

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 1
To Patti Nolte	From Eleanor Weber
Co.	Co. DHS - Rules
Dept. AG/ Admin	Phone # 297 4301
Fax # 297 2576	Fax # 296 6244

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Relating to Surveillance
and Utilization Review of Medical
Assistance Services, Minnesota Rules,
Part 9505.2165, Subpart 2, Item A,
Subitems (9) and (10)

DECLARATION OF
COUNSEL

I, Kim Buechel Mesun, 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 ~~2225~~ 0868.

Kim Buechel Mesun

Special Assistant
Attorney General

Dated: Sept. 4, 1991

9505.2165 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Abuse.** "Abuse" means:

A. in the case of a provider, a pattern of practices that is inconsistent with sound fiscal, business, or health service practices, and that result in unnecessary costs to the programs, or in reimbursements for services that are not medically necessary or that fail to meet professionally recognized standards for health service. The following practices are deemed to be abuse by a provider:

[For text of subitems (1) to (8), see M.R.]

(9) ~~repeatedly~~ failing to disclose or make available to the department the recipient's health service records or the provider's financial records as required by part 9505.2180;

(10) repeatedly failing to properly report duplicate payments from third party payers for covered services provided to a recipient under a program and billed to the department;

[For text of subitems (11) to (17), see M.R.]

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

[For text of subps 3 to 17, see M.R.]

Approved by Revisor

TITLE: Proposed Permanent Rules Relating to Surveillance and Utilization Review of Medical Assistance Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

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 Surveillance and
Utilization Review of Medical Assistance
Services, Minnesota Rules,
Part 9505.2165, Subpart 2, item A

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, July 1, 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 June 26, 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. Therefore the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn. (7) No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, (9) Part 9505.2165, Subpart 2, item A, subitems (9) and (10) are adopted this 28th day of August 1991, pursuant to authority vested in me by Minnesota Statutes, section 256B.04, subdivisions 2, 4, 10, and 15.

Natalie Haas Steffen

NATALIE HAAS STEFFEN
COMMISSIONER OF HUMAN SERVICES

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Relating to Surveillance
and Utilization Review of Medical
Assistance Services, Minnesota Rules,
Part 9505.2165, Subpart 2, Item A,
Subitems (9) and (10)

DECLARATION OF
COUNSEL

I, Kim Buechel Mesun, 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 .

Kim Buechel Mesun

Special Assistant
Attorney General

Dated: August 29, 1991

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

June 26, 1991

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

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10).

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
Rulemaker

Encl.

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

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

OFFICE MEMORANDUM

DATE: September 17, 1991

TO: NANCY BISHOP
Minnesota Dept. of Human Services

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Surveillance and Utilization

The above-referenced rule has been approved as to its legality by the Attorney General on September 13, 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.

MJC:sc

cc: Kim Mesun
William Brown, Chief Judge
MaryAnn Hruby

MJC

RULE REVIEW CHECKLIST

File No. 1849
DATE RECEIVED 8-30-91
REVIEW DATE 9-9-91
DUE DATE 9-13-91
(DIS)APPROVED 9-13-91 mjc
WITHDRAWN _____

Docket No. 05.0009.2225
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 9-6-91
REVISOR (DIS)APPROVED 9-12-91
FILED W/SEC. OF STATE 9-17-91
RETURNED TO AGENCY 9-20-91

✓ Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ 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 sub 2,4,10,15 Statutory Authority
NO statement Small Business Statement
NA Expenditure of public money statement
6-21-91 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
June 26, 1991 Dated 30/25 days before adoption
_____ Notice attached (indicates it is attached)
_____ Copy of rule or summary attached

✓ Publication in State Register
July 1, 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
✓ 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
August 28, 1991 Date

_____ Written Requests, Submissions or Comments

_____ Declaration of Attorney
Kim Mesun Name of SAAG representing agency missing

_____ Notice of Submission to Attorney General (if applicable)

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

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

OFFICE MEMORANDUM

DATE: September 17, 1991

TO: NANCY BISHOP
Minnesota Dept. of Human Services

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Surveillance and Utilization

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

MJC:sc

cc: Kim Mesun
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Permanent Rules Relating to Surveillance and Utilization Review of Medical Assistance Services

Rules as Adopted

9505.2165 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Abuse.** "Abuse" means:

A. in the case of a provider, a pattern of practices that is inconsistent with sound fiscal, business, or health service practices, and that result in unnecessary costs to the programs, or in reimbursements for services that are not medically necessary or that fail to meet professionally recognized standards for health service. The following practices are deemed to be abuse by a provider:

[For text of subitems (1) to (8), see M.R.]

(9) failing to disclose or make available to the department the recipient's health service records or the provider's financial records as required by part 9505.2180;

(10) repeatedly failing to properly report duplicate payments from third party payers for covered services provided to a recipient under a program and billed to the department;

[For text of subitems (11) to (17), see M.R.]

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

[For text of subps 3 to 17, see M.R.]

APPROVED AS TO FORM AND LEGALITY

Sept 13 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 17 1991

Joan Anderson Growe
Secretary of State

2:25P
RC

256. B. 04 sub 2, 4, 10, 15

The State agency shall

subd (2) make uniform rules, not inconsistant with law, for carrying out and enforcing the provisions hereof in an . . .

subd 4 Cooperate with the federal department of health etc

subd 10 Establish by rule general criteria and procedures for the identification and prompt investigation of suspected medical assistance fraud

subd 15 Establish on a statewide basis a new program to safeguard against unnecessary or inappropriate use of medical assistance services

end of comment peiod - July 31, 1991

Going to send attorney Rec. need bill number

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rule Amendments
of the Department of Human Services
Relating to Surveillance and Utilization
Review of Medical Assistance Service
Providers and Recipients, Minnesota Rules,
Part 9505.2165, subpart 2, item A,
subitems (9) and (10)

STATEMENT OF NEED
AND REASONABLENESS

Introduction

Minnesota Rules, parts 9505.0180 and 9505.2160 to 9505.2245, of which part 9505.2165 is one section, were proposed by the Department as amendments to existing rules, parts 9505.1750 to 9505.2150 which govern surveillance and utilization review standards and procedures used by the Department to: (1) monitor compliance with medical assistance program requirements; (2) identify fraud, theft, or abuse by medical assistance recipients or providers; (3) establish administrative and legal sanctions in cases of fraud, theft, or abuse; and (4) investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program.

The proposed amendments came on for hearing February 13, 1991. At the hearing, Mr. Joel Jensen representing Care Providers of Minnesota suggested

amending proposed part 9505.2165, subpart 2, item A, subitem (10) by adding the word "repeatedly" at the beginning of the subitem. During the 20 day comment response period, the Department accepted Mr. Jensen's suggestion to amend subitem (10).

On March 8, 1991 the rulemaking record closed. On page 5, #12 of the April 9, 1991 Report of the Administrative Law Judge, the judge noted that the Department had agreed to add the term "repeated" to (sub)item 10. He wrote that the "change eliminates any possibility that a provider or recipient of MA could suffer adverse action through a single error . . . ." See Attachment #1.

Through an oversight, the adopted version of this rule, published at 15 S.R. 2563, incorrectly placed the word "repeatedly" at the beginning of part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10). The proposed technical amendment corrects this oversight.

9505.2165 DEFINITIONS

Subp. 2. Abuse.

Item A. Subitem (9) As explained above, insertion of the word "repeatedly" at the beginning of this subitem rather than at the beginning of subitem (10) was an oversight. Therefore, it is necessary and reasonable to delete the word from this subitem.

Subitem (10) As explained above, during the 20 day comment response period, the Department agreed to amend this subitem by adding the word "repeatedly"

at the beginning of the subitem, but through oversight, the amendment was incorrectly added to subitem (9). Therefore, it is now necessary to amend this subitem. This amendment is reasonable for the reason cited by the Administrative Law Judge in his report at pages 5-6, #12:

> Addition of these terms makes the proposed rule's language consistent with the intent behind the abuse provision. The change eliminates any possibility that a provider or recipient of MA could suffer adverse action through a single error ....

See Attachment #1. Instead, a pattern of repeated failures should determine "abuse."

SMALL BUSINESS CONSIDERATION

This rule amendment will not impact small business costs.

EXPERT WITNESSES

If this rule amendment goes to public hearing, the Department does not plan to solicit outside expert witnesses to testify on its behalf.

Dated: June 21, 1991

/s/ NATALIE HAAS STEFFEN
Commissioner

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

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

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

4. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavit states 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.

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

6. 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.

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

8. 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. Please note that none were received.

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

10. No requests to be notified of submittal of the rule to the Attorney General.

11. 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.

Please note that a Notice of Solicitation of Outside Opinion was not published to do this rule amendment.

If you have any questions on this submitted material, please call me at 297-4301.

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10)

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 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 Minnesota Statutes, section 256B.04, subdivisions 2, 4, 10, and 15.

(2) All persons have 30 days or until 4:30 p.m. on July 31, 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: Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816, (612) 296-7454.

(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, parts 9505.0180 and 9505.2160 to 9505.2245 (Rule 64) govern surveillance and utilization review standards and procedures used by the Department to: monitor compliance with medical assistance program requirements; identify fraud, theft, or abuse by medical assistance recipients or providers; establish administrative and legal sanctions in cases of fraud, theft, or abuse; and

investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program. Minnesota Rules, part 9505.2165 is a general definition section.

Minnesota Rules, part 9505.2165, subpart 2 defines "abuse." When notice of the rule's adoption was published at 15 S.R. 2563, the word "repeatedly" was incorrectly inserted at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10).

This amendment correctly places the word "repeatedly" at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10). The amendment ensures that only repeated failure by a provider to properly report duplicate third party payments for covered services provided to a recipient under a program and billed to the Department constitutes "abuse." This change eliminates any possibility that a provider or recipient of medical assistance could suffer adverse action through a single error. This amendment is consistent with public testimony during the recent Rule 64 public hearing and agreed-upon language following the hearing.

A free copy of the rule is available upon request from Nancy Bishop, Rules Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota, 55155-3816, (612) 296-7454. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

12 A Statement of Need and Reasonableness that describes the need for and reasonableness of this 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 Bishop upon request at the address above.

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 Nancy Bishop at the address above.

George J. Steiner

Date: 6-21-91

for NATALIE HAAS STEFFEN
Commissioner

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 Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10)

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 26th day of June, 1991.

That on the 26th day of June, 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 26 day of June, 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 the Rule of the State Department of Human Services Relating to Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10)

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 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 Minnesota Statutes, section 256B.04, subdivisions 2, 4, 10, and 15.

All persons have 30 days or until 4:30 p.m. on July 31, 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: Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816, (612) 296-7454.

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, parts 9505.0180 and 9505.2160 to 9505.2245 (Rule 64) govern surveillance and utilization review standards and procedures used by the Department to: monitor compliance with medical assistance program requirements; identify fraud, theft, or abuse by medical assistance recipients or providers; establish administrative and legal sanctions in cases of fraud, theft, or abuse; and

investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program. Minnesota Rules, part 9505.2165 is a general definition section.

Minnesota Rules, part 9505.2165, subpart 2 defines "abuse." When notice of the rule's adoption was published at 15 S.R. 2563, the word "repeatedly" was incorrectly inserted at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10).

This amendment correctly places the word "repeatedly" at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10). The amendment ensures that only repeated failure by a provider to properly report duplicate third party payments for covered services provided to a recipient under a program and billed to the Department constitutes "abuse." This change eliminates any possibility that a provider or recipient of medical assistance could suffer adverse action through a single error. This amendment is consistent with public testimony during the recent Rule 64 public hearing and agreed-upon language following the hearing.

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A Statement of Need and Reasonableness that describes the need for and reasonableness of this 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 Bishop upon request at the address above.

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 Nancy Bishop at the address above.

George J. Steffen

Date: 6-21-91

for NATALIE HAAS STEFFEN
Commissioner

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 Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10)

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 26th day of June, 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
- Persons who requested copies of the rule in response to the Notice of Hearing dated 12-3-90

Nancy L. Bishop

Subscribed and sworn to before me

this 26 day of June, 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 the Rule of the State Department of Human Services Relating to Surveillance and Utilization Review of Medical Assistance Service Providers and Recipients, Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10)

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

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, parts 9505.0180 and 9505.2160 to 9505.2245 (Rule 64) govern surveillance and utilization review standards and procedures used by the Department to: monitor compliance with medical assistance program requirements; identify fraud, theft, or abuse by medical assistance recipients or providers; establish administrative and legal sanctions in cases of fraud, theft, or abuse; and

investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program. Minnesota Rules, part 9505.2165 is a general definition section.

Minnesota Rules, part 9505.2165, subpart 2 defines "abuse." When notice of the rule's adoption was published at 15 S.R. 2563, the word "repeatedly" was incorrectly inserted at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10).

This amendment correctly places the word "repeatedly" at the beginning of Minnesota Rules, part 9505.2165, subpart 2, item A, subitem (10). The amendment ensures that only repeated failure by a provider to properly report duplicate third party payments for covered services provided to a recipient under a program and billed to the Department constitutes "abuse." This change eliminates any possibility that a provider or recipient of medical assistance could suffer adverse action through a single error. This amendment is consistent with public testimony during the recent Rule 64 public hearing and agreed-upon language following the hearing.

A free copy of the rule is available upon request from Nancy Bishop, Rules Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota, 55155-3816, (612) 296-7454. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of this 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 Bishop upon request at the address above.

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 Nancy Bishop at the address above.

George J. Steffen

Date: 6-21-91

for NATALIE HAAS STEFFEN
Commissioner

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Surveillance and Utilization Review of Medical Assistance 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 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 *Minnesota Statutes*, section 256B.04, subdivisions 2, 4, 10, and 15.

All persons have 30 days or until 4:30 p.m. on July 31, 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: Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816, (612) 296-7454.

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, parts 9505.0180 and 9505.2160 to 9505.2245 (Rule 64) govern surveillance and utilization review standards and procedures used by the Department to: monitor compliance with medical assistance program requirements; identify fraud, theft, or abuse by medical assistance recipients or providers; establish administrative and legal sanctions in cases of fraud, theft, or abuse; and investigate and monitor compliance with federal and state laws and regulations related to the medical assistance program. *Minnesota Rules*, part 9505.2165 is a general definition section.

Minnesota Rules, part 9505.2165, subpart 2 defines "abuse." When notice of the rule's adoption was published at 15 S.R. 2563, the word "repeatedly" was incorrectly inserted at the beginning of *Minnesota Rules*, part 9505.2165, subpart 2, item A, subitem (9) rather than at the beginning of subitem (10).

This amendment correctly places the word "repeatedly" at the beginning of *Minnesota Rules*, part 9505.2165, subpart 2, item A, subitem (10). The amendment ensures that only repeated failure by a provider to properly report duplicate third party payments for covered services provided to a recipient under a program and billed to the Department constitutes "abuse." This change eliminates any possibility that a provider or recipient of medical assistance could suffer adverse action through a single error. This amendment is consistent with public testimony during the recent Rule 64 public hearing and agreed-upon language following the hearing.

A free copy of the rule is available upon request from Nancy Bishop, Rules Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota, 55155-3816, (612) 296-7454. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of this 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 Bishop upon request at the address above.

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 Nancy Bishop at the address above.

Natalie Haas Steffen
Commissioner

Rules as Proposed

9505.2165 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Abuse.** "Abuse" means:

A. in the case of a provider, a pattern of practices that is inconsistent with sound fiscal, business, or health service practices, and that result in unnecessary costs to the programs, or in reimbursements for services that are not medically necessary or that fail to meet professionally recognized standards for health service. The following practices are deemed to be abuse by a provider:

[For text of subitems (1) to (8), see M.R.]

(9) ~~repeatedly~~ failing to disclose or make available to the department the recipient's health service records or the provider's financial records as required by part 9505.2180;

(10) repeatedly failing to properly report duplicate payments from third party payers for covered services provided to a recipient under a program and billed to the department;

[For text of subitems (11) to (17), see M.R.]

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

[For text of subps 3 to 17, see M.R.]

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Gaming

Division of Pari-Mutuel Racing

Minnesota Racing Commission

Notice of Solicitation of Outside Information or Opinions Regarding Proposed New Rules Pertaining to Class "E" (Teleracing) Facilities

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission is seeking information or opinions from sources outside the agency in preparing to propose the adoption of teleracing rules. The adoption of rules is authorized by *Laws Minnesota*, ch. 336, art. I, sec. 17, which permits the agency to promulgate rules governing the operation of teleracing facilities and any other aspect of horse racing or pari-mutuel betting which in the Commission's opinion affects the integrity of racing or the public health, welfare or safety.

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Relating to Surveillance
and Utilization Review of Medical
Assistance Services, Minnesota Rules,
Part 9505.2165, Subpart 2, Item A,
Subitems (9) and (10)

DECLARATION OF
COUNSEL

I, Kim Buechel Mesun, 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 2225 .

Kim Buechel Mesun

Special Assistant
Attorney General

Dated: Sept. 4, 1991