



Protecting, maintaining and improving the health of all Minnesotans

December 2, 2002

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REVISOR OF STATUTES

Governor Jesse Ventura

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons
Revisor of Statutes

Chairs of the Policy and Funding Committees and Divisions
with Jurisdiction over the Minnesota Department of Health
[A complete list of addressees is at the end of the letter.]

Subject: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by
Minnesota Statutes, Section 14.05, Subdivision 5.

Minnesota Statutes, section 14.05, subdivision 5, states:

“By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.”

Note that the Minnesota Department of Health (MDH) obsolete rules report for 2002 will be very similar to our report for 2001. For the rules listed in our 2001 report, we stated that "MDH would prefer to have them repealed using the legislative process, as was done during the 2001 Legislative Session for rules identified by agencies in their December 1, 2000, obsolete rules reports.... MDH will cooperate with the Legislature and the Governor's Office as necessary to accomplish this." Also note that the Legislature took no action to repeal obsolete rules identified in 2001, hence we have the same rules to report as obsolete.

We have identified the following rules as obsolete for this report:

- 2002 (1) Chapter 4667 – Home Care Providers; Fees. These rules establish the fees that governed the temporary registration of home care providers prior to the full implementation of the licensure program. These rules are no longer required and are recommended for repeal.
- 2002 (2) Part 4735.0200 – Licensure Fees. These rules establish the licensure fees for hospitals, nursing homes, and other health care providers. However, these fees have been subsequently set in statute. (See Minnesota Statutes, section 144.122.) The rule language is obsolete and these rules are recommended for repeal.
- 2002 (3) Part 4685.1010, subpart 8 - Continuity of Care in the Event of Contract Termination. This rule is duplicative because it applies to HMOs only. The Legislature placed the same language into Minnesota Statutes, section 62Q.56, and expanded the scope to include all health plan companies that require the enrollee to select a primary care provider. The statute, as amended in the 2001 Legislative Session, is substantively the same as the rule, but more comprehensive. Therefore, the rule is unnecessary.
- 2002 (4) Chapter 4647 - Health Care Equipment Loan Program. These rules were promulgated in 1985. The rules established administrative procedures for review of applications from hospitals to obtain funds at a below market interest rate. The market interest rate fell shortly after the revenue bonds to create the fund were issued, and hospitals did not apply to the Health Care Equipment Loan Program because they could obtain loans at a lower interest rate elsewhere. Therefore, the rules were never used and the program never operated. The authority for the rules, Minnesota Statutes, section 446A.08, was repealed in 1994 (Minnesota Laws 1994, chapter 632, article 2, section 67), therefore, chapter 4647 is recommended for repeal.

- 2002 (5) Certain parts and subparts of chapter 9000 – Office of Mental Health Practice; Mental Health Practice. Because the Office of Mental Health Practice (OMHP) does not have a filing process, parts 9000.0050, 9000.0110, 9000.0120, 9000.0130, 9000.0140, 9000.0150, and 9000.0160, which describe filing, are obsolete and are, therefore, recommended for repeal. Part 9000.0100, subparts 2 and 3, are also recommended for repeal because OMHP does not have an applicant process or a Board. Finally, part 9000.0100, subpart 7, and part 9000.0190, are recommended for repeal because the variance process is not recommended in OMHP statutes.
- 2002 (6) Parts 4700.2600 to 4700.4000 – Grants for Maternal and Child Health Services. These rules establish a process for allocating federal maternal and child health funds and state funds in the form of grants to assist in establishing and maintaining maternal and child health services. These rules implemented a previous statute regarding the same grant funds and should have been revised several years ago when the statute was changed. We sought further statutory changes in the 2001 Legislative Session and had planned to revise or repeal the rules once the new statute was in place. Our proposed language did not pass, therefore we have to consider whether to revise the rules to correspond to the current statute or to repeal them.
- 2002 (7) Part 4620.1800 - Maximum Permissible Formaldehyde Level In Housing Units. In the 20 years since these formaldehyde requirements were first enacted, the industry has developed voluntary product standards that negate the need for the less restrictive Minnesota statute and rule. In addition, the federal government, through the Department of Housing and Urban Development, has promulgated rules for manufactured home construction and safety standards that preempt the state rules. CFR Title 24, Chapter XX, part 3280, subpart D, sec. 3280.308 addresses formaldehyde emission controls for certain wood products that are lower than the state limits. MDH recommended repeal of the statutory language (Minnesota Statutes, section 144.495) during the 2001 Legislative Session; this repeal language did not pass. Although we still recommend that this rule be repealed, the lack of legislative support indicates that this is a low priority item. MDH has no immediate plans to repeal the rule.
- 2002 (8) Parts 4620.3900 to 4620.4900 - Carbon Monoxide and Nitrogen Dioxide in Enclosed Arenas. These rules for enclosed arena have not been updated since 1973 and they are obsolete. Many arenas are using new technology, such as electric ice resurfacers, which do not release carbon monoxide or nitrogen dioxide. If high levels of carbon monoxide or nitrogen dioxide are released from

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internal combustion engine-powered machines, it tends to be an isolated event. Routine inspections rarely find violations of the air standards. With so few ice arenas, just over 200 in Minnesota, the cost of enforcement per arena is relatively high. MDH recommended repeal of the statute (Minnesota Statutes, section 144.1222, subdivision 3) and rule during the 2001 Legislative Session; this repeal language did not pass. Although we still recommend that this rule be repealed, the lack of legislative support indicates that this is a low priority item. MDH has no immediate plans to repeal the rule.

2002 (9) Part 4761.1230 - Lead-Safe Certification Of Housing. This rule originally was used to administer the lead-safe housing law found at Minnesota Statutes, section 144.9511. This statute was repealed in 1999. Therefore MDH no longer has authority to administer or enforce the associated rule. MDH recommended repeal of the rule during the 2001 Legislative Session; this repeal language did not pass. Although we still recommend that this rule be repealed, the lack of legislative support indicates that this is a low priority item. MDH has no immediate plans to repeal the rule.

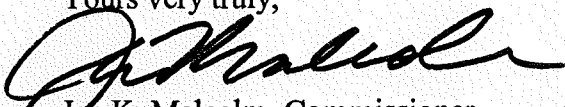
* For most of the rules listed in this report, MDH would prefer to have them repealed using the legislative process, as was done during the 2001 Legislative Session for rules identified by agencies in their December 1, 2000, obsolete rules reports. Representative Marty Seifert lead this legislative initiative in 2001. MDH will cooperate with the Legislature and the Governor's Office as necessary to accomplish this.

In last year's report, we identified these same nine sections of MDH rules as being obsolete, unnecessary, or duplicative. None of these obsolete rules were repealed. We had hoped that the Legislature would repeal the rules, as was done in the 2001 Session, but this did not happen.

If you have any questions regarding this report, please contact:

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Yours very truly,



Jan K. Malcolm, Commissioner
Department of Health

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This is a complete list of addressees for MDH's 2001 Annual Obsolete Rules Report.

Governor Jesse Ventura

Greg Hubinger, Director
Legislative Coordinating Commission

Michele Timmons
Revisor of Statutes

Senator Becky Lourey, Chair
Senate Health and Family Security Committee

Senator Linda Berglin, Chair
Health, Human Services and Corrections
Budget Division

Senator John Marty, Chair
Senate Environment and Natural Resources
Committee

Senator Dallas Sams, Chair
Senate Environment, Agriculture, and
Economic Development Budget
Division

Senator Jim Vickerman, Chair
Senate State and Local Government
Operations Committee

Senator Jane Ranum, Chair
State Government Budget Division

Representative Lynn Boudreau, Chair
House Health and Human Services Policy
Committee

Representative Fran Bradley, Chair
House Health and Human Services Finance
Committee

Representative Tom Hackbarth, Chair
House Environment and Natural Resources
Policy Committee

Representative Dennis Ozment, Chair
House Environment and Natural Resources
Finance Committee

Representative Jim Rhodes, Chair
House Governmental Operations and
Veterans Affairs Policy Committee

Representative Bob Gunther, Chair
House Jobs and State Government Finance
Committee

Note: normally, MDH sends a copy of this report to the ranking minority party member of each committee. However, since committee membership has not been fully set at this date, we are only sending copies to the Legislators who will be the committee chairs for the 2003 Session.