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Minnesota Department of Health

Health Resources Division
393 North Dunlap
P.O. Box 64900
St. Paul, MN 55164-0900
(612) 643-2100

March 7, 1994

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

RE: In the Matter of Proposed Rules of the State Department
of Health Governing Assessment of Residents in Nursing
Facilities Participating in the Medical Assistance
Program

Dear Ms. Hruby:

The Minnesota Department of Health intends to adopt rules Governing
Assessment of Residents in Nursing Facilities Participating in the
Medical Assistance Program. We plan to publish a Notice Of Intent
To Adopt Rules in the March 14, 1994, State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the
Department has prepared a Statement of Need and Reasonableness
which is now available to the public. Also as required, a copy of
this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice Of
Intent To Adopt Rules and a copy of the proposed Rules in this
matter.

If you have any questions about these rules, please contact me at
643-2157.

Yours very truly,

Mary F. Hedges
Management Analyst 3 - Rulewriter

enclosures: Statement of Need and Reasonableness
Notice Of Intent To Adopt Rules
Rules

lorar.doc

STATE OF MINNESOTA
DEPARTMENT OF HEALTH
HEALTH RESOURCES DIVISION

In the Matter of the Proposed Rules
of the Department of Health Governing
Assessment of Residents in Nursing
Facilities Participating in the
Medical Assistance Program

STATEMENT OF NEED
AND REASONABLENESS

BACKGROUND AND LEGAL AUTHORITY

Minnesota Rules, Parts 4656.0010 to 4656.0090 establish procedures and instructions for completing case mix assessments of residents in nursing facilities that qualify as vendors for medical assistance. The rules are authorized by Minnesota Statutes, section 144.072, which requires the Commissioner of Health to implement by rule procedures for the review of the appropriateness and quality of care and services furnished to recipients of medical assistance and for determining whether institutions meet the requirements for participation in the medical assistance program. Statutory authority for rulemaking is also granted by Minnesota Statutes, section 256B.502, which requires the Commissioners of Health and Human Services to promulgate rules regarding the resident reimbursement classification or "case mix". (The Minnesota Department of Human Services is proposing corresponding amendments to its case mix rules, Minnesota Rules, parts 9540.0050 to 9549.0059.) This Statement of Need and Reasonableness is prepared to comply with the requirements of the Administrative Procedure Act, specifically, Minnesota Statutes, sections 14.131 and 14.23.

HISTORY OF CASE MIX

Minnesota Laws of 1985 established a reimbursement system for residents in nursing homes and boarding care homes certified to participate in the federal Medicaid program. This system is commonly referred to as a "Case Mix" system. The Minnesota case mix system establishes eleven payment classifications based on residents' care needs. Those needs are identified by assessments conducted at various intervals by the facility, the Department of Health's Quality Assurance and Review Program (QA&R) or by the county pre-admission screening team.

All assessments are based on the Quality Assurance and Review (QA&R) procedures established by the Minnesota Department of Health (MDH) and must be recorded on the forms developed by QA&R.

In 1989 a Case Mix Technical Advisory Committee to the Commissioner of Health (composed of representatives from the Departments of Health and Human Services, provider organizations, and advocates) made a series of recommendations for changes to the case mix system. The recommendations were not adopted at that time as the changes and effects of the federal Nursing Home Reform Act (P.L. 100-203, the Omnibus Budget Reconciliation Act (OBRA) of 1987) on the delivery of health care in certified nursing facilities was unknown. Upon directives from the Commissioners of the Department of Human Services and the Department of Health, the Case Mix Technical Advisory Committee has been reconvened in 1993. The Committee has reviewed possible non-controversial rule changes and has recommended that these changes be considered as proposed amendments to the Rules.

RULE PARTS

The remainder of this Statement addresses the proposed changes to the Rules.

Part 4656.0020 Definitions.

Subp. 11. As a result of the federal OBRA legislation, the "plan of care" would be as set forth in the Code of Federal Regulations, title 42, section 483.20, paragraph (d) under "Resident Assessment." This section addresses initial and ongoing assessments of the resident(s) and development of the plan of care. As all certified facilities are federally mandated to use these methodologies and definitions, and certified facilities are subject to the case mix system, requiring the Case Mix Rule to also use these methodologies and definitions would lessen confusion and duplication by the facility staff. This would result in a change in the MDH's document, "Facility Manual for Completing Case Mix Requests for Classification", p. 5, "Definitions."

Part 4656.0080. Audits of Nursing Home Residents.

Since the inception of Case Mix, the QA&R section has been auditing resident assessments and when indicated, conducting 100% audits in certified facilities. The 100% audits are completed in addition to the regularly and heavily scheduled QA&R annual visits to nursing facilities, ICFs/MR (Intermediate Care Facilities for the Mentally Retarded), and RTCs (Regional Treatment Centers), and the annual audit which transpires approximately six weeks after the semi-annual assessment by the facility. The department selects either ten percent or ten, whichever is greater, of the semi-annual assessments submitted by the facility. If more than 20% of these assessments contain errors, the auditors remain on-site and audit a second sample equal in size and selected from the same type of assessments. The decision to schedule a 100% audit is determined by the QA&R Program Manager and is based on a number of factors in

addition to the percentage rate of error. A "case mix index" is obtained from the data base which indicates the number of residents in each of the 11 classification categories. The classification of the residents audited is subtracted from the original count, resulting in the number of residents in each class who were not audited. A comparison is made of the problem areas identified in the original audit and a determination made whether or not a 100% audit is warranted. If it is determined to proceed with the 100% audit, QA&R schedules are reviewed for whether or not staff are available. Historically, when 100% audits have been completed as a result of a 20-35% change in assessment classifications, an overall change of less than 20% of the classifications has resulted. The current rule states that if more than 20 percent of the assessments audited contain errors that could result in a change of classification, the facility shall be subject to an additional audit of up to 100 percent. The proposed language would allow QA&R the flexibility to determine whether to schedule a 100% audit, based not only on the percentage error, but also on a review of the facilities' remaining classifications and QA&R staff availability.

Part 4656.0090. Death, Discharge, and Change of Payment Source Information

During the past several years the Health Resources Division, of which QA&R is a section of, has upgraded its electronic data system resulting in a more accurate database and fewer demographic discrepancies. The QA&R section has also worked closely with the Department of Human Services in the exchange of information regarding resident payment status. Requesting the facilities to provide the update information on a quarterly basis rather than monthly will result in cost savings in time, wages, and mailing for both the facilities and the QA&R section without an appreciable decrease in the quality of the database.

State Of Minnesota
Department Of Health
Health Resources Division

**Proposed Permanent Rules Governing Assessment of Residents in
Nursing Facilities Participating in the Medical Assistance Program**

Notice Of Intent To Adopt Rules Without A Public Hearing

Introduction. The Minnesota Department of Health intends to adopt amendments to rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed amendments and may also submit a written request that a hearing be held on the amendments.

Agency Contact Person. Comments or questions on the amendments and written requests for a public hearing on the amendments must be submitted to:

Mary F. Hedges
Minnesota Department of Health
393 N. Dunlap St., P.O. Box 64900
St. Paul, MN 55164-0900
(612) 643-2157
Fax: (612) 643-2593

Subject Of Rules And Statutory Authority. The statutory authority to adopt these amendments is Minnesota Statutes, section 144.072, which requires the Commissioner of Health to implement by rule procedures for the review of the appropriateness and quality of care and services furnished to recipients of medical assistance and for determining whether institutions meet the requirements for participation in the medical assistance program. Statutory authority is also granted by Minnesota Statutes, section 256B.502, which requires the Commissioners of Health and Human Services to promulgate rules regarding the resident reimbursement classification or "case mix." A copy of the proposed rules is published in the State Register and attached to this Notice as mailed. The proposed rules will amend: Minnesota Rules, part 4656.0020, subpart 11, which defines "Resident plan of care"; part 4656.0080, subpart 5, which determines when facilities may be subject to additional audits of resident assessments; and part 4656.0090, to reduce the frequency that facilities must report death, discharge, and change of payment source information to the department.

The Minnesota Department of Human Services is in a parallel rule amendment process proposing amendments to rule parts 9540.0050 to 9549.0059. These rules establish procedures and instructions for completing case mix assessments.

Comments. You have until 4:30 p.m., April 6, 1994, to submit written comment in support of or in opposition to the proposed amendments or any part or subpart of the amendments. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request For A Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule amendments. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on April 6, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed amendments which caused your request, the reason for the request, and any changes you want made to the proposed amendments. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the Health Department will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule amendments may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Health Department and may not result in a substantial change in the proposed amendments as attached and printed in the State Register. If the proposed amendments affect you in any way, you are encouraged to participate in the rulemaking process.

Statement Of Need And Reasonableness. A Statement Of Need And Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments. A free copy of the Statement may be obtained from the agency contact person at the address and telephone number listed above.

Small Business Considerations. Under Minnesota Statutes, section 14.115, subdivision 7, clause (3), the small business consideration applicable to rulemaking does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing facilities. Since the proposed amendments govern nursing facilities, the requirements under Minnesota Statutes, section 14.115 do not apply to this rule.

Expenditure Of Public Money By Local Public Bodies. The amendments to these rule parts are not anticipated to result in any increases in medical assistance costs. A fiscal note, estimating the fiscal impact of the rule amendments, is available upon request from the agency contact person listed above.

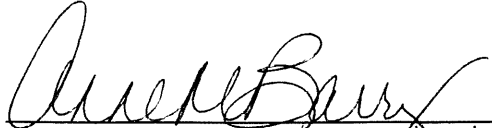
Impact On Agriculture Lands. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rule

amendments will have no impact on agricultural land.

Departmental Charges. Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rule amendments do not establish or adjust departmental charges.

Adoption And Review Of Rules. If no hearing is required, after the end of the comment period the Health Department may adopt the rule amendments. The rule amendments and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the amendments are submitted to the Attorney General or be notified of the Attorney General's decision on the rule amendments. If you wish to be so notified, or who wish to receive a copy of the adopted rule amendments, submit your request to the agency contact person listed above.

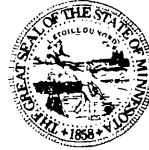
Date:


Mary Jo O'Brien, Commissioner
Department of Health

Jo

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Nursing Home Audits

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4656

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Marie O'Neill".

Marie O'Neill
Assistant Revisor

1 Department of Health

2

3 Proposed Permanent Rules Relating to Nursing Home Audits

4

5 Rules as Proposed

6 4656.0020 DEFINITIONS.

7 [For text of subps 1 to 10, see M.R.]

8 Subp. 11. Resident plan of care. "Resident plan of care"
9 for residents of nursing homes facilities means the patient-care
10 plan-specified-in-part-4655.6000---Resident-plan-of-care-for
11 residents-in-boarding-care-homes-means-the-overall-plan-of-care
12 as-defined-in-Code-of-Federal-Regulations, title-42, section
13 442.319, as amended through December 31, 1984 comprehensive care
14 plan as set forth in Code of Federal Regulations, title 42,
15 section 483.20, paragraph (d), as amended through October 1,
16 1992.

17 [For text of subp 12, see M.R.]

18 4656.0080 AUDITS OF ASSESSMENTS OF NURSING HOME RESIDENTS.

19 [For text of subps 1 to 4, see M.R.]

20 Subp. 5. Routine audits procedures. Facilities will be
21 routinely audited at least once per calendar year in accordance
22 with the following procedures:

23 - [For text of items A and B, see M.R.]

24 C. If more than ~~20~~ 35 percent of the assessments
25 audited under ~~item~~ items A and B contain errors that could
26 result in a change of classification, the facility ~~shall~~ may be
27 subject to an additional audit of up to 100 percent of the
28 assessments. The decision of whether or not to schedule a 100
29 percent audit shall be made by the program manager of the
30 Quality Assurance and Review Section and based upon a review of
31 the case mix index, the remaining classifications not audited, a
32 determination of the effect of the unaudited classifications on
33 the case mix index, and staff availability.

34 [For text of subps 6 and 7, see M.R.]

1 4656.0090 DEATH, DISCHARGE, AND CHANGE OF PAYMENT SOURCE
2 INFORMATION.

3 Every ~~month~~ quarter, certified facilities shall provide
4 updated information to the department relating to the deaths,
5 discharges, and changes in payment source when the resident
6 payment goes from private pay to medicaid sponsored that
7 occurred within the facility the previous ~~month~~ quarter.
8 Facilities may elect to report payment source changes from
9 private pay to Medicaid sponsored on either a monthly or
10 quarterly basis. This information must be provided on forms
11 developed by the department.