AUGUST 30, 2007, STATEMENT OF NEED AND REASONABLENESS FOR MINNESOTA RULES, PARTS 9505.2160 TO 9505.2245

Minnesota Department of Human Services

STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendments and Repeals to Rules Governing Surveillance and Integrity Review, Minnesota Rules, Parts 9505. 2160 to 9505.2245.**

INTRODUCTION

The department first adopted rules governing the Surveillance and Integrity Review Section (SIRS) program in September 1981. The rule was renumbered some years later as parts 9505.1750 to 9505.2150, and then amended and renumbered again in 1991 as parts 9505.2160 to 9505.2245. The most recent amendments to the rule were adopted in 1995.

The department published a Request for Comment notice in the State Register at 22 S.R. 884. Following the publication of the Request for Comments the department undertook a general overhaul of the rule. A Revised Request for Comments notice was published in the State Register at 31 SR 1369. An advisory committee comprised of persons who represented interest groups affected by the possible rule amendments was formed by the department and met for the first time in February 2004. The advisory committee met four times through June 2004. In addition to the rule advisory committee the department has continued to work with the Minnesota Department of Education to address their concerns about special education documentation.

Minnesota Rules, parts 9505.2160 to 9505.2245 (informally referred to as “Rule 64”, or the “SIRS rule”) govern the department’s Surveillance and Integrity Review Section program. The rule sets out standards and procedures used by the department to:

- Monitor compliance with health service program requirements;
- Identify fraud, theft, error or abuse by providers or recipients;
- Establish administrative and legal penalties in cases of fraud, theft, error or abuse; and
- Investigate and monitor compliance with federal and state laws and regulations that govern programs.

The department monitors compliance with program requirements for the following programs:

- Medical Assistance (MA);
- General Assistance Medical Care (GAMC);
- MinnesotaCare;
- Consolidated Chemical Dependency Treatment Fund;
- Prepaid health plans; and
- Other health service programs administered by the department.

The Federal government requires that the department stop fraud and abuse in programs funded through MA. Under the Code of Federal Regulations at 42 CFR 456.3 the department is required to have a statewide surveillance and utilization review program, which is known in Minnesota as the "SIRS" program. At 42 CFR 455 the requirements for the SIRS program are set forth. Parts 9505.2160 to 9505.2245 meet the requirements of Federal regulations for surveillance and utilization review.

The Minnesota Department of Human Services proposes to adopt amendments to rules governing its Surveillance and Integrity Review program. The proposed rule amendments will improve the rule in several ways:

- Clarify the definition of the terms "abuse" and "lock out";
- Set standards for the restricted recipient program;
- Set standards for electronically stored data;
- Improve and clarify medical record requirements for medical transportation services, durable medical equipment, rehabilitative and therapeutic services, personal care providers services, school based services, and language interpreter services;
- Delete references to obsolete programs and terms and repeal conflicting requirements;
- Clarify standards for the use of random sample extrapolation in monetary recovery; and
- Change references to out dated policies.

## ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Robert Klukas, Minnesota Department of Human Services, 444 Lafayette Road, Saint Paul, MN 55155, or by phone at 651-431-3613, and fax at 651-431-7523. TTY users may call the Department of Human Services at 1-800-657-3513.

## STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in a number of statutes. Minnesota Statutes, section 256B.04, subdivision 2, requires the department to make rules to carry out and enforce the law regarding the Medical Assistance system. Minnesota Statutes, section 256B.04, subdivision 10, requires the commissioner to establish by rule procedures and criteria for the investigation of fraud, theft, abuse, and other improper claims for medical assistance. Minnesota Statutes, section 256B.04, subdivision 15, requires the department to establish a utilization review function to guard against the unnecessary and inappropriate use of medical assistance services and excess payments for services. Minnesota Statutes, sections 256D.03, subdivision 7, and 256D.04, (2), requires the commissioner to adopt rules governing the General Assistance Medical Care program, including rules about quality assurance, utilization review, and payments for medical services. Minnesota Statutes, section 256L.02, subdivision 2 authorizes the department to adopt rules to administer the MinnesotaCare program.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

## REGULATORY ANALYSIS

**A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The rule amendments may affect all persons who provide or receive services through medical assistance, general assistance medical care, consolidated chemical dependency treatment, MinnesotaCare, or any other health care program administered by the department. The amendments may also affect recipients and vendors who participate in self-directed care programs.

The department expects that the rule amendments will not increase costs of rule compliance for providers and recipients. The rule clarifies existing requirements and does not independently create new substantial costs. The department will not experience substantial cost increases resulting from the rule amendments. The amendment to part 9505.2220, regarding random samples, will likely be less costly for the department to use, because the rule will no longer require such a large sample of claims in every case. The random sample method is not an important source of costs in any case, because the random sample method is seldom used. The random sample method has only been used twice in the last 15 years. The rule amendments are beneficial to providers, recipients and the department, because the record keeping standards in the proposed amendments are more clear than the existing rule standards.

**The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The rule amendments are intended to result in little or no changes to provider and recipient costs and the department will get no new revenue from these amendments.

**A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The proposed rule amendments continue the department's efforts to prevent fraud and abuse in programs it administers. Federal regulations require the department to use surveillance and integrity review activity to detect fraud and abuse in the program. The existing rule and the proposed amendments at part 9505.2175, require providers to document goods and services provided to recipients. The providers have noted that documentation efforts and record keeping take time and therefore, are a possible cost to the provider. The record keeping and documentation by the provider are essential to the department, because the records are used to determine the reasonableness and appropriateness of the services billed to the department by the provider. The amendments

to part 9505.2175 should not result in a significant cost to providers, because providers usually already gather the information required by the amendments.

The department expects that the random sample methods in the proposed rule amendment at part 9505.2220 will be less burdensome and therefore less costly for the department, than the random sample method in the current rule. The department has only used the current random sample method twice in the past and has no pre-determined intention to use the new method on a particular case if the proposed rule is enacted. It remains to be seen whether the amended random sample requirements will cause more than a slight change in costs. The other amendments are not likely to result in a reduction in cost for achieving the purpose of the proposed rule.

It is reasonable to require providers to document services, because the purposes of the rule are to prevent fraud and abuse and to correct error. It would be difficult to determine whether a provider's charge for a service was abusive, fraudulent or erroneous without documentation of the service and the need for the service. Based on the department's experience preventing fraud and abuse, it is necessary to require documentation and it is necessary to review the documentation. Therefore, it is not feasible to have a less costly and less intrusive method to limit fraud and abuse in a program.

**A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

The department did not consider other methods of achieving the purpose of the proposed rule amendments, because the department is required by federal regulations to have a surveillance and integrity review system. The federal requirements for the surveillance and integrity review program are contained in the Code of Federal Regulations at 42 CFR sections 456.3 and 455. The federal regulations require the department to make detailed reports to the federal government about amounts of money and types of services fraudulently provided, the details of which could only be determined by investigating claims and reviewing documentation provided by the providers of goods and services. The federal regulations also require the department to recover improperly billed claims paid to vendors, which are determined by reviewing a provider's records as required by the rule.

Minnesota Statutes, section 256B.04, subdivisions 2 and 15 also require the department to have a system that determines if fraud, abuse or error have occurred. The department needs to review documentation to determine if fraud, abuse or error have occurred in the provision of services to recipients in a program. In addition, the possibility that criminal proceedings may result from an investigation of possible fraud or abuse, makes documentation of claims necessary.

**The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The department estimates that the costs of complying with the requirements of the proposed rule amendments will be negligible. The department sent a substantially completed draft of the proposed rule and a letter and comment sheets to the advisory committee for this rule along with a letter requesting written comments on the rule's costs and impact. A sole respondent noted that the rule would likely have little or no impact on costs and the requirements in rule were not burdensome, because they are consistent with the provider's current practice.

The rule advisory committee attended meetings at which it reviewed the draft amendments. Several changes and clarifications of the proposed amendments were requested. The advisory committee did not suggest that the costs of the rule would be substantial. The advisory committee generally determined that the costs of the proposed rule changes would be minimal and the practices required by the rule are commonly associated with normal business practices in the respective industries.

**The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The costs of not adopting the rules would be born principally by the state, if it were to use the random sample methods contained in the existing rule for a large sample, rather than adopting the proposed amendments to part 9505.2220. In addition, it is likely that the federal government would issue costly penalties against the state, if the state did not maintain an effective program to prevent fraud, abuse, or error, as required in 42 USC, section 1396a (a). The maintenance of a federally approved program to prevent fraud, abuse and error is a federally imposed requirement that must be met to receive federal funding for the MA program.

**An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

The proposed rule amendments fulfill the requirements of federal regulations as described in the Introduction above. The federal regulations establish a minimum set of standards for a surveillance and utilization review program which the department must meet. The proposed rule amendments are in keeping with these federal requirements and must be read in conjunction with applicable laws and regulations as noted in part 9505.2160, subpart 1.

The requirements in the proposed amendments which are different than existing federal regulations are based upon the requirements in Minnesota Statutes. The amendments are necessary and reasonable, because it is necessary and reasonable to have rules which are in keeping with both federal and state laws and regulations.

## PERFORMANCE-BASED RULES

The proposed rule amendments meet the department's regulatory goals and when possible were drafted with performance-based standards in mind. The best examples of this are the proposed amendments regarding random sample methods, restricted recipient program, and electronic data standards. The random sample amendments at part 9505.2220 allow the use of the most appropriate random sampling method that will result in the greatest precision in determining an accurate amount of recovery. The restricted recipient program proposed amendments at part 9505.2238, allow the recipient flexibility to make provider choices, yet require that the choices ensure the integrity of the program. The electronic records requirements at part 9505.2197, allow the provider to use different systems for electronic records, if the provider's choice of the system does not impede the department's stated outcomes.

## Minnesota Statutes, section 14.127. Other fiscal considerations.

Minnesota Statutes, Chapter 14 was amended in 2005 by adding a new section at Minnesota Statutes, section 14.127. The section requires that the fiscal impact of a rule be accounted for during the adoption process if certain condition existed. The department does not believe that the proposed amendments are subject to the temporary exemption under Minnesota Statutes, section 14.127 for the following reasons;

- The rule amendments will not cost small city government nor a small business with less than 50 employees more than $25,000 in the first year; and
- The SIRS rule is required by federal regulations and state law;
- The federal regulations can be found at CFR Title 42, Chapter IV, sections 455 et seq., and 456 et seq.;
- Minnesota laws require a SIRS rule to guard against fraud, theft, abuse, error and improper utilization of publicly funded medical care in a program.

Therefore, under the exception provisions of Minnesota Statutes, section 14.127, Subdivision 4, no small business or small city can claim an exemption from the proposed rule amendments.

## ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a August 1, 2007 letter by Administrative Law Judge Eric L Lipman.

Our Notice Plan includes giving notice required by statute. The department will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The department will also give notice to the Legislature as required by Minnesota Statutes, section 14.116.

In addition the department will notify the following groups and individuals and provide information about the rules that is suitable for inclusion in the newsletters and other publications provided by the groups to their members

- Minnesota Association County Social Service Administrators, Rules Subcommittee members;
- County board chairs of 87 counties;
- Agency Notice list;
- Advisory committee members and persons who asked to be on the mailing list for notices to the advisory committee;
- Individuals who asked to be notified about this rulemaking;
- Minnesota Health and Housing Association newsletter;
- Medical device suppliers newsletter;
- Personal care attendant association newsletter;
- Minnesota Medical Association newsletter;
- Minnesota Dental Association newsletter;
- Kenneth Bence, Medica;
- Todd Bergstrom, Care Providers of Minnesota;
- Jonathan Lipis, Care providers of Minnesota;
- Mary E. Prentnieks, Minnestoa State Bar Association;
- Julie Loftus, Minnesota State Bar Association;
- Rose Schafhauser, MAMES;
- Anne Henry, Minnesota Disability Law Center;
- Rob Sauer, Health Partners Inc.

## CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the department has consulted with the Commissioner of Finance. The department did this by sending the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval, prior to the department's publication of the Dual Notice. The documents sent to the Commissioner of Finance included copies of: the proposed rule, the Statement of Need and Reasonableness, and a form requesting review with a cover letter. The documents were sent on May 1, 2007. The Department of Finance's comments were received on June 4, 2007. The Department of Finance stated that based upon the information available the proposed rule would have little fiscal impact on local units of government.

## LIST OF WITNESSES

The department's witnesses will include staff from the Attorney General's office and agency staff familiar with the SIRS program and the rulemaking process.

## RULE-BY-RULE ANALYSIS

### Part 9505.2160, Scope and Applicability.

**Subpart 1. Scope.** The addition of "or error" is reasonable and necessary in order to be consistent with the requirements in Minnesota Statutes, section 256B.064, subdivision 1c. The deletion of the phrase "the medical assistance, general assistance….or any other health service" and the addition of the reference to the definition in part 9505.2165, subpart 8, are technical changes, intended to limit redundancy. The changes are reasonable and necessary, because the programs that were deleted are set out in part 9505.2165 subpart. 8.

The phrase "or catastrophic health expense protection" is deleted because this program no longer exists; it was deleted by state law in 1994. See Minnesota Laws, 1994, Chapter 625, article 10, section 49. The department considers deleting references to defunct programs a technical change.

**Part 9505.2165, Definitions.**

**Subpart 2. Abuse. Item A.** Adding the clause "or causing claims to be submitted" to subitems (1) to (6) is reasonable because some vendors, such as personal care assistants, do not submit claims directly to the MHCP program, but cause claims to be submitted to the program by the provider who employs them. For example, a PCA may work five hours, but submit a timecard to the employer agency falsely claiming eight hours of work. Then the employer agency submits to the MHCP a claim for 8 hours of services for that PCA. In this instance, the PCA caused the employer to submit a false claim to the MHCP. This rule change is necessary to protect the integrity of the program by penalizing a vendor or recovering money from vendors that cause the overpayment to occur.

Removing the term "repeated" from subitems (1) to (6), (10), (13), (17) and (18) is necessary because the term is not needed. An action is considered abuse of the program if it results in one unnecessary program payment according to 42 CFR, section 455.2, thus unnecessary program payments need not be "repeated".

Subitem (13). Adding the term "service agreement" is reasonable and necessary to expand the definition to cover all service types. A recipient may not get services through a program that are not medically necessary. Causing an unnecessary service to be provided by submitting false information is prohibited. The service agreement details which services will be provided to a recipient.

Subitem (14). Removing the phrase "knowingly and willfully" is reasonable and necessary, because abuse does not require that a provider knowingly and willfully act. The inclusion of the phrase "knowingly and willfully" is more appropriate for determining criminal intent. The federal definition defines "abuse" to include practices that are inconsistent with sound medical or business practices that result in unnecessary costs to the program, as noted in 42 CFR, section 455.2. The federal definition of "abuse" does not require knowingly or willfully submitting a false application.

Subitem (19). Adding subitem (19) to the definition of "abuse" is reasonable and necessary, because a vendor must comply with the federal code of regulations at 42 CFR, section 455, et seq., and it is reasonable to notify providers of this requirement.

Subitem (20). Adding subitem (20) to the definition of "abuse" is reasonable to protect recipients from unscrupulous vendors of medical care who prey on vulnerable persons by providing recipients with services they may not need or have not ordered. It is necessary to protect the integrity of the program and ensure that only medically necessary services are provided to the client pursuant to Minnesota Statutes, section 256B.04 and 42 CFR, section 456.1.

Subitem (21). Adding subitem (21) to the definition of abuse is necessary and reasonable, because it ensures that services are provided within the scope of a vendor's professional license pursuant to Minnesota Statutes, section 256B.02 and that vendors who do not need licensure meet applicable regulatory requirements. It is necessary to protect the integrity of the program by only paying for services lawfully provided.

Subitem (22). Adding subitem (22) to the definition of abuse is reasonable, because it will prevent vendors from entering into illicit agreements with recipients that circumvent the spend down requirement. For example: SIRS has found situations where the provider has entered into agreements with recipients in which the provider bills the MHCP for services it has not provided to cover the spend down amount owed by the recipient. This change is necessary to protect the integrity of the program and to comply with 42 CFR, section 456.3 and Minnesota Statutes, section 256B.04.

**Item B.**

Subitem (2). Adding the phrase "such as going to multiple pharmacies" is reasonable and necessary to clarify the definition by providing an example and to notify recipients that this definition includes going to multiple pharmacies.

Subitem (15). Adding the requirement in subitem (15) is reasonable because the department has discovered abusive practices by recipients. Recipients have asked to use a specific pharmacy to fill prescriptions. When the pharmacy fills the prescription it credits the recipient's MHCP account with the spend down amount in anticipation of the recipient paying the spend down when the recipient picks up the prescription. Meanwhile, the recipient takes the prescription to a different pharmacy and has the prescription filled there. The second pharmacy notes that the computerized data for the recipient shows that the spend down amount has already been credited to the recipient's account and then does not collect the spendown amount. This subterfuge allows recipients to avoid paying the spend down amount they owe. As a result of this circumvention, MHCP has paid for a prescription that should have been paid in full or part by the recipient. The addition of the subitem is necessary to protect the integrity of the program and to comply with 42 CFR, section 456.3 and Minnesota Statutes, section 256B.04, subdivisions 10 and 15.

**Item C.**
Adding item C is necessary and reasonable, because it limits program abuse by recipients. The restricted recipient program requires recipients who are enrolled in the program to obtain medical care from one primary care provider, one hospital that the primary care provider uses and one pharmacy. The primary care provider monitors and coordinates the recipient's health care. All referrals to specialists must come from the primary care provider. The addition of item C is necessary to protect the integrity of the program and to comply with 42 CFR, sections 456.3 and 431.54 (e) and Minnesota Statutes, section 256B.04.

Subitem (1). Recipients enrolled in the restricted recipient program have their MHCP claims reviewed at the end of their two year placement period. If the review finds that the recipient has continued to abuse the program, then the recipient is re-enrolled in the restricted recipient program. The addition of item C clearly specifies the abuse criteria for re-enrollment in the restricted recipient program. Subitem (1) is reasonable to ensure compliance with and to notify recipients about restricted recipient program requirements. This definition of abuse has been a policy of the restricted recipient program for many years. A restricted recipient at the end of the restriction period, who did not comply with receiving medical care from one primary care physician, must be re-enrolled in the restricted recipient program in order to comply with 42 CFR, sections 456.3, and 431.54 (e) and Minnesota Statutes, section 256B.04. The addition of subitem (1 ) is necessary in order to protect the integrity of the program.

Subitem (2). Subitem (2) is reasonable because it ensures compliance with and provides notice of restricted recipient program requirements. The restricted recipient program requires recipients to receive care from the hospital that the recipient's primary care provider uses. This requirement in the definition of abuse has been a policy of the restricted recipient program for many years. This requirement ensures that the primary care provider is aware of all medical conditions and prescriptions that a recipient obtains at a hospital, so that the primary care provider can effectively monitor and coordinate the recipient's health care. If a recipient uses emergency rooms for nonemergent care, then the recipient is not obtaining cost-effective medical care and is also circumventing the primary care provider's efforts to coordinate the recipient's health care. If a recipient enrolled in the restricted recipient program cannot comply with the request that the recipient receive nonemergency medical care from one primary care provider, then the recipient must be re-enrolled in the restricted recipient program in order to comply with 42 CFR, sections 456.3, and 431.54(e) and Minnesota Statutes, section 256B.04, subdivision 15. The addition of subitem (2) is necessary to protect the integrity of the program.

Subitem (3). Subitem (3) is reasonable to ensure compliance with and provide notice of restricted recipient program requirements. This requirement in the definition of abuse has been a policy of the restricted recipient program for many years. The restricted recipient program requires recipients to specify one pharmacy where they will have their prescriptions filled. This requirement ensures that one pharmacy is monitoring all prescription medications. This requirement is necessary to ensure that the recipient is

receiving coordinated care, that the prescriptions will not cause adverse drug interactions, that any drug allergies are noted by the pharmacy, and that the recipient is not in danger of overdosing with multiple prescriptions of the same type of drug. If a recipient continues to use multiple pharmacies, then the recipient must be re-enrolled in the restricted recipient program. Re-enrollment ensures compliance with 42 CFR, sections 456.3, and 431.54 (e) and Minnesota Statutes, section 256B.04, subdivisions 10 and 15. The addition of subitem (3) is necessary in order to protect the integrity of the program.

Subitem (4). Subitem (4) is reasonable to ensure compliance with and to provide notice of restricted recipient program requirements. The restricted recipient program requires recipients to obtain health services only from specified providers. In addition to the primary care provider, the restricted recipient program limits services to services given by other specified providers, such as medical transportation and medical supply providers. This requirement assures that other providers are involved in monitoring and coordinating health services as needed. This requirement in the definition of abuse has been a policy of the restricted recipient program for many years. If a recipient enrolled in the restricted recipient program cannot comply with receiving medical care from the specified providers, then the recipient must be re-enrolled in the restricted recipient program in order to comply with 42 CFR, sections 456.3, and 431.54(e) and Minnesota Statutes, section 256B.04, subdivisions 10 and 15. The addition of subitem (4) is necessary to protect the integrity of the program.

**Subpart 2a. Electronically stored data.** The added language ”by any electronic means, including but not limited to data stored” is reasonable and necessary because it addresses current provider practices of developing and maintaining electronic records. The deleted terms are not broad enough to encompass all future data storage systems.

**Subpart 4. Fraud. Item B.** The addition of the language ”including knowingly and willfully submitting a false or fraudulent application for provider status” is reasonable, because it gives notice that this activity is fraudulent. The added language is necessary to protect the integrity of the program. For example: DHS has found that providers who have been excluded from the MHCP engage in a subterfuge whereby they re-enroll as providers in the MHCP by having friends, relatives, etc., fill out provider applications, as if the friend, relative, etc., were the owner of the business, when in fact the excluded provider is the actual owner and has control of the business. The additional language is also necessary to comply with 42 CFR, section 455.1 and part 455, subpart B which require providers to fully disclose ownership and control information.

Fraud is defined in 42 CFR, section 455.2 as “an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.” The rule amendment helps ensure that Minnesota’s program complies with federal law. The amendment is also necessary to comply with Minnesota Statutes, section 609.466 which defines medical assistance fraud as “Any person who, with the intent to defraud, presents a claim for reimbursement, a cost report or a rate application, relating to the payment of medical assistance funds pursuant to Minnesota Statutes, chapter 256B, to the state agency, which

is false in whole or in part, is guilty of an attempt to commit theft of public funds…" Filling out a false or fraudulent application for provider status, which results in a claim for reimbursement is medical assistance fraud.

**Subpart 6**. **Health service record.** This is a technical change that clarifies the intent of subpart 6. It is necessary and reasonable to clarify the meaning of the term "health service record."

**Subpart 6d. Lock out.** The addition of the term "lockout" in subpart 6d is reasonable, because it allows the department to limit vendors without completely excluding them from the program. For example, if a physician is found to have over prescribed a certain medication, DHS could allow program payment to the provider for all services other than prescribing certain types of medications. This type of limitation addresses the abuse issue, while allowing the vendor to remain a program participant for other services. Lock out is also allowed by 42 CFR, section 431.54(f). The addition of subpart 6d is necessary to protect the integrity of the program by allowing DHS to limit abusive behaviors. It also allows an otherwise competent provider to continue to provide services for which no abuse is found. This helps to ensure that program recipients have access to more medical providers as noted in 42 USC, section 1396 a (a)(30)(A).

**Subpart 7. Primary care provider.** The word "provider" is substituted for the word "case manager". This is a technical change made to clarify the difference between a county case manger and a provider in the MHCP.

**Subpart 8. Program.** The deletion of "catastrophic health expense protection program" is a needed technical change, because that program was repealed by the legislature in 1994.

**Subpart 10a. Responsible party.** Changing the statutory citation in this subpart is a necessary technical change that is more accurate.

**Subpart 10b. Restricted recipient program.** The program, formerly known as the "restriction program" has been renamed the "restricted recipient program". The renaming of the restriction program to "restricted recipient program" is reasonable and necessary in order to accurately describe the program. It is a program only for those recipients who, in some manner, have failed to comply with MHCP program requirements. Like the previous definition found in part 9505.2165, subpart 11, item B, the specified health service providers do not include long term care facilities.

**Item A**. Under the previous definition of "restriction", recipients were restricted for a period of twenty four months. The addition in item A of the words "of eligibility" is reasonable to define the actual period of placement in the restricted recipient program. If a recipient has periods of eligibility for MHCP intermixed with periods of ineligibility, placement in the restricted recipients program is only effective during periods of eligibility.

Subitem (1). The addition of subitem (1) is reasonable, because DHS wants to guarantee that recipients have access to health care near their residences and do not have to travel long distances to obtain health care. The addition of subitem (1) is necessary to comply with 42 CFR, section 431.54 (e), which requires state Medicaid agencies to ensure that recipients who are enrolled in a "lock-in program" (the restricted recipients program is a "lock-in program") have "reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services…"

Subitem (2). The addition of subitem (2) is reasonable, because it notifies recipients placed in the restricted recipient program that they could also have their personal cares restricted to a specified home health agency. This addition is necessary to protect the integrity of the program. The department has discovered that some recipients abuse the delivery of their personal care services and the personal care assistants cooperate with the recipient in falsifying the number of hours of care provided to the recipient. When the department specifies that a recipient receive services from one home care agency or Medicare certified home health agency, a recipient is prevented from choosing to be restricted to a personal care provider agency that may be owned by personal care assistants who abuse the MHCP program.

**Item B**. The addition of item B is reasonable to provide notice of the second type of placement possible in the restricted recipients program. Under Minnesota Statutes, sections 256B.0655, subdivision 7 and 256B.0656, recipients may hire their own personal care assistants. At times DHS has found recipients who abuse these services, either by billing for services not provided or billing for services that are not eligible for MHCP payment. Because there is less monitoring on the part of DHS of these services, it is necessary to add this new language to protect the integrity of the program and to place these recipients in a program where more monitoring of personal care services occurs.

**Subpart 11. Restriction.** The definition of the term "restriction" is deleted, because it has been renamed the "restricted recipient program" in subpart 10 b.

**Subpart 15. Theft.** The statutory citation change is necessary to remove inappropriate limitations on what may be considered theft. The change is reasonable, because the programs covered by this rule should be protected from all acts that constitute theft, rather than be protected from only some acts that constitute theft.

**Subpart 16. Third party payer.** The addition of the terms "the" and "program" are technical changes for clarification.

**Subpart 16a. Vendor.** The addition of the sentence, "A vendor is subject to criminal background checks according to Minnesota Statutes, section 245C.03," is reasonable to give notice of the requirement that certain vendors are required to undergo or obtain criminal background checks. It is also necessary to comply with Minnesota Statutes, section 245C.03. Incorporating the statutory standard by reference allows the rule to include any changes that may be made to the statutory background check requirements in the future.

**Part 9505.2175, Health Service Records.**

**Subpart 1. Documentation requirement.** The change to this subpart is a technical change that adds subparts 8 and 9 to the health service record requirements that the provider must comply with if they seek reimbursements for school-based or interpreter services. It is reasonable to require providers to comply with all documentation requirements in the rule that apply to the service they provide so that the program may be audited and to protect the integrity of the program.

**Subpart 2. Required standards for health service records. Item G.** The changes to this subpart are technical changes for clarification. The deletion of the phrase "or individual program plan" is a technical change, because the phrase "individual program plan" is no longer used in the MHCP. References to parts 9505.0477 and 9535.0100 are deleted, because the parts were repealed.

**Subpart 4. Medical transportation service records.** The changes to this subpart are reasonable, because special transportation drivers submit their mileage logs to the provider in order to receive payment from the provider. The provider, in turn, then bills the MHCP based upon the logs submitted by the drivers. It is reasonable to hold the drivers accountable for their mileage logs, because the department relies upon the drivers' logs to pay the vendors. The amendment to the rule is necessary to protect the integrity of the program. It allows the department to better oversee and investigate these services. The driver's certification of the accuracy of records is required by 42 CFR, section 455.18.

**Item A**. Adding "the description and address of both" is reasonable, because many health care providers have the same name, but operate at different locations. Transportation billing is based on mileage. For audit purposes it is reasonable to require special transportation providers to provide a description of the trip origins and destinations, as well as the addresses. Documenting the mileage of the most direct route is also reasonable, because payment is based on mileage and it is most cost effective for the MHCP to pay for the most direct route. At times drivers may take a route that is faster, but actually farther to travel. However, the department does not intend to pay for extra miles traveled on a quicker route that is a longer distance. These changes are necessary to protect the integrity of the program and to guard against unnecessary costs to the program pursuant to 42 CFR, part 455 and is required by Minnesota Statutes, section 256B.0625, subdivision 17 (b).

**Item B**. The addition of the term "provided" and deletion of the term "and" are technical changes that were made for clarification.

**Item C**. The deletion of the phrase "if applicable" is a technical change that was made because Minnesota Statutes, section 256B.0625, subdivision 17, now requires physician's certifications of medical necessity to establish eligibility for medical transportation.

**Item D.** For DHS's audit purposes, it is reasonable to know the name of the person who provided the service. It is also reasonable for DHS to be able to verify whether the vehicle used to provide the transportation is licensed by the state for transporting recipients. Minnesota Statutes, section 256B.02, subdivision 7, requires all medical services to be provided within the scope of the vendor's license. These additions to the rule are necessary to protect the integrity of the program.

**Item E.** Item E is reasonable, because transportation rates are based on whether the recipient is ambulatory or nonambulatory, according to Minnesota Statutes, section 256B.0625, subdivision 17. This language is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Item F.** Item F is reasonable, because it allows the department to verify that the transport was provided and to verify whether the transportation was to a medically necessary service pursuant to Minnesota Statutes, section 256B.0625, subdivision 17. This requirement is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Item G**. Item G is reasonable, because the number of recipients being transported can affect the cost of transportation. This language is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Item H**. Item H is reasonable, because the provider is paid more to provide transportation for a recipient who requires an extra attendant present, pursuant to Minnesota Statutes, section 256B.0625, subdivision 17, than the provider is paid for transporting a recipient that does not require an extra attendant. This language is necessary for audit purposes and to protect the integrity of the program.

**Subpart. 5. Durable medical equipment records.** The amendments to Subpart 5 are reasonable, because medical supplies are different than durable medical equipment and are used by the recipient differently. To reflect the difference between medical equipment and medical supplies, DHS has amended this rule part to become two distinct rule parts. These amendments are necessary for the rule to accurately reflect the medical services covered by the MHCP and to comply with Minnesota Statutes, section 256B.04, subdivisions 10 and 15. The addition of the terms "durable", "must document" and deletion of the term "supplies" are technical changes to clarify the meaning of this subpart.

**Item A.** The deletion of the phrase "must document that the medical supply or equipment meets the criteria in parts 9505.0210 and 9505.0310" is a technical change reflecting the overall change to this subpart. It is reasonable to require the documentation of "the type of equipment, including the brand and model names, the

model number and serial number, if available" to correctly identify the health care services and products that the MHCP is purchasing. This language is necessary for auditing purposes, to protect the integrity of the program, and to comply with federal law, at 42 CFR, section 455.1 (a) (2), which requires the department to have methods of verifying that services were actually received by a recipient.

**Item B**. The deletion of the phrase from the words "except" through "recipient" is a technical change reflecting the overall change to this subpart. It is reasonable to require documentation of "whether the equipment is being rented or purchased by the recipient" to accurately reflect the medical services MHCP is purchasing. This language is necessary for auditing purposes and to protect the integrity of the program and to comply with federal law.

**Item C.** Item C is reasonable, because the MHCP does not pay for repairs to medical equipment that is under a warranty. Therefore, the existence and extent of a warranty must be disclosed. This language is necessary for auditing purposes, to protect the integrity of the program and to comply with part 9505.0310, subpart 1, item B.

**Item D.** Item D is reasonable, because it gives information about the quality of the durable medical equipment that MHCP is purchasing. The value and usefulness of the equipment may be related to the number of repairs made on the equipment. This language is necessary to protect the integrity of the program, because it ensures that the equipment for the recipient is suitable and cost effective.

**Item E**. It is reasonable to require a vendor to verify that the durable medical equipment was actually delivered to the recipient, so that the program will know that the recipient is actually getting the item the program paid for. The rule distinguishes between a shipping invoice and a shipping invoice with a delivery service tracking log. Some durable medical equipment is delivered to the recipient directly by the provider. In this situation the provider's shipping invoice is sufficient to establish that the equipment was delivered to the recipient. When the durable medical equipment provider hires a delivery service or ships the equipment through a shipping service or the U.S. mail, both the provider's shipping invoice, showing that the equipment was shipped from the provider, and the shipper's delivery service tracking log, showing that the equipment was delivered to the recipient, must be maintained in the provider's health service record to verify that the equipment was delivered to the recipient. This documentation requirement is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1

**Item F**. It is reasonable to ensure that the medical equipment paid for by a department program is medically necessary, appropriate, and effective for the needs of the recipient. The length of time that medical equipment will be needed by an individual recipient may vary depending on the recipient's medical needs. Therefore, the physician's order must indicate the specific time the equipment is needed or that the recipient will continuously need the equipment. This language is necessary for audit purposes, to protect the

integrity of the program, verify compliance with part 9505.0210, and comply with federal law.

**Subpart 5a. Medical supply records.** The amendments to Subpart 5a are needed and reasonable, because medical supplies and durable medical equipment are two different services and are used by the recipient differently. To reflect the difference between medical equipment and medical supplies DHS has divided existing subpart 5 part into two distinct rule parts. These rule amendments are necessary to accurately reflect the medical services covered by the MHCP and to comply with Minnesota Statutes, section 256B.04, subdivisions 10 and 15, and 42 CFR, section 455.1.

**Item A**. Item A is reasonable, because it ensures that the medical supply is medically necessary, appropriate and effective for the needs of the recipient. The length of time that medical supplies will be needed by an individual recipient will vary depending on the recipient's medical condition. Therefore, the physician's order must indicate that the medical supplies will be needed for a specific time or that the recipient will continuously need the supplies. This language is necessary for audit purposes, to protect the integrity of the program, verify compliance with part 9505.0210, Minnesota Statutes, section 256B.04, subdivisions 10 and 15, and 42 CFR, section 455.1.

**Item B.** In item B it is reasonable to require documentation of the type of supplies, and the brand to correctly identify the health care services and products that the MHCP is purchasing. This language is necessary for auditing purposes and to protect the integrity of the program.

**Item C**. The requirement in Item C is reasonable, because stating the quantity of each medical supply creates a record that accurately reflects the health services MHCP is purchasing. This language is necessary for auditing purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Item D**. Item D is reasonable because it verifies that the medical supply was actually delivered to the recipient. The rule distinguishes between a shipping invoice and a shipping invoice with a delivery service tracking log. Some medical supply providers deliver medical supplies directly to the recipient. In this situation the provider's shipping invoice is sufficient to establish that the medical supply was delivered to the recipient. In a situation in which the medical supply provider hires a delivery service or ships the medical supply through a shipping service or the U.S. mail, then both the provider's shipping invoice, showing the medical supply was shipped from the provider and the shipper's delivery service tracking log, showing that the medical supply was delivered to the recipient, must be maintained in the health service record. This documentation requirement is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Subpart 6. Rehabilitation and therapeutic service records.** The addition of the phrase "and must document" clarifies requirements for therapeutic service records.

**Item A.** It is reasonable to require documentation of objective and measurable goals for rehabilitative and therapeutic services provided to a recipient, because the purpose of these services is to restore or maintain a recipient's functioning. Clear objective and measurable goals ensure that the rehabilitative and therapeutic services are appropriate and effective for the needs of the recipient and also ensure the effective and appropriate use of MHCP funds. This language is necessary for audit purposes, to protect the integrity of the program, and to verify compliance with part 9505.0210 and Minnesota Statutes, section 256B.04, subdivisions 10 and 15.

**Item B.** It is reasonable to require documentation of the need for the level of service to guarantee that the rehabilitative and therapeutic services are appropriate and effective for the needs of the recipient and also to ensure the effective and appropriate use of MHCP funds. This language is necessary for audit purposes, to protect the integrity of the program and to verify compliance with part 9505.0210 and Minnesota Statutes, section 256B.04, subdivisions 10 and 15.

**Item C**. Item C is reasonable, because it ensures that the rehabilitative and therapeutic services are appropriate and effective for the needs of the recipient and to ensure the effective and appropriate use of MHCP funds. This language is necessary for audit purposes, to protect the integrity of the program, and to verify compliance with part 9505.0210 and Minnesota Statutes, section 256B.04, subdivisions 10 and 15.

**Item D.** Item D is reasonable, because it ensures that the rehabilitative and therapeutic service is medically necessary, appropriate and effective and meets the needs of the recipient. The physician's order ensures that rehabilitative and therapeutic services provided to the recipient are necessary and appropriate. This requirement is necessary for audit purposes, to protect the integrity of the program and to comply with part 9505.0210.

**Subpart 7. Personal care provider service records.** The amendments made are technical changes for clarification and to address program changes made in Minnesota Statutes, sections 256B.0655 and 256B.0656.

**Item A**. The addition of "<u>in the form required by the commissioner</u>" to the requirement of the physician's order is reasonable, because a standardized form is easier to audit. This change notifies providers that the physician's order will be standardized by the department. Currently Surveillance and Integrity Review investigators find a variety of forms and pieces of papers with physicians' names or signatures on them. However, investigators are uncertain whether the various forms and pieces of paper qualify as physician's orders under the rule. Adding the proposed language will result in a standardized form for physicians' orders for personal care services. The amendment is necessary for audit purposes and to comply with Minnesota Statutes, sections 256B.0625, subdivision 19c, 256B.0651, and 256B.0655 that requires a physician's order to be on a form approved by the commissioner.

The addition of the phrases "prior to" and "30 days" is reasonable, because it clarifies the period of time in which the physician's order must be placed in the recipient's health service file. The language is also reasonable because Minnesota Statutes, sections 256B.0625, subdivision 19c and 256B.0655, subdivision 2, require that the service must be provided in accordance with a physician's order. The department acknowledges that certain circumstances exist where it is not possible to obtain a physician's order prior to the start of services, either due to an emergency situation or the physician being unable to produce an order prior to the start of services. Therefore, the proposed amendment allows "30 days" for inclusion of the order in the record. Thirty days is a reasonable amount of time to produce a physician's order. The amendments are needed to protect the integrity of the program and for compliance with Minnesota Statutes, section 256B.0655, and 42 CFR, section 455.1.

**Item B.** The changes made to this item are technical changes to comply with statutory changes in Minnesota Statutes, sections 256B.0625 and 256B.0655, that substitute the term "qualified professional" for the term "registered nurse."

**Item C.** The changes made to this item are technical changes to comply with statutory changes in Minnesota Statutes, sections 256B.0625 and 256B.0655 that substitute the term "qualified professional" for the term "registered nurse."

**Item D**. The deletion of "hardship waiver" requirements in item D is a needed technical change that reflects changes in DHS policy and federal waiver language**.** The department no longer requires an annual hardship waiver review. The statutory documentation requirements added to this item are necessary technical changes that clarify the rule requirement and notify interested persons about the statutory documentation requirements for shared personal care arrangements.

**Item E**. It is necessary to require documentation of the flexible use of the personal care hours to protect the integrity of the program. The addition of item E to the documentation requirements is reasonable, because it ensures that the recipient's authorized personal care hours are used in the manner the recipient has chosen. The required documentation describes the manner in which a recipient's personal care hours are used. The documentation shows the reason the personal care hours are being used as they are and that the recipient has chosen to use the personal care hours in this manner. The language is also necessary to protect the interests of the recipient and the integrity of the program.

**Item F**. The addition of item F to the documentation requirements is reasonable, because it ensures that MHCP has correct information about whether the recipient is using a fiscal agent and the fiscal agent's identity. The language in item F is necessary for audit purposes and to protect the integrity of the program.

**Item G**. The addition of item G to the documentation requirements is reasonable to ensure the MHCP has the information regarding the manner in which the recipient will receive personal cares. The language also ensures that personal care services are provided

in the manner the recipient has chosen. The language in item G is necessary for audit purposes and to protect the integrity of the program.

**Item H**. The changes to the subitems in this item are editorial changes intended to improve the organization of the rule and are not intended to change the meaning of the rule. The deletion of the following language from old item F; "the following daily documentation requirements: (1) in an individual care arrangement, the following documentation must be made by each personal care assistant of services provided to the recipient" and the addition of the following language to new item H; "for all care arrangements, the following documentation must be made for each day that care is provided by each personal care assistant who provides care to the recipient;" are technical changes to reflect the statutory changes in Minnesota Statutes, section 256B.0655 regarding the various types of care arrangements. It is reasonable and necessary to bring the rule into closer agreement with the underlying statute.

Subitem (5). The addition of the phrase "at the site where personal care services were provided" is reasonable because personal care services can be provided outside of the recipient's residence. The language is necessary for audit purposes to verify when and where services were provided.

The deletion of the phrase "of the personal care assistant at" is a technical change to reflect the changes made to item H. The deleted language is no longer necessary.

The addition of the phrase "including a.m. and p.m. designations" is reasonable for audit purposes. The language changes allow DHS to verify when services were actually provided. Often PCA timecards document cares being provided from 8 -12 and 1-5. DHS does not know if these cares were provided in the morning, afternoon or at night. This distinction is more important when another PCA provided cares to the same recipient on the same day from 9-12 and 3-5. Currently, DHS has no way to determine if the billing overlaps or if cares were actually provided at different times. The language is necessary to protect the integrity of the program and to comply with 42 CFR, sections 455.1 and 455.20.

Subitem (7). The deletion of the word "nurse" and addition of the term "qualified professional" is a technical change to reflect changes made to Minnesota Statutes, sections 256B.0625, and 256B.0655.

Subitem (8). The certification statement is reasonable, because it helps ensure compliance with 42 CFR section 455.18.

**Item I**. It is reasonable to notify interested parties that shared care arrangements have distinct documentation requirements. Requiring distinct documentation requirements for shared care arrangements is necessary to protect recipients by ensuring that their individual needs and cares are met in a shared care setting and to verify that recipients requested that their cares be provided in this manner. The addition of the word "daily" is reasonable, because under the shared care arrangement recipients receiving personal care

may have several personal care assistants who also take care of two or three other recipients. It is reasonable to require each personal care assistant to document the services they provide to a particular recipient. This documentation requirement is necessary to protect recipients and to ensure that recipients get the required cares from the personal care assistant and to protect the integrity of the program. This documentation requirement is also necessary to protect the integrity of the program. This language is also necessary to comply with 42 CFR, sections 455.1 and 455.20.

Subitem (1) This amendment is reasonable, because each recipient in a shared care setting must have their care supervised by a qualified professional. It is reasonable to require the qualified professional to document the ongoing supervision, because the qualified professional helps ensure that the recipient gets necessary appropriate care that is effective. The qualified professional also participates in the decision making process regarding whether shared care is appropriate for the recipient. This amendment is necessary to protect the recipient and to protect the integrity of the program.

Subitems (2), (3) and (4) These amendments are reasonable because they are technical changes for clarification and to reiterate requirements of Minnesota Statutes, section 256B.0655, Subdivision 6.

**Item L**. The substitution of the phrase "qualified professional" for the word "nurse" is a technical change to comply with statutory changes to Minnesota Statutes, sections 256B.0625 and 256B.0655.

**Subpart 8. School-based service records**. These requirements are reasonable, because services funded with MHCP dollars must be documented in order to be eligible for payment according to Minnesota Statutes, sections 256B.0625, subdivision 26, and 256B.064; part 9505.0220; and 42 CFR, section 455.1. Proper documentation of covered services provided to students ensures that future reviews of payments by the department or federal agency will verify that expenditures are appropriate. Schools and other providers are not liable for reimbursing the department for an appropriate service provided to a student in keeping with program requirements. Documentation requirements are necessary to protect the integrity of the program.

**Item A**. Requiring documentation of the medical diagnosis or condition that indicates the need for an individualized education plan is reasonable, because it is the recipient's diagnosis or condition that determines whether services are required and which services are required. This requirement is necessary to protect the integrity of the program.

**Item B**. It is reasonable to require a copy of the recipient's plans, because the plans document the recipient's needs. It is reasonable to require that the scope of services identified in the individualized family service plan, the IEP or individual interagency intervention plan include covered services, because the program will only pay for covered services. This requirement is necessary for audit purposes and to protect the integrity of the program.

**Item C**. The addition of item C is reasonable, because it recognizes that school districts have a choice regarding the manner in which they will notify parents that the services provided by the school district will be charged to the Minnesota Health Care Program.

Item C is also reasonable, because it ensures that the services provided to the recipient have the consent of the recipient's parent or legal guardian, as required by part 9505.0220, item N. Requiring the documentation in item C is necessary to ensure that services are being provided and billed with the consent of the parent or legal guardian. The language is necessary to ensure services are being appropriately billed and to protect the integrity of the program.

**Item D**. Requiring documentation of the name of the school district and the recipient's date of birth is reasonable for audit purposes. During an investigation DHS needs to know where the services were provided, because the department can then get documentation from the location and interview people at the location. The recipient's date of birth helps identify the recipient. These documentation requirements are necessary to protect the integrity of the program.

**Item E**. Requiring specific documentation for assistive technology devices is reasonable, because it allows the department to determine whether the devices are appropriate and effective for the needs of the recipient. This documentation is also reasonable for audit purposes, because it tells which health services the MHCP is purchasing. This language is necessary to protect the integrity of the program.

Requiring a copy of the invoice or rental agreement is reasonable for audit purposes to accurately document the services the MHCP is purchasing. This requirement is necessary for auditing purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Item F**. It is reasonable to hold IEP special transportation providers to the same documentation standards as other transportation providers. This requirement is necessary to comply with Minnesota Statutes, section 256B.0625, subdivision 26.

Subitem (1) The changes to this subitem are reasonable, because the special transportation drivers submit their mileage logs to the provider, who then submits the mileage to the school district. The school district bills MHCP for the mileage submitted by the provider. Documenting the mileage of the most direct route is also reasonable, because payment is based on mileage and it is most cost effective for the MHCP to pay for the most direct route. At times drivers may take a route that is faster, but actually further to travel. These changes are necessary to protect the integrity of the program and to guard against unnecessary costs to the program pursuant to 42 CFR, section 455 and are required by Minnesota Statutes, section 256B.0625, subdivision 17, paragraph (b).

Subitem (2). Subitem (2) is reasonable because transportation rates are based the type of special transportation provided, including such factors as whether the recipient is ambulatory or nonambulatory, according to 256B.0625, subdivision 17. This language is

necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

Subitem (3). It is reasonable to include information about who can verify that a service was provided, because the information is needed for audit purposes and to protect the integrity of the program.

Subitem (4) The inclusion of a requirement that the transportation be tied to a covered service is necessary and reasonable for purposes of verifying the transport and also verifying whether the transportation was to a medically necessary service pursuant to Minnesota Statutes, section 256B.0625, subdivision 17. This language is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, section 455.1.

**Subpart 9. Language interpreter services**. The requirements for language interpreter records in subpart 9 are reasonable, because pursuant to part 9505.0220, items N and O, services must be documented in the recipient's health service record in order to be eligible for MHCP payment. The requirements are also reasonable, because they conform with Minnesota Statutes, section 256B.0625, subdivision 18a (d). Subpart 9 is necessary, because Minnesota Statutes, section 256B.04 requires DHS to make uniform rules to carry out the provisions of Minnesota Statutes.

**Item A**. It is reasonable to know the name of the person who provided the service for audit purposes. Item A is necessary pursuant to 42 CFR, section 455.1 for verifying whether services were actually provided.

**Item B**. It is reasonable to know the name of the company that provided the service for audit purposes. Item B is necessary pursuant to 42 CFR, section 455.1 for verifying whether services were actually provided.

**Item C**. Item C is reasonable for audit purposes, because the MHCP does not pay for relatives to provide language interpreter services. Item C is necessary to protect the integrity of the program and to comply with 42 CFR, section 455.1.

**Item D**. Item D is reasonable, because a person proficient in English does not require a language interpreter. Item D is necessary to protect the integrity of the program, because Minnesota Statutes, section 256B.0625, subdivision 18a (d), requires that recipients have limited English language proficiency in order to be eligible to receive language interpreter services.

**Item E**. Item E is reasonable for audit purposes and to know what interpreter service was provided. Item E is necessary for compliance with Minnesota Statutes, section 256B.0625, subdivision 18a (d), which requires that language interpreter services are provided person to person while the person is receiving a covered health care service.

**Item F**. It is reasonable to require that language interpreter services be billed to the MHCP in the way that it is paid. Item F is reasonable, because it establishes a record of the time billed to MHCP which may be audited to determine compliance with program requirements. Item F is necessary to protect the integrity of the program and comply with 42 CFR, section 455.1.

**9505.2180 Financial Records**

**Subpart 1. Financial records required of vendors**.

**Item A**. Deleting "prepared for the vendor" is a technical change that clarifies the requirement by eliminating a clause that some vendors misunderstood. The vendor is responsible for the records, whether the vendor prepares the record or the vendor allows someone else to prepare the record. The change is necessary to clarify the meaning of this part. Some vendors were confused by the phrase "prepared for the vendor", because they believed they were not responsible for the record if they allowed someone else to prepare the record.

**Item G**. Deleting "and" is a technical change necessitated by adding Item I.

**Item H**. Adding "employee's time sheets" is reasonable for audit purposes, because it helps the department verify whether services were provided and whether services were appropriately billed. It is also necessary to protect the integrity of the program and to comply with 42 CFR, sections 455.1 and 455.20 (a). Adding "criminal background checks, when required" is reasonable, because it ensures compliance with criminal background check requirements. Certain vendors and providers are not eligible to receive MHCP payment without a criminal background check. Adding this language is also necessary to comply with Minnesota Statutes, sections 245A.04, 245C.03 and 256B.0655, subdivision 1f (7).

**Item I**. Item I is reasonable, because it helps the department verify whether the items paid for by the program were actually delivered to the recipient. The rule distinguishes between a shipping invoice and a delivery service tracking log depending on the item being delivered and who delivered it. This documentation requirement is necessary for audit purposes and to protect the integrity of the program pursuant to 42 CFR, sections 455.1 and 455.20 (a).

**9505.2185 Access to Records**

**Subpart 1. Recipient's consent to access**. The changes made to subpart 1 are technical changes that are reasonable, because they clarify the rule. The amendments also comply with Minnesota Statutes, sections 256.01, subdivision 2 (s), and 256D.03, subdivision 7.

**Subpart 2. Department access to records**. The deletion of "the vendor's regular business hours" and addition of "the department's normal business hours" is reasonable to ensure that the department has access to health service and financial records in compliance with Minnesota Statutes, section 256B.064, subdivision 1a (5). Changing the emphasis to the department's regular business hours will not inconvenience most providers, because most providers' business hours are similar to the department's business hours. The change is needed, because it prohibits providers from denying access to records by claiming that the records are available to the department only during unreasonable hours. The amendments to this subpart are necessary for compliance with 42 CFR, part 455 and section 431.107 (b).

The clause beginning with "A vendor shall make its records available at the vendor's place" and ending with "will be viewed at another location" is reasonable, because it ensures the department's access to the health service and financial records and complies with Minnesota Statutes, sections 256B.064, subdivision 1a (5) and 256B.27, subdivisions 3 and 4. It is reasonable to require that records be made available at the provider's place of business. The change also prohibits providers from denying access to records by making the records inaccessible, or by claiming they are kept in a location which is unreasonably difficult to get to, such as records kept in another state or country. Requiring records to be available for access at the place of business is necessary for complying with 42 CFR, parts 455 and 456 and section 431.107. The addition of the phrase "or vendor's records" is a technical change that clarifies that the department has access to the records needed to conduct an audit.

**9505.2190. Retention of Records**

Subpart 1. **Retention required; general.** The amendment to subpart 1 is reasonable, because it allows vendors to determine the manner in which they will maintain and store health service and financial records within reasonable parameters. The amendment also reiterates the necessity of making the records accessible to the department and the timeframe in which they have to be made available to the department. The amendment is necessary to reflect the changes in the various modes of record keeping and ensures compliance with Minnesota Statutes, sections 256B.064 and 256B.27, subdivision 3, and 42 CFR, part 455 and section 431.107 (b).

**9505.2195 Copying Records**

The addition of the phrase "on the day of the audit" and deletion of the sentence beginning with "If a vendor fails" and ending with "request for copies by the department" are reasonable, because the vendor has been given at least 24 hour notice that the department will require access to the records. The amendments are also reasonable, because they prohibit vendors from either denying access to the records by refusing to allow copying of the records or allowing the vendors time to "create" records. These

amendments are necessary to protect the integrity of the program and comply with 42 CFR, parts 455 and 456, and section 431.107.

The amendment beginning with the phrase "If requested, a vendor must help" and ending with "on the day of the audit" is reasonable, because given the various possible modes of storing a vendor's data, the department may need help from the vendor to duplicate records. The amendment also reiterates that access and duplication of the records must take place on the day of the audit. This amendment is necessary to protect the integrity of the program and to comply with 42 CFR, parts 455 and 456, and section 431.107.

**9505.2197 Vendor's Responsibility for Electronic Records**

**Item A**. Item A is reasonable because it notifies vendors that their use of electronic records and signatures does not excuse them from complying with all documentation rules and laws and other laws and rules governing access to records. It is necessary to protect the integrity of the program and to remind interested parties that they must comply with parts 9505.2175, 9505.2180, 9505.2185, and 9505.2195, and 42 CFR, parts 455 and 456, and section 431.107 (b), and Minnesota Statutes, section 256B.27, subdivision 3.

**Item B.** It is reasonable to require that the vendor be responsible for all claims, because it protects the integrity of the program and reminds the vendor of their duties under parts 9505.2175 through 9505.2195.

**Items C and D.** Items C and D are reasonable, because they comply with Minnesota Statutes, sections 256B.064, subdivision 1a (5), and 256B.27, subdivision 3 that allow the commissioner to review records and impose sanctions against a vendor who does not allow the state reasonable access to examine necessary records. It is necessary to require that the commissioner have access to records to protect the integrity of the program and conduct investigations as required. It is also reasonable to require vendors who store records electronically to comply with documentation rules, regulations and laws to ensure compliance with parts 9505.2175, 9505.2180, 9505.2185, and 9505.2195 and 42 CFR, part 455 and 456 and section 431.107 (b).

**Item E, Subitem (1)**. It is reasonable and necessary to require that vendors comply with Minnesota Statutes, section 325L.09, because that law governs electronic records.

**Item E, Subitems (2) and (3).** Subitems (2) and (3) are reasonable, because they require electronic records and signatures to comply with other documentation rules and laws regarding health service records. It is necessary to protect the integrity of the program and to comply with parts 9505.2175, 9505.2180, and 9505.2185, and 42 CFR, parts 455 and 456, and section 431.107 (b).

**Item E, Subitem (4)**. The requirements of subitem (4) are reasonable and necessary, because they require that vendors comply with Minnesota Statutes, chapter 325L and data privacy regulations and laws.

**9505.2200 Identifying Fraud, Theft, Abuse, or Error.**

**Subpart 1. Department investigation**. The deletion of the word "or" and addition of the words "or error" is a technical change to comply with changes made to Minnesota Statutes, section 256B.064, subdivision 1c.

**Subpart 4. Determination of investigation.**

**Item A**. The addition of the phrase "and program payments were properly made" is reasonable for determining whether recovery of funds is necessary. The added phrase is also necessary to comply with part 9505.0465, which requires the department to recover payments that were erroneously or fraudulently obtained.

**Items B and C.** Items B and C contain technical changes to comply with Minnesota Statutes, section 256B.064, subdivision 1c.

**Subpart 5. Postinvestigation actions. Item A**.

Subitem (4). The addition of the terms "peer review mechanism or licensing board" is reasonable, because it clarifies the meaning of state regulatory agency. The amendment is necessary to notify providers about the post-investigatory actions that the department may take and protect the integrity of the program.

Subitem (5). The deletion of the word "or" is a technical change that is necessary because of the addition of subitems (7) and (8).

Subitem (7). The addition of subitem (7) is reasonable to protect MHCP vulnerable recipients from abuse that may have been discovered during the course of the investigation. The requirement was moved from part 9505.2210. This amendment is also necessary to protect the integrity of the program.

Subitem (8). This amendment is reasonable, because it notifies recipients that one effect of the investigation is to place the recipient in the restricted recipient program. It is also reasonable, because it ensures that recipients receive appropriate medical care and that program dollars are used most effectively. This amendment is necessary to protect the integrity of the program.

**9505.2205 Imposition of Vendor Sanctions.**
The change to this part is a technical change. For the sake of clarity the vendor and recipient post investigation actions have been separated into two distinct rule parts. Vendor penalties remain in this rule part. Recipients are discussed in part 9505.2207. The deletion of the language beginning with "The commissioner shall consider.." and ending with the phrase "in addition the" are technical changes. The requirements set out in the deleted language were moved to part 9505.2207. The addition of "The" is a

technical change. The addition of "on a vendor" is reasonable and necessary to clarify that these penalties pertain to vendors.

**Items A and B.** In items A and B the addition of the term "error" is a technical change to reflect changes made to Minnesota Statutes, section 256B.064, subdivision 1c.

**Item C**. Item C was deleted because the language set out a factor that proved to be difficult to determine. It was impractical to accurately determine the "willingness of a vendor or recipient to comply…", because the determination was too subjective.

**Item E.** Item E has been moved to part 9505.2207.

**9505.2207 Placement of Recipient in the Restricted Recipient Program.**

It is reasonable and necessary to distinguish the penalties imposed on a vendor from the actions taken by the department regarding a recipient. The requirements in this part were moved from part 9505.2205 and modified and placed in this rule part to distinguish the placement of a recipient in the Restricted Recipients Program from a vendor penalty. When a recipient is placed in the Restricted Recipients Program the recipient does not lose benefits. Placement in the program is not a denial, reduction or termination of benefits. However, a vendor penalty usually results in a payment of money by the vendor to the state, a restriction on their services or termination of their vendor status. It is reasonable to require the commissioner to decide to place a recipient in the restricted program according to the standards in part 9505.2200, because these standards are intended to protect the integrity of the program and the standards are not substantially changed by these amendments.

**9505.2210. Administrative Sanctions For Vendors.**

The words "for vendors" have been added to this part for clarification**.** The amendments to this part carry out the separation of vendor restrictions from the Restricted Recipient Program for recipients. Please see explanation of separate results for vendor and recipient in part 9505.2205 of this statement of need and reasonableness.

**Subpart 2. Nature of administrative sanction. Item A**.

Subitem (1). "Referral to the appropriate peer review mechanism or licensing board" has been deleted from this rule part. The deletion is reasonable, because referral to a board is not a penalty imposed by the department. The department may need to be able to refer matters to the various boards when it discovers a licensing board matter during the course of an investigation, not after the imposition of a penalty.

Subitem (5). The deletion of the term "restricting" and addition of the words "lockout of" is a technical change which accurately reflects the federal language in 42 CFR, section 431.54 (f).

**Subpart 2, Item C, and Subpart 3.** The requirements in subpart 2, item C and subpart 3 have been moved to part 9505.2238. The provisions deal with recipient restrictions. Please see the explanation of separating vendor requirements from recipient requirements at part 9505.2205.

**9505.2215 Monetary Recovery**

**Subpart 2. Methods of monetary recovery**.

**Item C.** Item C is a technical change, because the language "money described in subpart 1" is not necessary.

**9505.2220 Monetary Recovery; Random Sample Extrapolation.**

**Subpart 1. Authorization**. Deletion of the words "of money erroneously paid" is reasonable, because monetary recovery and the potential need for a random sample isn't limited to situations where money was erroneously paid. A random sample may be necessary in fraud or abuse recoveries as well. The language change is necessary to protect the integrity of the program.

The deletion of the word "provider" and addition of the word "vendor" is a technical change to reflect the change in terms throughout the rule.

**Subpart 2. Decision to use samples**. Changes to Subpart 2 and items A and B are technical terminology changes that were made to clarify the rule.

**Item C**. Item C is necessary, because it defines one of the parameters for conducting a random sample. Item C is reasonable, because the standards support determining the amount of recovery through the use of the most practical method available. Use of the standard will save state resources.

**Subpart 3. Statistical Method**. Substituting the term "statistical" for the term "sampling" is a technical change.

**Item A**. The addition of the language in item A is reasonable, because it clarifies that the department may employ other means of statistical sampling to arrive at the best and most accurate results of the sampling. The language prevents the department from being limited to using one type of sampling. The language is necessary to protect both the department and vendors by allowing the department to use the most appropriate statistical sampling method for the situation.

**Items B and C.** Items B and C contain technical changes made to clarify the rule.
**Item D**. The changes made to item D define the sample size. These changes are reasonable and necessary to clarify the department's actions. The changed requirements are reasonable, because they are consistent with accepted standards for samples.

**Item E.** Item E is reasonable, because it gives notice and clarifies the outcome of using the statistical sample. The method described in this item is reasonable, because it is consistent with accepted standards for extrapolation from a sample to the population. This item is necessary to protect the integrity of the program.

**9505.2230 Notice of Agency Action.**

**Subpart 1. Required written notice**. The addition of the phrase "placement in the Restricted Recipients Program" is a technical change. This amendment is consistent with other changes made regarding the change from a system of restrictions to the Restricted Recipients Program. It is necessary and reasonable to notify the recipient about placement in the Restricted Recipient Program so that the recipient can comply with the program requirements and to meet requirements for notice to recipients at 42 CFR, section 431.54 (e).

**9505.2238 Placement in Restricted Recipient Program.**

**Subpart 1. Effect of placement**. Subpart 1 is necessary and reasonable, because it gives DHS the means to coordinate medical services for recipients who use health services in a manner that results in unnecessary costs to the MHCP or use health services that are not medically necessary. This subpart is reasonable because it does not reduce, deny or terminate medical services for MHCP recipients. This subpart is necessary to protect the integrity of the MHCP. The intent of this proposed subpart was met by parts 9505.2165 subpart 11 item B, in the existing rule, which is proposed to be repealed along with part 9505.2210, subpart 2, item C.

The addition is reasonable, because it notifies the recipient about the duration of the recipient's participation in the restricted recipient program. The department's policy has been to place recipients in the program for a period of twenty four months of eligibility. By adding this language to the rule it notifies recipients of the actual period of time they will be in the program, which is twenty four months of eligibility, but not necessarily twenty four consecutive months. The addition of the following sentences to the proposed rule: "(A) recipient will be given thirty days to designate specific providers. At the end of the thirty days the department will designate specific providers for a recipient who has failed to designate specific providers." is reasonable, because it provides the opportunity for the recipients to choose their providers. The method of provider selection is in keeping with 42 CFR, section 431.51, Free Choice of Providers, but sets an end date after which DHS can proceed with the placement in accordance with part 9505.2230.

The last sentence of this subpart is reasonable. It explains that the restricted recipient program includes recipients who participate in this fairly new MHCP covered service.

**Subpart 2. Change in selected providers**. Subpart 2 is reasonable, because the purpose of the restricted recipient program is to coordinate health care services that are used by recipients, who have been found to have either used medical services needlessly or in a manner that has resulted in unnecessary costs to the MHCP. Limiting how often and

when recipients can change their designated providers is necessary to ensure that the recipients' care will be better coordinated and to protect the integrity of the program.

Item A is reasonable and necessary to continue the recipients' access to care as required by 42 CFR, section 431.54 (e).

Item B is reasonable and necessary to continue the recipient's access to care.

Item C is reasonable, because it continues the recipients' ability to obtain health services, but also protects DHS' interests to ensure that the recipient's medical services continue to be coordinated by limiting how often a recipient can change providers. This item is also necessary to protect the integrity of the program.

**Subpart 3. Placement renewal**. This subpart is reasonable, because it articulates current practices and provides additional notice to recipients regarding expectations of compliance with program rules. This subpart is necessary to protect the integrity of the program.

This subpart has changed the renewal period from twenty four to thirty six months of eligibility. At the end of a recipient's placement in the Restricted Recipients' Program, program staff reviews the medical claims of the recipients. If the staff determines that the recipient has failed to comply with program criteria, the recipient's placement is renewed for an added thirty six month period. This change is reasonable, because extending the period of placement by thirty six months after the initial placement will reduce program and administrative costs by limiting the frequency of renewals. The amendment is also reasonable, because these recipients whose placement is renewed, have failed to comply with program rules during the initial twenty four month period of eligibility and need additional supervision and training. The change is necessary to protect the integrity of the program.

**Subpart 4. Emergency health services**. Subpart 4 is a technical change and was moved from part 9505.2210, subpart 3 to this rule part. It is necessary and reasonable to provide emergency health services to a recipient. It is reasonable to require that the vendor document the emergency circumstances to protect the integrity of the program. The provision is required to comply with 42 CFR, section 431.54 (c).

**9505.2240 Notice to Third Parties.**

**Subpart 1. Notice about vendors**. Items B and C. The addition of subitem (1) and deletion of subitem (3) are technical changes to reflect the changes made to part 9505.2210.

**Subpart 2. Information and notice about recipients**. The changes and deletions to this subpart regarding the restricted recipient program are technical changes to reflect other language changes throughout the rule.

The sentence "(T)he recipient's placement in the restricted recipient's program must be indicated in an eligibility verification system." Is a technical change needed to protect the integrity of the program. The sentence was moved from part 9505.2165, subpart 11 to this rule part.

**9505.2245. Appeal of Department Action.**

**Subpart 1. Vendor's right to appeal**. Item C. The deletion of the term "medical assistance" is a technical change that reflects the use of the term "program" throughout the rule instead of the term "medical assistance program".

## CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

August 30, 2007