has delegated its review functions to the medical review agent and if the recipient requests a hearing from the decision of the medical review agent.

REPEALER

Part 9505.5095 deals with two mechanisms for request of exemptions from the second surgical opinion. In the present rules there is no difference between the different circumstances in which exemptions can be granted. The provider has a choice to either (1) request exemption after the surgery and at the time of submitting the claim for payment, or (2) request exemption before the surgery through the prior authorization process.

The amendments to parts 9505.5000 to 9505.5105 provide that except in the case of emergencies, incidental surgeries or retroactive eligibility, all exemptions should be obtained before providing the surgical procedure. The procedures to be followed by the provider have been detailed in part 9505.5096. It is therefore necessary to repeal this provision.

This provision is reasonable because since there is only one process to follow, it minimizes provider confusion on procedures. It also minimizes the possibility of providers not getting reimbursed for surgical services provided by them. This amendment takes into account surgical procedures which should not be delayed because of prior authorization and at the same time streamlines the entire system to make it move faster. The amendment has the support of the advisory committee.

The Department will not present expert witnesses to testify concerning the provisions of these proposed rules on behalf of the department.

September 7, 1988

Julie Brunner

for SANDRA GARDEBRING, Commissioner
Department of Human Services

SMJ/anu.snr

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO DEPARTMENT OF HUMAN SERVICES RULES GOVERNING THE PROCEDURES FOR PRIOR AUTHORIZATION OF HEALTH SERVICES AND THE REQUIREMENTS OF A SECOND SURGICAL OPINION AS CONDITIONS OF REIMBURSEMENT TO PROVIDERS OF HEALTH SERVICES FOR RECIPIENTS OF MEDICAL ASSISTANCE AND GENERAL ASSISTANCE MEDICAL CARE

AFFIDAVIT OF MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 28th day of September, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to 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 hearing by this Department.

Nancy Storelee

Subscribed and sworn to before me

this 28 day of Sept, 1988

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Rules of the Department of Human Services Governing the procedures for Prior Authorization of Health Services and the requirements of a Second Surgical Opinion as conditions of reimbursement to providers of health services for recipients of Medical Assistance and General Assistance Medical Care Minnesota Rules, Parts, 9505.5000 to 9505.5105

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256.991 and section 256D.03, subdivision 7(b).

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON MONDAY, NOVEMBER 14, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 297-4997.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on November 2, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the proposed amended rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion , when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

The Second Surgical Opinion system ensures that certain elective surgical procedures are not reimbursed under Medical Assistance or General Assistance Medical Care unless a confirming opinion of medical appropriateness is obtained from a physician in the same specialty area as the physician offering to provide the surgery. This rule affects providers of Medical Assistance and General Assistance Medical Care (inpatient and outpatient hospitals, physicians, and vendors of other health services), physicians who will provide a second or third opinion on the medical appropriateness of a surgical procedure, the medical review agent, and recipients of Medical Assistance and General Assistance Medical Care.

The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment.

It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments clarify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854, upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816.

State of Minnesota

for Julie Brunner

SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/84

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Department of Human Services Rules Governing the procedures for Prior Authorization of Health Services and the requirements of a Second Surgical Opinion as conditions of reimbursement to providers of health services for recipients of Medical Assistance and General Assistance Medical Care, Parts, 9505.5000 to 9505.5105

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 2A and 2B, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, on November 14, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business

days to respond in wr[illegible]g to any new information subm[illegible]d during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion , when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

The Second Surgical Opinion system ensures that certain elective surgical procedures are not reimbursed under Medical Assistance or General Assistance Medical Care unless a confirming opinion of medical appropriateness is obtained from a physician in the same specialty area as the physician offering to provide the surgery. This rule affects providers of Medical Assistance and General Assistance Medical Care (inpatient and outpatient hospitals, physicians, and vendors of other health services), physicians who will provide a second or third opinion on the medical appropriateness of a surgical procedure, the medical review agent, and recipients of Medical Assistance and General Assistance Medical Care.

The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment. It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments ratify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256.991, and section 256D.03 subdivision 7(b). Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 297-4997.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

for Julie Brunner
SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO DEPARTMENT OF HUMAN SERVICES RULES GOVERNING THE PROCEDURES FOR PRIOR AUTHORIZATION OF HEALTH SERVICES AND THE REQUIREMENTS OF A SECOND SURGICAL OPINION AS CONDITIONS OF REIMBURSEMENT TO PROVIDERS OF HEALTH SERVICES FOR RECIPIENTS OF MEDICAL ASSISTANCE AND GENERAL ASSITANCE MEDICAL CARE

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 28th day of September, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices 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 parties:

-The 87 Minnesota County Human Services Agencies
-Rule 68 Advisory Committee
-Individual Hospitals
-Border Medical Association
-Border Hospital Association

Nancy Storelee

Subscribed and sworn to before me

this 28 day of Sept, 1988

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Adoption of Amendments to
Rules of the Department of
Human Services Governing
the procedures for Prior
Authorization of Health Services
and the requirements of a
Second Surgical Opinion as
conditions of reimbursement
to providers of health services
for recipients of Medical Assistance
and General Assistance Medical Care
Minnesota Rules, Parts, 9505.5000 to 9505.5105

NOTICE OF INTENT TO ADOPT
A RULE WITHOUT A PUBLIC
HEARING AND NOTICE OF
INTENT TO ADOPT A RULE
WITH A PUBLIC HEARING
IF TWENTY-FIVE OR MORE
PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256.991 and section 256D.03, subdivision 7(b).

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON MONDAY, NOVEMBER 14, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 297-4997.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on November 2, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the proposed amended rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion , when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

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The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

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It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments clarify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854, upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816.

State of Minnesota

for Julie Brunner

SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/88

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Department of Human Services Rules Governing the procedures for Prior Authorization of Health Services and the requirements of a Second Surgical Opinion as conditions of reimbursement to providers of health services for recipients of Medical Assistance and General Assistance Medical Care, Parts, 9505.5000 to 9505.5105

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 2A and 2B, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, on November 14, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business

days to respond in writing to any new information submi d during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

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The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment. It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

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The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256.991, and section 256D.03 subdivision 7(b). Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St.Paul, MN 55155-3816, telephone (612) 296-2854.

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(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

for Julie Brunner
SANDRA S. GARDEBRING
Commissioner

Dated: 9/6/88

C. The license holder may waive orientation in the subjects in subpart 2, items E to H, for staff who document completion within the previous two years of training in those subjects.

Subp. 4. **Volunteers and governing body.** Volunteers who provide direct services to persons must complete eight hours of orientation that includes at least items A to C in subpart 2. The license holder shall invite members of the governing body to complete the orientation provided volunteers.

Subp. 5. **Initial supervision.** During the first ten working days of employment or until orientation is completed, whichever occurs first, direct service staff who are working directly with persons must be supervised in person by staff who have completed orientation.

Subp. 6. **Training.** The license holder shall ensure and shall document that direct service staff annually complete the number of hours of training that equals at least two percent of the hours for which the individual is annually paid, up to 40 hours of training. Countable training hours include orientation, in-service training, or training from educational coursework, conferences, seminars, or video tapes.

Subp. 7. **Training subjects.** Annual training must include three or more of the following subjects:

A. additional training in the orientation subjects in subpart 2, items E to H;

B. conducting assessments of:

(1) skills and behaviors needed by persons in the environments where the skills and behaviors are typically used or displayed by nondisabled individuals;

(2) environmental, health, and communicative factors that influence a person's behavior; and

(3) the need for equipment or environments to assist persons in daily living, learning, and working;

C. developing and writing measurable objectives that focus on training persons in functional skill areas and are directed at achieving the service outcomes in part 9525.0245, subpart 2;

D. analyzing tasks and developing steps to achieve objectives and behavioral changes;

E. using positive instructional procedures and adaptations of equipment or environments to enable persons to live or work more independently and to actively interact in community settings with nondisabled individuals who are not paid staff. These procedures include positive techniques to achieve behavior change, use of advanced technology, alternative communication systems, and techniques for lifting, turning, positioning, or transferring persons;

F. collecting information and data that measure changes in persons' behavior and the effectiveness of instructional procedures, including the establishment of baseline measurement and charting and graphing behavioral changes;

G. analyzing information to evaluate the effectiveness of instructional methods in achieving objectives of a person's PIP;

H. developing methods and strategies to recommend service changes or to modify services for persons to more effectively achieve the goals and objectives of the IHP and service outcomes in part 9525.0245, subpart 2, including Program Analysis of Service Systems (PASS);

I. assuring the health and safety of persons, including training in first aid and cardiopulmonary resuscitation; programs designed to promote a person's health and wellness; and monitoring the side-effects of medications, including tardive dyskinesia; and

J. other areas identified by the living unit supervisor or case manager to improve the implementation of the PIP.

REPEALER. *Minnesota Rules,* parts 9525.0210; 9525.0220; 9525.0230; 9525.0240; 9525.0250; 9525.0260; 9525.0270; 9525.0280; 9525.0290; 9525.0300; 9525.0310; 9525.0320; 9525.0330; 9525.0340; 9525.0350; 9525.0360; 9525.0370; 9525.0380; 9525.0390; 9525.0400; 9525.0410; 9525.0420; and 9525.0430, are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance and General Assistance Reimbursement

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.

Notice of Hearing and Notice of Intent to Cancel Hearing If Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

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PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997.

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Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion, when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

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The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment. It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments clarify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situations.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, section 256.991, and section 256D.03, subdivision 7(b). Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year

for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 297-4997.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Sandra S. Gardebring
Commissioner

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing If Twenty-five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, section 256.991 and section 256D.03, subdivision 7(b).

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY

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.

COMMENT PERIOD, A HEARING WILL BE HELD ON MONDAY, NOVEMBER 14, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services, between November 3, 1988 and November 13, 1988 at (612) 297-4997.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 297-4997.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on November 2, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the proposed amended rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Minnesota Rules, Parts 9505.5000 to 9505.5105, clarify the policy and procedures for prior authorization of health services and establish a system for requiring a second opinion for certain elective surgical procedures. Both prior authorization and a second surgical opinion, when required by these rules, are conditions of Medical Assistance and General Assistance Medical Care reimbursement. These systems are designed to safeguard against the unnecessary or inappropriate expenditures of Medical Assistance or General Assistance Medical Care funds.

The Second Surgical Opinion system ensures that certain elective surgical procedures are not reimbursed under Medical Assistance or General Assistance Medical Care unless a confirming opinion of medical appropriateness is obtained from a physician in the same specialty area as the physician offering to provide the surgery. This rule affects providers of Medical Assistance and General Assistance Medical Care (inpatient and outpatient hospitals, physicians, and vendors of other health services), physicians who will provide a second or third opinion on the medical appropriateness of a surgical procedure, the medical review agent, and recipients of Medical Assistance and General Assistance Medical Care.

The proposed amendments combine the procedures for obtaining authorization of a surgery requiring a second surgical opinion with the admission certification procedures. This means that a provider calling to obtain a certification number will, simultaneously, in the majority of cases, be able to obtain an authorization number. This rule has therefore to be read in conjunction with the admission certification rule, parts 9505.0500 to 9505.0540. The amendments also provide that the second surgical opinion will be obtained from the medical review agent if the Department enters into a contract with the medical review agent.

The amended rule contains definitions of terms used in the rule, updates the citation on health services which require prior authorization, and clarifies the procedures to be followed if reimbursement is sought after the delivery of service, or if there is third party liability for Medical Assistance or General Assistance Medical Care payment.

It also clarifies which surgical procedures require a second surgical opinion, and the conditions under which exemption from the second surgical opinion requirements can be obtained.

The amendments clarify definitions and qualifications for second and third surgical opinions, and the duties of the physician offering to provide the surgical service. There is clarification on the penalties that can be imposed, on the time limits for the surgical opinions, and on the responsibilities of the medical review agent, the Department, the physician offering to provide the surgery, and the second and third physicians. The amendments state the consequences of not obtaining the second or third opinion and the procedures for requesting exemptions in different situtations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854, upon request.

Adoption of these rules will not result in addtional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney

General, or who wish to receive a copy of the adopted rule, must submit the written request to Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816.

Sandra S. Gardebring
Commissioner

Rules as Proposed

9505.5000 APPLICABILITY.

Parts 9505.5000 to 9505.5105 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 489.57; *Minnesota Statutes*, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.22; ~~and~~ parts ~~9500.0750 to 9500.1100~~ 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; 9505.0500 to 9505.0540; 9505.1000 to 9505.1040; and 9505.1750 to 9505.2150, and with rules adopted by the commissioner under *Minnesota Statutes*, sections 256.991 and 256D.03, subdivision 7, clause (b).

9505.5005 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Authorization number.** "Authorization number" means the number issued by the medical review agent that establishes that the surgical procedure requiring a second surgical opinion is medically appropriate.

Subp. 1b. **Certification number.** "Certification number" means the number issued by the medical review agent that establishes that all or part of a recipient's inpatient hospital services are medically necessary.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Medical appropriateness or medically appropriate.** "Medical appropriateness" or "medically appropriate" refers to a determination, by a medical review agent or the department, that the recipient's need for a surgical procedure requiring a second surgical opinion meets the criteria in part 9505.0540 or that a second or third surgical opinion has substantiated the need for the procedure.

Subp. 12b. **Medical review agent.** "Medical review agent" means the representative of the department who is authorized in parts 9505.0500 to 9505.0540 to determine the medical appropriateness of procedures requiring second surgical opinions.

Subp. 13. to 18. [Unchanged.]

Subp. 18a. **Second opinion or second surgical opinion.** "Second opinion" or "second surgical opinion" means the determination by the medical review agent under part 9505.5050, subpart 1, or by a second physician under part 9505.5050, subpart 2, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Subp. 18b. **Third opinion or third surgical opinion.** "Third opinion" or "third surgical opinion" means the determination by a third physician under part 9505.5050, subpart 3, that a surgical procedure requiring a second surgical opinion is or is not medically appropriate.

Subp. 19. [Unchanged.]

9505.5010 PRIOR AUTHORIZATION REQUIREMENT.

Subpart 1. **Provider requirements.** Except as provided in part 9505.5015, a provider shall obtain prior authorization as a condition of reimbursement under the medical assistance and general assistance medical care programs for health services designated under parts 9500.1070, subparts 1, 4, 6, 12 to 15, and 23; 9505.0170 to 9505.0475; and 9505.5025; and Minnesota Statutes, section 256B.02, subdivision 8y. 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 the provider meets all requirements of the medical assistance or general assistance medical care programs.

Subp. 2. to 4. [Unchanged.]

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9505.5015 ~~RETROACTIVE~~ AFTER THE FACT AUTHORIZATION.

Subpart 1. **Exceptions.** As provided in subparts 2 to 4, 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. The provider of the health service shall submit the request on form DHS-1855 as required in part 9505.5010, subpart 3, and shall submit materials, reports, progress notes, admission histories, or other information that substantiates that the service was necessary to treat the recipient.

Subp. 2. **Emergencies.** A health service requiring prior authorization shall ~~be reimbursed without~~ retroactively receive prior authorization in an emergency if the provider submits the ~~prior~~ request for authorization ~~form, DPW-1855,~~ no later than five working days after providing the initial service and the provider documents the emergency ~~by submitting materials, reports, progress notes, admission histories, or other information which substantiates that the service was necessary to treat the recipient~~.

Subp. 3. **Retroactive eligibility.** 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 part 9505.5030, 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 part 9505.5010.~~

Subp. 4. ~~Medicare denial~~ **Third party liability.** ~~A health service originally billed to Medicare for which reimbursement was denied shall be reimbursed without prior authorization if the service meets the criteria of part 9505.5030 and if the authorization request is submitted to the department along with a copy of the explanation of Medicare benefits (EOMB), within 20 working days of the date of the EOMB~~ A provider of a health service originally billed to Medicare or a third party payer as defined in part 9505.0015, subpart 46, for which Medicare or the third party payer denied payment or made a partial payment may retroactively submit a request for authorization if the provider wants to receive payment of the difference between the medical assistance or general assistance medical care payment rate for the service and the payment by the third party payer. The service is eligible for medical assistance or general assistance medical care reimbursement if it meets the criteria in part 9505.5030 and if the authorization request is submitted to the department along with a copy of the notice explaining the denial or partial payment within 20 working days of the date of the notice.

9505.5035 SURGICAL PROCEDURES REQUIRING SECOND OPINION.

Subpart 1. **General requirements.** Except as provided in part 9505.5040, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient elective surgical procedures according to the list published in the *State Register* under *Minnesota Statutes*, section 256B.02, ~~subdivision~~ 8 subdivisions 8a and 8d. Publication shall occur ~~annually~~ in the last issue of the *State Register* for the month of October if there has been a revision in the list since the last October. In addition, the department shall publish any revision of the list at least 45 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. [Unchanged.]

9505.5040 EXEMPTIONS TO SECOND SURGICAL OPINION REQUIREMENTS.

~~Provided~~ If the requirements of part ~~9505.5095~~ 9505.5096 are met and the surgical procedure is medically appropriate as defined in part 9505.5005, subpart 12a, a second surgical opinion is not required ~~when~~ in the circumstances set out in items A to F:

A. to F. [Unchanged.]

9505.5050 SECOND AND THIRD SURGICAL ~~OPINION~~ OPINIONS.

Subpart 1. **Second surgical opinion by medical review agent.** Except as provided in subpart 2, a second surgical opinion must be obtained from the medical review agent as specified in parts 9505.0520, subparts 6 and 8, and 9505.0540.

Subp. 2. **Second surgical opinion by a second physician.** If the department does not have a contract with the medical review agent to provide a second surgical opinion, a second surgical opinion must be obtained from a second physician.

Subp. 3. **Third surgical opinion.** ~~When~~ If a second surgical opinion obtained under subpart 1 or 2 fails to substantiate the initial surgical opinion and the recipient still wants the surgery, a third surgical opinion shall be obtained ~~if the recipient still wants the surgery~~ from a third physician. 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 ~~programs~~ program.

9505.5055 SECOND OR THIRD OPINION BY A PHYSICIAN.

Subpart 1. ~~Requirements~~ **Duties of ~~recommending~~ physician offering to provide the surgical service.** ~~The physician offering~~

~~to provide the surgical service~~ If the recipient requires the opinion of a second physician under part 9505.5050, subpart 2, or if the medical review agent or the second physician determines that the surgical procedure requiring a second surgical opinion is medically inappropriate and the recipient needs a third opinion under part 9505.5050, subpart 3, the physician offering to provide the surgical service shall provide to the recipient in need of ~~a~~ the second or third surgical opinion~~,~~ the names of at least two other physicians who are qualified to render ~~a second or third~~ the surgical 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 physician offering the surgical service shall ensure that the required second opinion ~~and, when required,~~ or third opinion~~,~~ ~~are~~ is obtained.

Subp. 2. **Qualifications of physician offering second or third opinions.** The physician offering the surgical service and the physician named to render a second or third opinion or the medical referral resource service shall have no direct shared financial interest or referral relationship resulting in a shared financial gain. The physician who gives a second or third opinion must be a provider and must meet the criteria on experience in treating and diagnosing the condition that requires a second or third surgical opinion as published in the *State Register* under part 9505.5035.

9505.5060 PENALTIES.

The penalties for failure to comply with parts 9505.5000 to 9505.5100 shall be imposed in accordance with parts 9505.1750 to 9505.2150 in addition to parts ~~9500.0960 and 9500.1080~~ 9505.0145, 9505.0465, and 9505.0475.

9505.5065 REIMBURSEMENT OF COST OF SECOND AND THIRD SURGICAL OPINIONS.

Reimbursement of the cost of a second ~~and~~ or third surgical ~~opinions~~ opinion 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.

9505.5070 TIME LIMITS; SECOND AND THIRD OPINIONS; SURGERY.

The second surgical opinion from the medical review agent or a second physician shall be obtained within 90 days of the date of the initial opinion. The ~~third~~ surgical opinion from a third physician, if required, shall be obtained within 45 days of the date of the ~~second~~ opinion of the medical review agent or the second physician. Approved surgery, if not performed within 180 days of the initial opinion, and if still requested by the recipient, shall require repetition of the second surgical opinion process as described in this part.

9505.5075 PHYSICIAN RESPONSIBILITY.

The physician who provides a second or third opinion shall indicate his or her approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered necessary by the commissioner to substantiate the second opinion, shall be personally signed by each physician providing an opinion, and shall be attached to a completed and signed prior authorization form~~, and shall be submitted to the department by the physician who is offering to provide the surgical service~~. The completed form must be returned to the physician offering to provide the surgical service and must be made available by the physician to the department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department.

9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.

Subpart 1. **Opinion of medical review agent.** Failure of the physician who offers to provide a surgical procedure requiring a second opinion to obtain a required ~~second or third~~ surgical opinion from the medical review agent shall result in denial of reimbursement for all costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals.

Subp. 2. **Opinion of second or third physician.** Failure of a physician who offers to provide a surgical procedure requiring a second opinion to obtain the required surgical opinion from a second or third physician shall result in denial of reimbursement for all 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 surgical 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~~

Subp. 3. **Submission of completed form to department.** If the second or third opinion by a physician does not substantiate the need for the surgical procedure and if the department does not have a contract with a medical review agent, then the physician

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offering to provide the surgical procedure shall submit the completed form 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.

9505.5090 MEDICAL REVIEW AGENT AND DEPARTMENT RESPONSIBILITY.

Subpart 1. **Medical review agent responsibility.** Except as provided in subpart 2, if the medical review agent agrees that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the information, and shall issue a hospital admission certification number if the procedure requires inpatient hospital admission.

If the third physician, consulted according to part 9505.5050, subpart 3, agrees with the physician offering to provide the surgical service that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of this part are met, shall assign an authorization number within one working day of the medical review agent's receipt of the necessary information and forms, and shall issue a hospital certification number.

If the third physician agrees with the second opinion provided by the medical review agent that the requested surgical procedure is not medically appropriate, then the medical review agent shall deny an authorization number and a certification number and the department shall deny authorization of reimbursement for the requested surgical procedure. The medical review agent shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in *Minnesota Statutes,* section 256.045.

Subp. 2. **If no medical review agent.** The department shall assign or deny an authorization number when the department does not have a contract with a medical review agent to determine the medical appropriateness of procedures requiring second surgical opinions.

If two of the three physicians ~~concur~~ agree that the requested surgical procedure is medically appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 30 working days of the department's receipt of the necessary information and forms.

If two of the three physicians ~~concur~~ agree that the requested surgical procedure is inappropriate, then the department shall deny authorization of reimbursement for the requested surgical procedure. The department shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in *Minnesota Statutes,* section 256.045.

9505.5096 REQUEST FOR EXEMPTION FROM SECOND SURGICAL OPINION.

Subpart 1. **Request for exemption; general.** A provider who believes a surgical procedure is exempt under part 9505.5040 from the second or third opinion requirement shall request approval of the exemption from the medical review agent or the department before carrying out the surgical procedure, except for exemptions under part 9505.5040, items B, C, and F, which may be requested after performing the surgical procedure.

Subp. 2. **Request for exemption before carrying out surgical procedure.** A provider shall request approval of the exemption either under item A or B.

A. If the department has a contract with a medical review agent, the provider shall call the medical review agent and provide the information required in parts 9505.5000 to 9505.5030.

B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the prior authorization procedures in part 9505.5010.

Subp. 3. **Request for exemption after performing the surgical procedure.** If a provider chooses to carry out the surgical procedure before requesting approval of the exemption, the provider shall request approval of the exemption under item A or B.

A. If the department has a contract with a medical review agent, the provider shall submit to the medical review agent the medical records related to the recipient's medical condition, diagnosis, and treatment.

B. If the department does not have a contract with a medical review agent, the provider shall submit the request to the department according to the procedures in part 9505.5015.

Subp. 4. **Retroactive eligibility.** A hospital may seek an authorization number for a person found retroactively eligible for medical assistance or general assistance medical care program benefits after the date of admission. The hospital shall inform the physician offering to provide the surgical service of the authorization number of a retroactively eligible recipient. The physician offering to provide the surgical service and the hospital shall not seek an authorization number for a person whose application for the medical assistance or general assistance medical care program is pending. The medical review agent may require the hospital to submit, at its own expense, a copy of the complete medical record to substantiate the medical appropriateness of the surgical procedure. Failure to submit a requested record within 30 days of the request shall result in denial of the authorization number.

Subp. 5. **Documentation required.** A provider who believes a surgical procedure is exempt from the second and third opinion requirement under part 9505.5040 must submit supporting documentation with the request for exemption. If the provider requests approval of the exemption before performing the procedure, the department or medical review agent, as appropriate, may withhold approval of the exemption until the provider has submitted the documentation.

9505.5100 INDEPENDENT PHYSICIAN EVALUATION.

The commissioner shall have the right to order an independent evaluation by a physician selected by the recipient and approved by the commissioner when the commissioner has reason to believe, based on parts 9505.1750 to 9505.2150, that the requested surgical procedure is not ~~necessary~~ medically appropriate. If the recipient needs assistance locating an appropriate physician, the services of the local county medical society, or any other physician referral resource may be ~~utilized~~ used. If the selected physician determines the procedure is not ~~necessary~~ medically appropriate, the commissioner shall deny authorization.

9505.5105 FAIR HEARINGS AND APPEALS.

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

A. the ~~department has failed~~ department's failure to act with reasonable promptness on a request for prior authorization or on an authorization request under the second surgical opinion program, as established under parts 9505.5020, subpart 1, and 9505.5090;

B. the ~~department has denied~~ department's denial of a request for prior authorization;

C. the ~~department has denied~~ department's denial of an authorization request under the second surgical opinion program; or

D. the ~~department has~~ department's proposed ~~a~~ reduction in service as an alternative to authorization of a proposed service for which prior authorization was requested.

Subp. 2. to 4. [Unchanged.]

Subp. 5. **Commissioner's ruling.** Within 90 days of the date of receipt of the recipient's request for a hearing, the commissioner shall make a ruling to uphold, reverse, or modify the action or decision of the department or the medical review agent. The commissioner's ruling shall be binding upon the department and the recipient unless a request for judicial review is filed pursuant to *Minnesota Statutes*, section 256.045, subdivision 7.

REPEALER. *Minnesota Rules*, part 9505.5095, is repealed.

Department of Human Services

Proposed Permanent Rules Relating to Reimbursement for Inpatient Hospital Services

Notice of Hearing and Notice of Intent to Cancel Hearing If Fewer Than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 2A and 2B, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, on November 14, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between November 3, 1988 and November 13, 1988 at (612) 297-4997.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments of Rules of the State Department of Human Services Governing The Procedures for Prior Authorization of Health Services and the Requirements of a Second Surgical Opinion as Conditions of Reimbursement to Providers of Health Services for Recipients of Medical Assistance and General Assistance Medical Care, Minnesota Rules, Parts 9505.5000 to 9505.5105

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on October 3, 1988, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on September 28, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received within the time period stated in the notice published in the State Register. Therefore, the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the attorney general were received by the agency. Written comments were received by the agency from Mr. Vern Silvernale, Vice President, Health Care Finance, Minnesota Hospital Association, within the time period stated.

Based on the comments and evidence in the record before the agency, I find the following:

1. 9505.5075.

Mr. Vern Silvernale commented that "the requirement to maintain these records assumes a set period of time. That length of time should be identified". He suggested that the Department identify in the rule, how long the record should be maintained.

The Department accepts this suggestion. The provision stated below has been proposed as an amendment to the present part 9505.5075. The proposed amendment to part 9505.5075 is further modified as follows :

"The completed form must be returned to the physician offering to provide the surgical service and must be retained and made available for at least five years , by the physician to the department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department".

This modification is necessary to avoid ambiguity in the rule. It is reasonable because this time frame is consistent with part 9505.1850 which requires all providers to retain health records for at least five years.

The Department finds the modification is not substantial but only clarifies the rule.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Prior Authorization of Health Services and the Requirements of a Second Surgical Opinion as Conditions of Reimbursement to Providers of Health Services for Recipients of Medical Assistance and General Assistance Medical Care, Minnesota Rules, Parts 9505.5000 to 9505.5105, (as modified) is adopted this 1st day of December , 1988, pursuant to authority vested in me by Minnesota Statutes, section 256.991 and section 256D.03, subdivision 7(b).

Julie Brunner
for SANDRA S. GARDEBRING
Commissioner

minnesota hospital association

representing nonprofit hospitals

October 25, 1988

Anu Seam
Department of Human Services
Rule Division
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. Seam:

I have enclosed the changes that the Minnesota Hospital Association would like considered for the following Rules:

- Inpatient Hospital Admission Certifications, Parts 9505.0500 to 9505.0540
- Prior Authorization of Health Services and the requirements of a second surgical opinion, Parts 9505.5000 to 9505.5105
- Inpatient Hospital Reimbursement, Parts 9500.1090 to 9500.1155

Please call if you have any questions.

Sincerely,

Vern Silvernale

Vern F. Silvernale, Vice President
Health Care Finance

FS/cj

Encl.

2221 UNIVERSITY AVENUE SE, SUITE 425 • MINNEAPOLIS, MINNESOTA 55414-3085 • PHONE (612) 331-5571

9505.0520 Inpatient Admissions Certifications

Page 8, lines 3 - 8

Subp. 4.B (3) The admission of a pregnant woman that does not result in the delivery of a newborn or a stillbirth within 24 hours of her admission, as specified in subpart 2, item B.

For purposes of this sub-item the time limit for notifying the medical review agent is calculated beginning with the time of the admission of the pregnant woman.

Issue: There continues to be a question over the necessity of this part of the rule. A retroactive admission certification for most deliveries or a stillbirth within 24 hours would add unnecessary paper work for no useful purpose.

Recommendation: Eliminate subpart.

9505.0520 Inpatient Admissions Certifications

Page 14, lines 29 - 36, Page 15, lines 1 - 4

Subp. 10 F. If the medical review agent conducting a retrospective review finds the recipient's medical record is inadequate to justify that a surgical procedure requiring a second opinion is medically appropriate, or that an exemption under part 9505.5040 was appropriate, the medical review agent may request a hospital to submit, at the hospital's expense, documentation substantiating the opinion of the third physician that the surgical procedure was medically appropriate, or that the exemption under part 9505.5040 was appropriate. The hospital shall submit the documentation within 20 days, exclusive of weekends and holidays, of the date of the notice requesting the documentation.

Issue: The hospital's financial responsibility for submitting documentation substantiating the opinion of the third physician. This assumes total responsibility for record maintenance and accuracy to the hospitals.

Recommendation: Delete the financial requirement from the hospital.

Page 14, line 34 may request a hospital to submit, ~~at the hospital's expense,~~

9505.0540 Criteria to determine medical necessity or appropriateness

Page 23, lines 18 - 27

Subp. 4. C. The recipients' discharge and readmission to the same hospital results from the preference of the recipient or the recipients's family that the recipient's treatment be delayed, that the recipient be discharged without receiving the necessary procedure or treatment, and that the recipient be readmitted for the necessary procedure or treatment. If the admitting and readmitting hospitals are the same, the medical review agent shall determine the admission eligible to retain the certification number and withdraw the certification number of the readmission.

Issue: Application of the readmission policy for readmission to the same hospital or a different hospital. By determining that the same hospital receives only one payment in a readmission you are inappropriately penalizing these hospitals.

Recommendation: Eliminate the mandate to withdraw the certification number for readmission to the same hospital.

~~If the admitting and readmitting hospitals are the same, the medical review agent shall determine the admissions eligible to retain the certification number and withdraw the certification number of the readmission.~~

9505.0540 Criteria to Determine Medical Necessity or Appropriateness

Pages 24 & 25 Lines 30 - 36 and 1 - 10

Subp. 5.B. The readmission results from a referral from one hospital to a different hospital because the recipients's medically necessary treatment was outside the scope of the first hospital's available services. In this case, both hospitals shall retain their certification numbers, and medical assistance payment to each hospital shall be made according to the transfer payment established under part 9500.1130, subpart 7, item A, for the inpatient hospital services necessary for the recipient's diagnosis and treatment. If, however, the admission to the first hospital is not due to an emergency and the first hospital knew or had reason to know at the time of admission that the inpatient hospital services that were medically necessary for the recipient's treatment were outside the scope of the hospital's available services and the readmission to another hospital resulted because of the recipients's need for those services, the first hospital's certification number will be withdrawn.

Issue: The assumption is that all hospitals will be able to immediately determine if a patient is within the capabilities their services. The admitting diagnosis is also a criteria that needs to be identified, not only the condition.

Recommendation: Add language to insure that there is no confusion on what diagnosis would be considered within the capabilities of the hospital.

the recipient's treatment or condition were outside the scope of the hospital's available services and the readmission to another hospital resulted because of the recipient's need for those services, the first hospital's certification number will be withdrawn.

9505.5010 Prior Authorization

Page 3 & 4, lines 35 & 36 and 1-12

Subp. 4. Third party liability. A provider of a health service originally billed to Medicare or a third party payer as defined in part 9505.0015, subpart 46, for which Medicare or the third party payer denied payment or made a partial payment may retroactively submit a request for authorization if the provider wants to receive payment of the difference between the medical assistance or general assistance medical care payment rate for the service and the payment by the third party payer. The service is eligible for medical assistance or general assistance medical care reimbursement if it meets the criteria in part 9505.5030 and if the authorization request is submitted to the department along with a copy of the notice explaining the denial or partial payment within 20 working days of the date of the notice.

Issue: The language of this part is in conflict with 9500.1130. subp.5.B and 9505.0520 subp. 2.B which precludes payment for denied Medicare claims. 1

Recommendation: Retain this language and amend 9505.0520 and 9500.1130 to conform with existing Department policy.

9505.5075 Physician Responsibility

Page 7, line 13 - 17

The completed form must be returned to the physician offering to provide the surgical service and must be made available by the physician to the Department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department.

Issue: The requirement to maintain these records assumes a set period of time. That length of time should be identified.

Recommendation: The Department establishes a policy to identify, in rule, how long this record should be maintained.

9500.1130 Reimbursement Procedures

Page 3, lines 18 & 19

Subp. 5.B. Claims will not be reimbursed if inpatient hospital services have already been denied under Medicare.

Issue: The language of this subpart would limit the Department to the same services that are provided by Medicare. Because the Medicaid program covers services not covered under Medicaid, I would recommend changing the language to allow for a clearer understanding of services being denied.

Recommended Change:

Subp. 5.B. Claims will not be reimbursed for <u>covered Medicare</u> inpatient hospital services that have already been denied under Medicare.

In the Matter of the Adoption of Amendments to the Rule of the State Department of Human Services Relating to Prior Authorization and Second Surgical Opinion for Health Services in the Medical Assistance and General Assistance Medical Care Programs, Minnesota Rules, Parts 9505.5000 to 9505.5105

DECLARATION OF COUNSEL

I, Neil Scott, Special Assistant Attorney General, do hereby declare that I have examined the above captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0866.

Special Assistant
Attorney General

Dated: 11/30/88

Agency Requested a Rush if possible, Approval on 12/12.

If approved on 12/12, let Roben know it must go over to the Revisor that day.

Rule - adopted

p 6 line 31

substantial Change?

previously a dr could have assumed he/she would need to keep records for 1 yr - Now they must be kept 5 yrs. However - if they assumed records needed to be retained for 20 yrs, Now they only need to keep them 5 yrs. The change is to their advantage.

Rule - adopted

p 2. line 19 see ag copy.

p 5 lines 9+ see ag copy

p 8 lines 18-22.

Authorization

256.991 d

256D.03 Subd 7(b)