



Protecting, Maintaining and Improving the Health of All Minnesotans

November 21, 2017

Governor Mark Dayton

Greg Hubinger, Director
Legislative Coordinating Commission

Paul Marinac
Revisor of Statutes

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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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.

In 2017, the Minnesota Department of Health (MDH) has identified Minnesota Rules 4630.2000 as being obsolete, unnecessary, or duplicative. This part governs licensing fees for mobile home parks and is obsolete because the fees that are now contained in Minnesota Statutes, section 327.15 supersede them.

In last year's report, we identified the following five sections of MDH rules as being obsolete, unnecessary, or duplicative. The current status of these rules appears in the respective rules' section:

1. Newborn Screening—Minnesota Department of Health has determined that repealing rules 4615.0300 to 4615.0700 is justified because the 2014 Legislature added explicit provisions to the Newborn Screening statutes (Minnesota Statutes, sections 144.125 to 144.128), making the rules either obsolete, duplicative or redundant. Status: MDH will repeal the following identified rules using the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895:

4615.0300—This part is obsolete because most duties of the duties stated are defined in Minn. Statutes 144.125.

4615.0400—This overlaps and thus partially duplicates language included in Minnesota Statutes, section 144.125 and thus is unnecessary.

4615.0500—This part is obsolete because it does not include all conditions currently on screening panel and does not reflect parents' rights to opt out for any reason. It also duplicates language in Minnesota Statutes, section 144.125.

4615.0600—This part is now unnecessary because it prescribes basic, standard MDH practice that is integral to operating the program.

4615.0700—This obsolete part does not require reporting of all conditions currently on screening panel and includes an incorrect reporting address.

2. Tuberculosis testing—Minnesota Department of Health (MDH) has identified the following MDH rules that govern tuberculosis testing of employees and residents in health care facilities as being obsolete, unnecessary, or duplicative. In 2013, the Legislature enacted Minnesota Laws, chapter 45, which included new statutes that supersede them, as specifically described below. Status: MDH will repeal the following identified rules using the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895:

4640.0100, subpart 12, and other specific phrases listed below—these definitions for hospital licensing and operation rules refer to TB hospitals, but Minnesota no longer has TB hospitals:

- “with tuberculosis or” in subpart 3;
- “a tuberculosis hospital” in subpart 10;
- “tuberculosis” in subpart 11;

4640.4400–4640.6000—these hospital licensing and operation rules, which govern staff of TB hospitals, are superfluous because Minnesota has no TB hospitals.

4655.3000—these requirements for specific tests for nursing and boarding care home employees are now outdated because of Minnesota Statutes, sections 144A.04 and 144.56, subdivision 2c, which the Legislature enacted in 2013.

4655.4700, subpart 1—the following specific language for a physical exam of boarding care home residents at admission requires a now-obsolete testing method:

“a report of a standard Mantoux tuberculin test or, if the Mantoux test is positive or contraindicated, a chest X-ray within three months in advance of admission and as indicated thereafter;”

4658.0450, subpart 1, delete item H—these penalties refer to parts 4658.0810 and 4658.0815, which are superseded by Minnesota Statutes, section 144A.04, a statute passed in 2013.

4658.0800, subpart 4, item E, delete “a tuberculosis program as defined in part 4658.0810,” and item F, delete “, including a tuberculosis program as defined in part 4658.0815.” These references are obsolete because 4658.0810 and 4658.0815 are superseded by Minnesota Statutes, section 144A.04, a statute passed in 2013.

4658.0810—nursing home providers need no longer use this resident tuberculosis program since Minnesota Statutes, section 144A.04, a statute passed in 2013, makes this language obsolete.

4658.0815—nursing home providers need no longer use this employee tuberculosis program since Minnesota Statutes, section 144A.04, a statute passed in 2013, makes this part obsolete.

4658.0850—these penalties are in reference to parts 4658.0810 and 4658.0815, which are superseded by Minnesota Statutes, section 144A.04, a statute passed in 2013.

4664.0190, subpart 3, item L—delete “, as required by part 4664.0290, subpart 6.”—this reference was made obsolete by Minnesota Statutes, section 144A.752, subdivision 4, a statute passed in 2013.

4664.0290, remove subparts 1–6 and subpart 8, A–F—hospice providers need no longer use these infection control requirements because Minnesota Statutes, section 144A.753, subdivision 4,* a statute passed in 2013, makes this language obsolete.

*Note: The enacting legislation, Laws 2013, Chapter 43, section 18, erroneously codified this new subdivision in “Minnesota Statutes, section 144A.752, subdivision 4.” The Revisor’s Office has since re-codified the provision into section 144A.753.

4664.0290, change subpart 8 to read, “For a violation of subpart 7, the stated fine shall be \$300.”—hospice providers need no longer use these infection control requirements because Minnesota Statutes, section 144A.753, subdivision 4, a statute passed in 2013, makes this language obsolete.

4665.1200, item A—supervised living facilities need no longer follow this staff health provision because a statute passed in 2013, Minnesota Statutes, section 144.50, subdivision 6a, makes this language obsolete.

4675.0500, item I—governs outpatient surgical centers medical staff. Minnesota Statutes, section 144.55, subdivision 3(c) a statute passed in 2013, makes this language obsolete.

3. Certified Food Manager Certification Fees—Minnesota Rules 4626.2015, subparts 3(c) and 6(b)—Certified Food Manager certification fees are obsolete and duplicative because Minn. Stat. § 157.16 imposes different fees that supersede the rule. Status: MDH will repeal these rules in its proposed revision of Minnesota Rules, chapter 4626, OAH Docket No. 82-9000-34708. We will not repeal them using the expedited process under Minnesota Statutes, section 14.3895.

4. Local Public Health Agencies; Merit System—Chapter 4670, Local Public Health Agencies; Merit System, is obsolete because the Legislature repealed its statutory authority, Minnesota Statutes, section 144.071, by Laws 2014, chapter 192. Status: MDH will repeal these rules using the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895.

5. Accrediting Environmental Laboratories—Since 2010, we have identified obsolete rules in Minnesota Rules, Chapter 4740, which governs accrediting environmental laboratories. In 2009, the Legislature amended Minnesota Statutes, sections 144.98 and .99, requiring the commissioner to accredit labs according to national laboratory standards and charging the fees stated in the amended statute. Consequently, we have included these rules in our obsolete rules report in each subsequent year. Status: In 2017, MDH has again included the rules previously identified as duplicative or obsolete for the reasons stated, though we have revised this list for accuracy and completeness. We will repeal the following rules using the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895:

4630.2000—current fees are found in Minnesota Statutes, section 327.15.

4740.2010, subpart 39 — “notarial officer” is a defined term that is no longer used in Minnesota Rules 4740.2050, subpart 1, but is defined in statutes elsewhere.

4740.2050, subpart 1, item C with the phrase beginning “The laboratory must supply...”, —MDH is converting the lab certification program’s application to an online form using an electronic signature, so this item is superfluous.

4740.2050, subpart 1, item D (1) to (2)—these requirements are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 1, item D (3) to (6), and item E—these requirements are superseded by Minnesota Statutes, section 144.98, subdivision 6.

4740.2050, subpart 2, item C with the phrase beginning “With each change in location...”

—the information required here is now included in laboratory documentation required with application under Minnesota Statutes, section 144.98.

4740.2050, subpart 3—these requirements are superseded by Minnesota Statutes, section 144.98, subdivision 3a(b).

4740.2050, subpart 7, item B—the required items are listed in national standards and adopted in Minnesota Statutes, section 144.98.

4740.2050, subpart 7, item D—these requirements are superseded by Minnesota Statutes, section 144.98, subdivision 7.

4740.2050, subpart 10 (5), remove “at the frequency specified in part 4740.2070.”

4740.2050, subpart 12, item A, remove “unless a reciprocity agreement exists.”

4740.2050, subpart 12, item C, remove “not to include an on-site inspection fee for out of state laboratories.”

4740.2050, subpart 12, item A, with the phrase beginning “Fees include the on-site...”,—these fees and their frequency of payment are requirements that are superseded by Minnesota Statutes, section 144.98.

4740.2050, subpart 12, item C—these requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subdivision 6(d).

4740.2050, subpart 12, item F, remove the phrase “...except the fee for out-of-state inspection under subpart 16, item D”—requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subdivision 6(d).

4740.2050, subpart 12, item F, remove the last sentence beginning “Only fixed-base laboratories located within...”, —requirements for approval of reciprocal agreements are in the national standard (adopted in Minnesota Statutes, section 144.98) and as replaced by Minnesota Statutes, section 144.98, subdivision 6(d).

4740.2050, subpart 16, item A, remove the phrase “..., subdivision 3.”—this change reflects the reference change made in Minnesota Statutes, section 144.98.

4740.2050, subpart 16, item C, remove the phrase “..., subdivision 3.”—this change reflects the reference change made in Minnesota Statutes, section 144.99.

4740.2050, subpart 16, item D—current rule language contradicts Minnesota Statutes, section 144.98.

4740.2060, subpart 2, item C; subpart 3, item C; subpart 4, item C; and subpart 5, item C; remove the phrase “...as required under part 4740.2050, subpart 16, item C”—repeal of a prior reference in this rule requires repeal of the references here.

4740.2060, subpart 5, item C—remove “subpart 1, and fees”

4740.2065, subpart 8—required items listed in national standard (adopted in Minnesota Statutes, section 144.98)

4740.2070, subpart 2; subpart 3; subparts 5 to 6; and subpart 7, items A, B, and D—the required items are now listed in Minnesota Statutes, section 144.98, eliminating the need for these references.

4740.2070, subpart 8, items A, B, and C—the required items here are now listed in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2087, subpart 2, items A and C—this rule language contradicts requirement in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2089, item C—these required items are listed in the national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 4, item A, remove the second sentence—not included in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 5, item B, remove “before sample preparation or extraction”—not included in national standard (adopted in Minnesota Statutes, section 144.98).

4740.2100, subpart 9, item A—the national standard includes a broader list of technologies affected by selectivity and consequently this item is out of date.

The above-listed sections 1–5 contain MDH’s rules identified as obsolete from previous years’ reports. For sections 1, 2, 4, and 5, MDH will repeal all these rule subparts, items, and any related portions of rules inadvertently overlooked, plus the rules superseded by statute, using the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895. As stated above, MDH will repeal the rules identified in section 3 in a separate rules revision.

For several years, plans to repeal these previously identified obsolete rules have met with other Department priorities. MDH decided in its judgment that no harm would befall the public if this project were postponed further. Early in 2018, however, MDH will use the expedited process for repealing obsolete rules under Minnesota Statutes, section 14.3895, to repeal all these rules,

subparts, and portions of rules, along with any related subparts or portions of rules inadvertently overlooked; plus, the rules superseded by statute.

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

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Yours very truly,



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