

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

IN THE MATTER OF THE PROPOSED AMENDMENT
OF RULES OF THE DEPARTMENT OF HUMAN SERVICES
GOVERNING ELIGIBILITY TO RECEIVE PAYMENT
AS A PROVIDER OF MENTAL HEALTH SERVICES
IN THE MEDICAL ASSISTANCE PROGRAM, MINNESOTA
RULES, PART 9505.0323, Subpart 31

STATEMENT OF NEED
AND REASONABLENESS

Background

Part 9505.0323 sets standards to receive medical assistance payment as a provider of mental health services to medical assistance recipients. This part became effective January 1, 1990. Part 9505.0323 is a component of the entire set of rules, parts 9505.0170 to 9505.0491, which establish the standards to receive medical assistance payment for health services to a medical assistance recipient.

Subpart 31 is an amendment of part 9505.0323 proposed by the Department of Human Services (Department) as required under Laws of Minnesota 1990, Chapter 568, Article 3, Section 97.

The Minnesota medical assistance program is the joint federal-state program that implements the provisions of Title XIX of the Social Security Act by providing services for the medical needs of low income or disabled persons and families with dependent children. (See United States Code, title 42, section 1396a, et seq.)

In compliance with the requirements of the Code of Federal Regulations, title 42

section 431.10, (42 CFR 431.10), the Department has been designated as the state agency to supervise the administration of the state's medical assistance program and to adopt rules that must be followed in administering the State Plan. The State Plan is the Department's comprehensive written plan to administer and supervise the medical assistance program according to the federal requirements.

Minnesota Statutes, section 256B.04, subdivision 2 requires the Commissioner of Human Services (commissioner) to establish "uniform rules and regulations, not inconsistent with law" to ensure that the medical assistance program is carried out in an efficient, economic, and impartial manner. The Department is further required, under Minnesota Statutes, section 256B.04, subdivision 4, to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program...."

Further authority for part 9505.0323 is found in Minnesota Statutes, section 256B.0625, subdivision 24 in regard to "any other medical or remedial care licensed and recognized under state law unless otherwise prohibited."

Small business requirements

Part 9505.0323, subpart 31 applies to certain specified entities that provide mental health services, a branch of medical care. The Department believes, therefore, that part 9505.0323, subpart 31 is exempt from small business considerations in accordance with Minnesota Statutes, section 14.115, subdivision 7, clause (4). Furthermore, the Department notes that parts 9505.0170 to 9505.0491 which establish standards to receive medical assistance reimbursement

for health services provided to medical assistance recipients and of which part 9505.0323 is a component were found by the Office of Administrative Hearings to be exempt from the small business consideration requirements of Minnesota Statutes, section 14.115.

Subpart 31. Medical assistance payment for mental health services by mental health practitioner.

The Minnesota Comprehensive Mental Health Act, Minnesota Statutes, sections 245.461 to 245.486, requires the commissioner to create a "unified, accountable, comprehensive mental health system." Minnesota Statutes, section 245.462, defines "mental health practitioner" in subdivision 17 and "mental health professional" in subdivision 18. At the time part 9505.0323 was proposed and adopted, the definitions of mental health practitioner and mental health professional applicable to mental health services under medical assistance were amended to be consistent with those in the Minnesota Comprehensive Mental Health Act. See part 9505.0175, subparts 27 and 28. Additionally, the amended definition of mental health professional in subpart 28 of part 9505.0175 limited the term for medical assistance reimbursement purposes to a person who was licensed. See Minnesota Statutes, section 256B.02, subdivision 7 which sets minimum professional standards applicable to medical assistance vendors and requires that a vendor be licensed.

Part 9505.0323, subpart 23 requires as a condition of eligibility for medical assistance payment that a mental health service other than day treatment be provided by a mental health professional. (See the definition of mental health service in part 9505.0323, subpart 1, item N.) However, before September 1, 1990, mental health services from a mental health practitioner were eligible for

medical assistance payment if they were provided under the clinical supervision of a psychiatrist, licensed psychologist, or licensed consulting psychologist who was a provider. (See part 9505.0323, subpart 22.) Thus, as of September 1, 1990, mental health services from mental health practitioners that had been eligible for medical assistance payment were no longer covered services and the role of mental health practitioners was narrowed.

The 1990 legislature provided an exception to this restriction in Laws of Minnesota 1990, Chapter 568, Article 3, section 97 which states:

> The commssioner of human services shall adopt or amend rules to allow a mental health practitioner with only a bachelor's degree to provide mental health services under clinical supervision when employed by a private, nonprofit agency specializing in mental health services to low income children under age 15. To be eligible the mental health practitioner must have provided outpatient mental health services, with a primary emphasis on family-oriented mental health services, to children under age 15 under clinical supervision for at least ten years after receiving a bachelor's degree.

Thus the amendment is necessary to comply with the 1990 law. The amendment is consistent with the conditions specified in section 97. A bachelor's degree may be in any one of a large number of disciplines, as widely different as art and wildlife management. It is necessary therefore to clarify the type of bachelor's degree required to be a mental health practitioner. It is reasonable to require the bachelor's degree to be in a behavioral science or a related field and from an accredited college or university as these requirements are consistent with the requirements to qualify as a mental health practitioner according to Minnesota Statutes, section 245.462, subdivison 17 and part 9505,0175, subpart 27. Furthermore, requiring the person's degree to be in a behavioral science or a related field assures the person has had training in fields related to mental health.

It is necessary to define the phrase "low income children under age 15" to

clarify its meaning and set a standard. The standard chosen is found in Minnesota Statutes, section 256.936, subdivision 1 which defines the persons eligible for services under the children's health plan. These persons are childen "who have gross family incomes that are equal to or less than 185 percent of the federal poverty guidelines...." See also Minnesota Statutes, section 256B.057, subdivision 1 which defines medical assistance eligibility as less than 133 percent of the federal poverty guidelines in the case of a child one through five years of age and 100 percent of the guidelines in the case of a child six through seven years of age who was born after September 30, 1983. Thus the standard is reasonable as it is consistent with statutory criteria for eligibility to receive health services funded through public sources.

It is necessary to specify the medical assistance payment rate for the mental health services provided by mental health practitioners qualified under this proposed subpart in order to set a standard. Subpart 23 of part 9505.0323 establishes the medical assistance payment rate for mental health services provided by certain mental health practitioners; their provision of the mental health services must be under the clinical supervision of a mental health professional. The medical assistance payment rate for these services is one-half the medical assistance payment rate for the same service provided by a fully qualified person. The mental health practitioners qualified under subpart 31 to provide mental health services have qualifications similar to those specified in subpart 23. Mental health practitioners qualified under subpart 31 do not meet the qualifications to be mental health professionals and will require clinical supervision of the mental health services they provide. Therefore, it is reasonable to establish the same payment rate for their services as the payment rate for mental health services provided by other mental health practitioners as

using this rate assures equity of payment for similarly qualified persons and complies with the requirement of administering the medical assistance program in an impartial manner uniformly throughout the state as specified in Minnesota Statutes, section 256B.04, subdivision 2.

Expert Witnesses

If this rule should go to public hearing, the Department does not plan to have any expert witnesses from outside the Department testify in its behalf.

Dated: April 4th, 1991

Natalie Haas Steffen

Commissioner of Human Services

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: June 13, 1991

TO: NANCY BISHOP
Rules and Bulletins Division
Department of Human Services

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Medical Assistance Mental Health Services

The above-referenced rule has been approved as to its legality by the Attorney General on June 12, 1991.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

MJM:sc
Enclosures
cc: Deborah Huskins
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Permanent Rules Relating to Medical Assistance Mental Health Services

Rules as Adopted

9505.0323 MENTAL HEALTH SERVICES.

[For text of subps 1 to 30, see M.R.]

Subp. 31. **Medical assistance payment for mental health services by mental health practitioner.** Notwithstanding other provisions of this part, a mental health service provided by a mental health practitioner is a covered service if the mental health practitioner has the qualifications in items A to C and the service is provided under the clinical supervision of a mental health professional. Medical assistance for services performed according to this subpart shall be paid at one-half the medical assistance payment rate for the same service provided by a mental health professional.

A. The mental health practitioner holds at least a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university.

B. The mental health practitioner is employed by a private nonprofit entity specializing in mental health services to low income children under age 15.

C. The mental health practitioner has provided outpatient mental health services with a primary emphasis on family-oriented mental health services, to children under age 15, under clinical supervision for at least ten years after receiving a bachelor's degree.

For purposes of this subpart, "low income children under age 15" refers to children under age 15 in a family having a gross family income equal to or less than 185 percent of the federal poverty guidelines for the same family size.

APPROVED AS TO FORM AND LEGALITY

June 12 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 12 1991 4:02

Joan Anderson Growe

Secretary of State

6-5
MJM

RULE REVIEW CHECKLIST

File No. 1829
DATE RECEIVED 6-3-91
REVIEW DATE 6-12-91
DUE DATE 6-17-91
~~(DIS)~~APPROVED
WITHDRAWN

Docket No. 05.0009.0866
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 6/5/91
REVISOR (DIS)APPROVED 6-10-91
FILED W/SEC. OF STATE 6-12-91
RETURNED TO AGENCY 6-13-91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
December 10, 1990 Date published in State Register
Comments

Petition for Adoption of a Rule

~~Board's Authorizing Resolution~~
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
256B.04 subd 2 Statutory Authority
no statement Small Business Statement
Expenditure of public money statement
April 4, 1991 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
April 17, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
April 22, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply only added a subd (rules division without hearing)
✓ end of comment period (§ 14.26)
effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
May 28, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Deborah Huskins Name of SAAG representing agency

✓ Notice of Submission to Attorney General (if applicable)

✓ Affidavit of Mailing Notice to Attorney General (if applicable)

Rules.ac1

Stat. Authority 256B.04 subd 2

The state agency shall make uniform rules, not inconsistant with law, for carrying out and enforcing the provisions hereof in an efficient, economical, and impartial manner . . .

Findings of Fact

missing (7) no statement stating that anyone requested submission to the Attorney General - there's an affadavit stating that someone(s) requested Notice of Submission to the Attorney General

OK - affd. in record & it was sent is suff. [illegible]

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Adoption
of Amendments to the Rule of the
State Department of Human Services
Relating to Medical Assistance
Mental Health Services, Minnesota
Rules, Part 9505.0323, Subpart 31

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

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on Monday, April 22, 1991 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 April 17, 1991.

(2) 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.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency. (5) Therefore the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn.

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

(8) The above-captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, Part 9505.0323, Subpart 31 is adopted this 28th day of May 1991, pursuant to authority vested in me by Minnesota Statutes, section 256B.04, subdivision 2.

George J. Steffen

for NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Eleanor Weber

SUBJECT: Review of Rule Adopted Without a Public Hearing

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavit state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

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AN EQUAL OPPORTUNITY EMPLOYER

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness,

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. The notice of submission of the rule to the attorney general, if applicable.

12. The affidavit of mailing notice of submission of the rule to the attorney general, if applicable.

13. A copy of the cover letter to the LCRAR submitting a copy of the Statement of Need and Reasonableness as required under Minnesota Statutes, section 14.131.

If you have any questions on this submitted material, please call me at 296-4301.

	Original 1990	Restored Credits	Increase
NONPROFIT SET ASIDE ADMINISTERED BY MHFA			
Metro Twin Cities Area	$408,094	$544,125	$136,031
Greater Minnesota Area	$206,251	$275,000	$68,749
Subtotal	$201,843	$269,125	$67,282
	$408,094	$544,125	$136,031
TOTAL TAX CREDITS FOR STATE	$4,080,937	$5,441,250	$1,360,313

State Ceiling, State Demographer Population for Tax Credits in 1990

The ceiling for the State of Minnesota for calendar year 1990 is $5,441,250—Minnesota's population estimate of 4,353,000 times $1.25.

The Minnesota population estimate of 4,353,000 is based on the annual estimates of population of states: from U.S. Census Bureau release of December, 1989 Estimates of the Resident Population of States, July 1, 1989.

Greater Minnesota population 2,124,369: Twin Cities Metro population 2,182,181.

Population estimates of individual cities and counties by State Demographer published August, 1989, in parentheses above.

Any questions concerning the Low Income Housing Tax Credit Program should be directed to John Madson at MHFA (612) 296-3029.

Department of Human Services

Health Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendment of Rules Governing the Eligibility of Mental Health Practitioners to Receive Medical Assistance Payment for Mental Health Services, *Minnesota Rules*, Part 9505.0323

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 the adoption of an amendment of the rule governing the eligibility of mental health practitioners to receive medical assistance payment for mental health services, *Minnesota Rules*, part 9505.0323. The adoption of the amendment to the rule is authorized by *Laws of Minnesota 1990*, Chapter 568, Article 3, Section 97, which requires the agency to adopt or amend rules related to the eligibility of certain mental health practitioners to receive medical assistance payment for mental health services to low income children under age 15 when employed by a private, nonprofit agency specializing in such services.

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 and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. 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.

Dated: 3 December 1990

Eleanor Weber, Assistant Director
Rules and Bulletins Division

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Eligibility to Receive Medical Assistance Payment As A Provider of Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above entitled rule amendment without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is in Minnesota Statutes, section 256B.04, subdivision 2 and Laws of Minnesota 1990, Chapter 568, Article 3, Section 97.

(2) All persons have 30 days or until 4:30 p.m. on May 23, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) 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. (4) 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. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

(11) Minnesota Rules, part 9505.0323 is a component of the entire set of rules, parts 9505.0170 to 9505.0491, which establish the standards for providers of health services to receive medical assistance payment for health services to a medical assistance

recipient.

(11) Minnesota Rules, part 9505.0323, subpart 31 authorizes medical assistance for mental health services provided by mental health practitioners to children under 15 years of age, under clinical supervision, if they are employed by a private nonprofit entity specializing in mental health services to low income children. Subpart 31 also establishes the payment rate for these services of the mental health practitioners.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296 7454.

A copy of the rule may also be viewed at any of the 87 county welfare or human service agencies in the State of Minnesota.

(12) 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 upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296 7454

(13) 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.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 :

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

Date: April 4th, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance Mental Health Services

Rules as Proposed

9505.0323 MENTAL HEALTH SERVICES.

[For text of subps 1 to 30, see M.R.]

Subp. 31. **Medical assistance payment for mental health services by mental health practitioner.** Notwithstanding other provisions of this part, a mental health service provided by a mental health practitioner is a covered service if the mental health practitioner has the qualifications in items A to C and the service is provided under the clinical supervision of a mental health professional. Medical assistance for services performed according to this subpart shall be paid at one-half the medical assistance payment rate for the same service provided by a mental health professional.

A. The mental health practitioner holds at least a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university.

B. The mental health practitioner is employed by a private nonprofit entity specializing in mental health services to low income children under age 15.

C. The mental health practitioner has provided outpatient mental health services with a primary emphasis on family-oriented mental health services, to children under age 15, under clinical supervision for at least ten years after receiving a bachelor's degree.

For purposes of this subpart, "low income children under age 15" refers to children under age 15 in a family having a gross family income equal to or less than 185 percent of the federal poverty guidelines for the same family size.

Approved by Revisor KTH

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Medical Assistance Mental Health Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Governing Eligibility to Receive Medical Assistance Payment as a Provider of Mental Health Services, Minnesota Rules, part 9505.0323, subpart 31

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Bishop, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 17th day of April, 1991.

That on the 17th day of April, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Nancy L. Bishop

Subscribed and sworn to before me
this 18 day of April, 1991.

Claudia G. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Eligibility to Receive Medical Assistance Payment As A Provider of Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

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All persons have 30 days or until 4:30 p.m. on May 23, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

Minnesota Rules, part 9505.0323 is a component of the entire set of rules, parts 9505.0170 to 9505.0491, which establish the standards for providers of health services to receive medical assistance payment for health services to a medical assistance

recipient.

Minnesota Rules, part 9505.0323, subpart 31 authorizes medical assistance for mental health services provided by mental health practitioners to children under 15 years of age, under clinical supervision, if they are employed by a private nonprofit entity specializing in mental health services to low income children. Subpart 31 also establishes the payment rate for these services of the mental health practitioners.

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Nancy Bishop
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Department of Human Services
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St. Paul, MN 55155-3816
(612) 296 7454

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.

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Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

Date: April 4th, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Governing Eligibility to Receive Medical Assistance Payment as a Provider of Mental Health Services, Minnesota Rules, part 9505.0323, subpart 31

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 17th day of April, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- The 87 Minnesota County Human Services Agencies
- National Association of Social Workers, Minnesota Chapter
- Minnesota Psychological Association
- Minnesota Psychiatric Society
- Minnesota Medical Association
- Lyonel Norris at the Minnesota Mental Health Law Project
- Alliance for the Mentally Ill
- Minnesota Nurses Association
- Mental Health Association of Minnesota
- Minnesota Psychological Association
- Susan Erbaugh at Minneapolis Children's Medical Center
- Ron Brand at the Association of Community Mental Health Centers
- Executive Secretary of the Minnesota Psychiatric Society
- Minnesota Psychologists in Private Practice
- Minnesota Licensed Psychologists
- Upper Midwest Association of Marriage and Family Therapists
- Board of Marriage and Family Therapists
- Board of Psychology
- Office of Social Work and Mental Health Boards
- Community Mental Health Centers and Clinics

Nancy L. Bishop

Subscribed and sworn to before me

this 18 day of April, 1991

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Eligibility to Receive Medical Assistance Payment As A Provider of Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above entitled rule amendment without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is in Minnesota Statutes, section 256B.04, subdivision 2 and Laws of Minnesota 1990, Chapter 568, Article 3, Section 97.

All persons have 30 days or until 4:30 p.m. on May 23, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

Minnesota Rules, part 9505.0323 is a component of the entire set of rules, parts 9505.0170 to 9505.0491, which establish the standards for providers of health services to receive medical assistance payment for health services to a medical assistance

recipient.

Minnesota Rules, part 9505.0323, subpart 31 authorizes medical assistance for mental health services provided by mental health practitioners to children under 15 years of age, under clinical supervision, if they are employed by a private nonprofit entity specializing in mental health services to low income children. Subpart 31 also establishes the payment rate for these services of the mental health practitioners.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296 7454.

A copy of the rule may also be viewed at any of the 87 county welfare or human service agencies in the State of Minnesota.

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 upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296 7454

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.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 :

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

Date: April 4th, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

F. representing that ~~he~~ the abstracter has a license or bond or abstracter's liability insurance policy when ~~he~~ the abstracter, in fact, does not;

G. falsifying an abstract of title, or any entry ~~therein~~, or the certification of an abstract; and

H. engaging in any other conduct which constitutes dishonest actions in ~~his~~ the abstracter's practice as a licensed abstracter which endangers the interest of the public or any person, firm, or private corporation in connection with the performance of an abstract.

Nothing ~~contained herein~~ in this part shall limit the authority of the board to take formal action against an abstracter for the use of fraudulent, deceptive, or dishonest activities of a type not specifically described ~~herein~~.

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance Mental Health Services

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above entitled rule amendment without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is in *Minnesota Statutes*, section 256B.04, subdivision 2 and *Laws of Minnesota 1990*, Chapter 568, Article 3, Section 97.

All persons have 30 days or until 4:30 p.m. on May 23, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

Minnesota Rules, part 9505.0323 is a component of the entire set of rules, parts 9505.0170 to 9505.0491, which establish the standards for providers of health services to receive medical assistance payment for health services to a medical assistance recipient.

Minnesota Rules, part 9505.0323, subpart 31 authorizes medical assistance for mental health services provided by mental health practitioners to children under 15 years of age, under clinical supervision, if they are employed by a private nonprofit entity specializing in mental health services to low income children. Subpart 31 also establishes the payment rate for these services of the mental health practitioners.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454

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.

A copy of the rule may also be viewed at any of the 87 county welfare or human service agencies in the State of Minnesota.

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 upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454

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.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Natalie Haas Steffen
Commissioner of Human Services

Rules as Proposed

9505.0323 MENTAL HEALTH SERVICES.

[For text of subps 1 to 30, see M.R.]

Subp. 31. **Medical assistance payment for mental health services by mental health practitioner.** Notwithstanding other provisions of this part, a mental health service provided by a mental health practitioner is a covered service if the mental health practitioner has the qualifications in items A to C and the service is provided under the clinical supervision of a mental health professional. Medical assistance for services performed according to this subpart shall be paid at one-half the medical assistance payment rate for the same service provided by a mental health professional.

A. The mental health practitioner holds at least a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university.

B. The mental health practitioner is employed by a private nonprofit entity specializing in mental health services to low income children under age 15.

C. The mental health practitioner has provided outpatient mental health services with a primary emphasis on family-oriented mental health services, to children under age 15, under clinical supervision for at least ten years after receiving a bachelor's degree.

For purposes of this subpart, "low income children under age 15" refers to children under age 15 in a family having a gross family income equal to or less than 185 percent of the federal poverty guidelines for the same family size.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Class D Licenses

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 240.23 (1990).

All persons 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. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Relating to Medical
Assistance Mental Health Services,
Minnesota Rules, Part 9505.0323, Subpart 31

DECLARATION OF
COUNSEL

I, Deborah Huskins, 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 98-000-0866

Deborah Huskins
Special Assistant
Attorney General

Dated: June 3, 1991

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Medical Assistance Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule has been submitted to the Office of the Attorney General on the date of this notice, June 3 , 1991 for review as to legality and form to the extent the form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on April 22, 1991 is proposed for adoption without modification. A free copy of the rule as well as the Findings of Fact, Conclusions, and Order explaining why the rule has not been modified (if necessary) is available upon request from:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155
(612) 297-4301

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of the submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
525 Park Street, Suite 500
St. Paul, MN 55103

Telephone Number: (612) 296-9715

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4301

Date: June 3, 1991

Eleanor Weber

Eleanor Weber
Assistant Director
Rules and Bulletins Division

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Relating to Medical Assistance Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA

COUNTY OF RAMSEY

Eleanor Weber, being sworn, says:

That on the 3 day of June, 1991, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Claudia A. Eliason

Subscribed and sworn to before me this 3 day of June, 1991.

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

WRIGHT COUNTY
HUMAN SERVICES AGENCY

Government Center, Buffalo, MN 55313

Social Services	682-7400
Community Health	682-7456
Financial Services	682-7414
Metro	339-6881
Toll Free	1-800-362-3667

Don R. Mleziva, Director

Received
5-24-91
Rules + Bulletins

May 21, 1991

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

RE: Eligibility to Receive Medical Assistance Payment of a Provider of Mental Health Services, Minnesota Rules, Part 9505.0323, Subpart 31

Dear Ms. Weber:

I would like to comment on the above-noted Subpart 31, Sections B and C, lines 22-29:

B. "The mental health practitioner is employed by a private nonprofit entity specializing in mental health services to low income children under age 15."

C. "The mental health practitioner has provided outpatient mental health services with a primary emphasis on family-oriented mental health services, to children under age 15, under clinical supervision for at least ten years after receiving a bachelor's degree."

COMMENTS:

Section B. In as much as this section, as written, would appear to preempt public agencies from utilizing their employees as mental health practitioners, I would suggest the section be reworded as follows:

"The mental health practitioner is employed, or is eligible to be employed by a private nonprofit entity specializing in mental health services to low income children under age 15."

Section C. Lines 28 and 29, "...under clinical supervision for at least ten years after receiving a bachelor's degree," seems unduly restrictive, and for all practical purposes may eliminate most, if not all, agency staff who might be very capable of providing the services in question. I would suggest that this section allow a Master or Doctoral degree practitioner with 2 years of post degree clinically supervised experience, or a bachelor's degree practitioner with five years of post degree clinically supervised experience. I believe either of those two requirements would be sufficiently rigorous to assure quality service, while at the same time broadening the available field of qualified practitioners.

Thank you for the opportunity for this input.

Sincerely,

Don R. Mleziva, ACSW
Human Services Director

Sherburne County Social Services

April 29, 1991

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Boulevard, 2nd Floor South
St. Paul, Minnesota 55155-3816

REGARDING: MENTAL HEALTH PROVIDER'S RULE

Comments received from county staff here, regarding the proposed Rule 9505.0323, Subp. 31, is as follows:

In part C, the requirement of ten years experience seems unreasonably long.

In the other parts, the requirements are so narrow as to lead anyone to assume this Rule change is being engineered for one specific provider alone. We do not believe it is justifiable, to use the Rule making process in this way. Perhaps a fuller explanation of this change should be made before soliciting Statewide comment.

Donald Strei
Director

mg

13880 Hwy. 10, P.O. Box 310
Elk River, MN 55330
Telephone: (612) 441-1711 Metro Area

Toll free: 253-2384, St Cloud & 662-2524 Mid-county

Becker Branch Office
Becker, MN 55308
Telephone: 441-1880, 261-4550, 253-6623

Washburn Child Guidance Center • 2430 Nicollet Avenue South • Minneapolis, Minnesota 55404 • (612) 871-1454 • FAX (612) 871-1505

April 24, 1991

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. Weber:

Regarding the Notice of Intent to Adopt a Rule without a Public Hearing, in the matter of the Proposed Adoption of Rules of the State DHS Eligibility to Receive M.A. Payment as a Provider of Mental Health Services, MN Rules, Part 9505.0323, Subpart 31: As offered in the last paragraph of the notice, if no hearing is required and the rule is adopted, we are requesting notification of the date of submission of the supporting documents to the Attorney General and a copy of the adopted rule.

Please send to Marlys Horgan, Washburn Child Guidance Center, 2430 Nicollet Avenue, Minneapolis, MN 55404. Thank you.

Thank you.

Sincerely,

Marlys

Marlys Horgan
Administrative Assistant
871-1454

mh

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38____

April 22, 1991

Mr. Steve Lepinski
Executive Director
Washburn Child Guidance Center
2430 Nicollet Avenue South
Minneapolis, Minnesota 55404

Dear Mr. Lepinski:

This is in response to your recent correspondence regarding the Department's implementation of Minnesota 1990 Session Laws, Chapter 568, article 3, section 97 which allows Medical Assistance (MA) reimbursement for the services of mental health practitioners beyond September 1, 1990 as defined in law. I understand that several employees of Washburn Child Guidance Center are the mental health practitioners affected by this law.

Your letter indicates that you were not satisfied with the response you received on this matter from Commissioner Wynia on November 27, 1990. In her letter, Commissioner Wynia stated that she believed it was indeed the intent of the legislature that the Department implement this change as quickly as possible. She went on to say, however, that the legislature specifically directed the Commissioner to make this exception to Rule 47 through rulemaking. She further indicated that the Department had already taken steps to comply with this legislative directive as quickly as possible through an expedited non-controversial amendment to the rule.

Your letter included a copy of a legal opinion which was rendered to you on January 24, 1991 by Allen H. Aaron of PHILLIPS, GROSS & AARON, P.A. You requested that I review the issue. Having completed my review, I would like to communicate my conclusions and update you concerning the Department's progress in amending the rule in accordance with Chapter 568, article 3, section 97.

Thank you for sharing with me your counsel's analysis and advice. This was received with great interest. After consulting our attorneys, however, we continue to believe that the Department is required by statute to accomplish this change through rulemaking. We do not see that this change could be

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AN EQUAL OPPORTUNITY EMPLOYER

accomplished by a Commissioner's Order, or that the Commissioner has any legal authority to accomplish this change retroactively.

As indicated in Commissioner Wynia's response, the Department has proceeded with haste and diligence to accomplish this change through an expedited non-controversial amendment to Rule 47. The process has moved very quickly to this point in time. The proposed rule amendment will appear in the State Register on April 22, 1991. We project that the amendment will be effective by August 1, 1991. However, the effective date depends on whether the proposed amendment is able to continue to adoption in a non-controversial mode. The statutes provide that if 25 or more people request a public hearing during the comment period after the proposed rule is published in the State Register (between April 22 - May 22, 1991), the amendment process will no longer be non-controversial and a hearing must be held (Minnesota Statutes, section 14.22(3)). Should the Department be required to hold a public hearing, the time required for the rule to become effective will be lengthened by at least four months.

In closing, I would like to comment on your counsel's question concerning whether the Department is required to publish a notice of solicitation either for rules which are to be adopted after a public hearing, or for rules which are to be adopted without a public hearing. The Administrative Procedures Act (Minnesota Statues, Chapter 14, section 14.10), is the legal authority underlying the Department's policy. We follow this policy for all administrative rules promulgated by the Department of Human Services. The intent of the policy is, of course, to assure that due process is afforded to the general public and to all parties who may be affected by the Department's rule.

Thank you for providing me with an opportunity to review this matter. I hope that my response is satisfactory. However, should you have further concerns, please contact Marcia Tippery, of my staff. She can be reached at 296-7970.

Sincerely,

NATALIE HAAS STEFFEN,
Commissioner

cc: Sen. Linda Berglin
James Stoebner

Washburn Child Guidance Center • 2430 Nicollet Avenue South • Minneapolis, Minnesota 55404 • (612) 871-1454 • FAX (612) 871-1505

March 26, 1991



Commissioner Natalie Steffen
State of Minnesota
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155

Dear Commissioner Steffans:

I am writing with regard to a matter about which I had previous correspondence with Commissioner Wynia. It relates to the issue of medical assistance reimbursement for mental health practitioners (bachelor's level clinicians). I have attached copies of previous correspondence between myself and Commissioner Wynia.

I was not satisfied with Commissioner Wynia's response to the issues that I raised, and subsequent to her letter, I received an additional legal perspective which I believe contradicts her assessment of the situation. I have attached a letter from Allen Aaron, an attorney at Phillips, Gross & Aaron, P.A.. His letter articulates the belief that beginning September 1, mental health practitioners at Washburn Child Guidance Center who meet the criteria specified in Chapter 568, Article 3, Section 97, should be eligible for medical assistance reimbursement.

Practitioners meeting the aforementioned criteria have been providing services at Washburn Child Guidance Center since September 1, and we have been billing medical assistance for such services. Medical assistance has been reimbursing Washburn at the appropriate rate.

As indicated, this is contrary to the opinion provided by Commissioner Wynia. I am asking you to review the opinion provided by Allen Aaron, and approve the practice under which we are operating. The legislation that authorizes this reimbursement for practitioners is quite specific, and affects only a small number of clinicians in the state, perhaps as few as 10. However, it is an important issue for Washburn Child Guidance Center as we continue to see more seriously disturbed children at younger ages.

I would appreciate your review of this situation, and I look forward to hearing from you. Thank you very much for your consideration of this issue.

Sincerely,

Steve Lepinski
Executive Director

cc. Linda Berglin
James Stoebner

LAW OFFICES

PHILLIPS, GROSS & AARON, P. A.

2350 PIPER JAFFRAY TOWER

222 SOUTH NINTH STREET

MINNEAPOLIS, MINNESOTA 55402

(612) 349-6786

TELECOPIER: (612) 349-2824

WRITER'S DIRECT DIAL NUMBER

349-6767

BERT M. GROSS
FELIX M. PHILLIPS
ALLEN H. AARON
SUSAN L. LENTZ
STEVEN G. POTACH
MARK R. GEIER

RECEIVED

JAN 25 19[illegible]

WASHBURN CENTER

#15-228

January 24, 1991

Mr. Steven Lepinski
Executive Director
Washburn Child Guidance Center
2430 Nicollet Avenue South
Minneapolis, Minnesota 55404

Dear Mr. Lepinski:

We have a copy of your letter of October 18, 1990 to Commissioner Ann Wynia, State of Minnesota Department of Human Services. We also have a copy of Commissioner Wynia's letter to you of November 27, 1990. You may have seen a copy of our letter of October 2, 1990, to Ann Phillips, your employee.

An issue presented by the exchange of correspondence is whether Washburn Child Guidance Center ("Washburn") and the Department of Human Services ("DHS") should presently comply with and implement the obvious intent of Laws of Minnesota, 1990, Chapter 568, Article 3, Section 97, immediately prior to or even without the adoption or amendment by the Commissioner of the rules she is required to adopt or amend, by the first sentence of that law.

In our opinion, Washburn and DHS must act in compliance with the statute as of the law's effective date, August 1, 1990. There is ample legal authority in support.

The Oregon Supreme Court has held that its legislature did not intend that provisions of its Medical Practice Act relating to unprofessional conduct should be inoperative until the Board of Medical Examiners made rules and regulations further defining such conduct. In short, the drafting of a rule by the Administrative Agency was held not to be a prerequisite to the exercise by that Agency of power in conformity with the clear mandate of the Statute. In Re Mintz, 378 P2d 945.

In Stream v. Continental Machines, Inc., 111 N.W.2d 785 at 787 (Minn. 1961), the Minnesota Supreme Court held that a court may reverse or modify decisions of an administrative body when its action is arbitrary and unreasonable. There are many appellate court decisions in accord. It seems axiomatic that if a court may intervene to correct the arbitrary and unnecessary action of an administrative agency, a court has the power to intervene to correct arbitrary and unreasonable inaction. The language of the subject law is so clear that Washburn and the DHS are both obligated to presently act in accordance with its plain intent. See also Good Neighbor Care Centers, Inc. v. Minnesota Department of Human Services, 428 N.W.2d 397 (Minn. App. 1988). The Court there held:

> If an interpretation is consistent with the plain meaning of the statute or rule, the agency's action is authorized by the statute itself, and the fact that no rule was promulgated does not render that interpretation invalid . . .

Moreover, the duty of the Commissioner of Human Services to promulgate the rules which are described with great specificity in the first sentence of the subject session law permits, and indeed perhaps requires, the Commissioner to comply with the statute by the issuance of individual appropriate orders in the interval between the enactment of the statute and the finalization of the rules. The following proposition appears at Vol. 2, American Jurisprudence 2d, Administrative Law §195, p. 27:

> Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. In performing its important functions an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. (emphasis supplied).

The following rule appears at p.28 of the same volume:

> If rules of practice have not been provided by the lawmaking power, administrative agencies exercising judicial or quasi-judicial functions should establish rules of procedure under which such functions will be exercised, but the failure to prescribe rules governing its action will not vitiate proceedings in which is sought a privilege

> the grant or refusal of which is in the discretion of the agency. (emphasis supplied).

In our view the duty of the agency (here DHS) to enforce the statute, even before its promulgation of the required rules, is even more compelling where the agency has been required in very specific terms to promulgate finite and easily understood rules, than where the agency is merely given discretionary power to grant a privilege, within the meaning of the above quoted rule from American Jurisprudence. See also the following rule set forth at § 188, p. 21 of the same volume:

> It [the administrative agency] may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute. (emphasis supplied).

Additionally, and most significantly, it has been held that the power of the agency to adopt rules includes the power to give them retroactive effect, unless the enacting statute specifically declares to the contrary. See Vol. 2 American Jurisprudence supra at § 308, p. 137. In the present situation DHS seems to be proceeding at a rather leisurely pace. We note that it did not get around to publishing a notice of solicitation of outside information concerning the statute in question until December 3, 1990, which was seven months after the passage of the law. The notice does not state as forcefully as it should the fact that the Legislature has required in no uncertain terms the promulgation of specific, sharply defined rules. Furthermore, we do not know why that notice was published, in view of the fact that the Department does not have to seek information or opinions from sources outside the agency regarding the rules. The Legislature has told DHS what is required. Further, although we have not thoroughly researched the point, the notice, seems to not have been required either for rules which are to be adopted after a public hearing or for rules which are to be adopted without a public hearing.

However, whatever DHS's intentions were in publishing its notice of December 3, 1990, it is clear that when it finally gets around to finalizing the rules the legislature mandated nearly nine months ago, those rules can be promulgated retroactive to the date of the enactment of the statute.

Basic and elementary rules of statutory interpretation are applicable here, as well. Minn. Stat. § 645.16 explicitly states that the object of all interpretation and construction of laws is to give effect to the intention of the legislature. The subject law is most explicit and leaves no room for ambiguity. The

commissioner is under an affirmative duty to move expeditiously to adopt rules. We believe the commissioner should also abide by the statute by issuing individual orders, as necessary, even prior to the adoption of the rules.

Surely non-action by the commissioner cannot be permitted to negate the statute.

CONCLUSION

We believe that Washburn is authorized and indeed required to presently act in conformity with the new law. You are presently authorized to allow a mental health practitioner with a bachelor's degree to provide mental health services, provided that the mental health practitioner has the experience and meets the qualifications set forth in the second sentence of the new law. We do not know what is the DHS timetable for adoption of the statutorily required rules. We assume that until now the failure of the DHS to promulgate the rules in a more timely fashion has not yet caused loss or disruption to Washburn.

We are confident that Washburn would prevail if it brought a declaratory action in district court to seek relief against DHS. However, in view of the fact that the DHS has apparently not yet disrupted Washburn's program nor caused loss to Washburn, the commencement of legal action seeking declaratory relief may not be necessary.

PHILLIPS, GROSS & AARON, P.A.

By 
Allen H. Aaron

AHA/jl
cc: Ann S. Phillips

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3815

November 27, 1990

Mr. Steven Lepinski
Executive Director
Washburn Child Guidance Center
2430 Nicollet Avenue South
Minneapolis, Minnesota 55404

Dear Mr. Lepinski:

This is in response to your letter regarding reimbursement for mental health practitioners. As you know, after September 1, 1990, medical assistance (MA) reimbursement is limited to mental health services performed by enrolled mental health professionals. Your question concerned the Department of Human Services (DHS) implementation of Minnesota 1989 Section Laws, chapter 568, article 3, section 97 which allows MA reimbursement for the services of a small number of mental health practitioners beyond September 1, 1990.

In your letter, you state your understanding that "changes in law supercede changes in rule." However, the statutory language you quote in your letter (from chapter 568, article 3, section 97) specifically directs the Commissioner to implement the exemption through rulemaking. The language which DHS had originally recommended to the Legislature made no reference to rulemaking. Had that language been enacted, DHS would have been able to implement the exemption effective September 1, 1990.

Although the Legislature did direct the Commissioner to make this exemption through rulemaking, we agree with you that it was the intent of the Legislature to implement this change as quickly as possible. DHS has initiated steps to comply with this legislation. The Health Care Management Division and the Rulemaking Unit will coordinate closely to assure that the rule amendment required to implement the legislation is adopted as expeditiously as possible. It is our experience that the expedited non-controversial amendment rule process takes about 12 months to complete.

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I realize that this delay may be difficult for your organization. The only potentially good news I can offer is that DHS is currently phasing-in prepaid coverage for all Hennepin County AFDC children on MA. The goal is for 100 percent of AFDC children to be off regular "fee-for-service" MA and into a prepaid plan by July 1, 1991. The actual percentage of children will be somewhat less than 100 percent due to the county's option to exclude certain groups of children. The prepaid plans may have different criteria for credential requirements which would allow reimbursement for the services of the mental health practitioners you are concerned about.

Thank you for communicating your concern regarding the status of this rule change. If you have further question, please contact Marcia Tippery, of my staff, at 296-7970.

Sincerely,

ANN WYNIA
Commissioner

cc: Senator Linda Berglin

Washburn Child Guidance Center • 2430 Nicollet Avenue South • Minneapolis, Minnesota 55404 • (612) 871-1454 • FAX (612) 871-1505

October 18, 1990

Commissioner Ann Wynia
State of Minnesota
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155

Dear Commissioner:

I am writing regarding the issue of medical assistance reimbursement for mental health practitioners (bachelor's degree level clinicians). Under amendments to Minnesota Rules, Chapter 9505, adopted in 1989, certain changes were to be effected beginning September 1, 1990, with respect to mental health services provided my a mental health practitioner:

> Beginning September 1, 1990, a mental health service other than day treatment that is provided by a mental health practitioner is not eligible for medical assistance payment. Minnesota Rules 9505.0323, Subp. 23.

Last spring the Minnesota Legislature addressed and effectively overruled in part the above administrative regulation. In Chapter 568, Article 3, s97, the legislature instructed the Commissioner of Human Services to change this rule:

> The Commissioner of Human Services shall adopt or amend rules to allow a mental health practitioner with only a bachelor's degree to provide mental health services under clinical supervision when employed by a private nonprofit agency specializing in mental health services to low income children under age 15. To be eligible, the mental health practitioner must have provided outpatient mental health services, with a primary emphasis on family-oriented mental health services, to children under age 15 under clinical supervision for at least ten years after receiving a bachelor's degree.

This is a significant revenue issue for Washburn Child Guidance Center, and an important job security issue for three practitioners at Washburn. My understanding was that the action taken by the Minnesota Legislature would prevent the change which was scheduled to occur on September 1, 1990. I have received a legal opinion which supports this perspective (attached). I understand now from state staff in the medical assistance division that the state does not intend to pay for mental health services provided by practitioners after September 1, until the rule is formally changed. This may take six months to a year. I understand the logic of this, but it seems inconsistent with the intent of the Legislature.

I also understand that changes in the law supersede changes in rules, and that the Department of Human Services has the authority to make emergency rules. My desire is to preserve the employment of several experienced clinicians and to maintain quality services to a needy population.

I would appreciate anything that you could do or suggest that I do to resolve this situation. Thank you very much for your consideration of this issue.

Sincerely,

Steve Lepinski

Steve Lepinski
Executive Director

cc: Senator Linda Berglin
Maria Gomez
Barbara Kaufman

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#15,228

October 2, 1990

Ms. Ann Phillips
2815 Burnham Boulevard
Minneapolis, MN 55416

Dear Ann:

You recently requested my advice regarding your status as a mental health practitioner and your agency's eligibility for reimbursement for your services under Minnesota's medical assistance program. I understand that you are a mental health practitioner as that term is defined in Minnesota Statutes, §245.462, Subd. 17. I further understand that you have a bachelor's degree, are employed by a private, nonprofit agency specializing in mental health services provided to children of low income families, and have provided those services for over ten years.

Under amendments to Minnesota Rules, Chapter 9505, adopted in 1989, certain changes were to be effected beginning September 1, 1990, with respect to mental health services provided by a mental health practitioner:

> Beginning September 1, 1990, a mental health service other than day treatment that is provided by a mental health practitioner is not eligible for medical assistance payment. Minnesota Rules 9505.0323, Subp. 23.

During the 1990 legislative session, however, the Minnesota legislature addressed and effectively overruled in part the above administrative regulation. In Chapter 568, Article 3, §97, the legislature instructed the Commissioner of Human Services to change this rule:

> The Commissioner of Human Services shall adopt or amend rules to allow a mental health practitioner with only a bachelor's degree to provide mental health services under clinical

supervision when employed by a private, nonprofit agency specializing in mental health services to low income children under age 15. To be eligible, the mental health practitioner must have provided outpatient mental health services, with a primary emphasis on family-oriented mental health services, to children under age 15 under clinical supervision for at least ten years after receiving a bachelor's degree.

In light of the information about your practice described above, i clearly appears that this legislative directive applies to you. B enacting this legislative directive in advance of the September 1 1990 date at which the disqualification of practitioner reimbursemen would have become effective, the legislature has manifested it intent that you and others qualifying as practitioners under th narrow provisions of §97 should be allowed to provide medica assistance-reimbursable services.

As you may know, the Department of Human Services is also in th process of rewriting Minnesota Rules, Chapter 9520, formerly known a Rule 29, the rule governing mental health clinics' eligibility fo insurance reimbursement. Although these rules have not yet bee through the formal approval process, proposed Rule 9520.0804, Subp. 3, provides, in terms quite similar to those of the above-quote legislation, that a mental health practitioner who has provide outpatient mental health services to children under age 15 for ten years in a private nonprofit agency specializing in mental health services to low income children may provide clinical services that would otherwise require the qualifications of a mental health professional, provided the mental health practitioner is under clinical supervision. This rule would therefore be consistent with the legislation regarding medical assistance.

I hope that this analysis assists in resolving the questions posed. Please contact me should you have any further questions. Best regards.

Very truly yours,

Susan Lentz

Susan L. Lentz

SLL/pa

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

June 3, 1991

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by Minnesota Statutes, section 14.23, I forward a Statement of Need and Reasonableness relating to proposed amendments to permanent rules governing Eligibility to Receive Payment as a Provider of Mental Health Services in the Medical Assistance Program, Part 9505.0323, Subpart 31.

If you have any questions on the Statement of Need and Reasonableness, please do not hesitate to contact me at 297 4301.

Sincerely,

Eleanor Weber

Eleanor Weber
Rules and Bulletins Division

Enclosure

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