

Minnesota Department of Human Services

Office of Inspector General, Surveillance and Integrity Review Section

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number 4567

Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220

Introduction. The Minnesota Department of Human Services intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on December 31, 2020, the Department will hold a virtual public hearing on the proposed rule changes. **An Administrative Law Judge will conduct the hearing** starting at 9:30 a.m. on Thursday, January 28, 2021. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after December 31, 2020 and before January 28, 2021.

For video and audio connection to the virtual hearing, join through an internet connection, such as with a computer or tablet:

Enter <https://minnesota.webex.com>

Meeting number: 146 976 9291

Meeting password: TsYYgtyA232

For audio connection only, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 146 976 9291

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is:

Vanessa Vogl

Minnesota Department of Human Services

Administrative Law Office

PO Box 64254

Saint Paul, MN 55164-0254

Email: Vanessa.Vogl@state.mn.us

Phone: 651-431-3168

Fax: 651-431-7714

TTY users may call the Department at (800) 627-3529. You may also review the proposed rule and submit written comments via the [Office of Administrative Hearings Rulemaking eComments website https://minnesotaoah.granicusideas.com/discussions](https://minnesotaoah.granicusideas.com/discussions).]

Subject of Rules and Statutory Authority. The proposed rules are about the Department's use of random sample extrapolation in monetary recovery for fraud, theft, abuse, and other improper claims related to the Minnesota Health Care Programs (MHCP). As it is currently written, Minnesota Rules, part 9505.2220 does not provide clear guidance about the Department's sampling procedures, references a textbook published in 1977 that was not intended to guide government agencies in the recovery of overpaid public funds, and requires the Department to issue a notice to a provider of its sampling method before drawing the sample. The proposed amendment to part 9505.2220 will allow the Department to efficiently recover MHCP funds paid as a result of fraud, abuse, or error. The proposed amendment will enable the Department to provide more detailed guidance to the state and federal contractors who regularly use statistical sampling to determine overpaid MHCP funds in their investigations, while still allowing the Department flexibility to adjust its methods to fit the variety of different sampling scenarios that arise in its investigations. The proposed amendment will also better inform providers of what to expect when their audits include a statistical sample.

The current rule language uses technical terms without defining them. The proposed amendment creates a subpart that contains definitions related to statistical sampling. Providing definitions helps to clarify the random sample extrapolation process. The proposed amendment also identifies certain sampling software used for reviewing claims, but gives the Department flexibility to use other generally accepted software and methods to maximize its responsiveness to the circumstances of each investigation. And, like the current language, the proposed amendment sets certain parameters around when the Department may use sampling and extrapolation to calculate monetary recovery, as well as when a provider will be required to pay an overpayment determined through this method.

The statutory authority to adopt the rules is Minnesota Statutes, section 256B.04, subdivision 10. A copy of the proposed rules is published in the State Register and available on the Department's website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>. A free copy of the rules is also available upon request from the agency contact person listed above.

Comments. You have until 4:30 p.m. on Thursday, December 31, 2020, to submit written comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comments must be in writing and received by the agency contact person by the due date. Comments are encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Thursday, December 31, 2020. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under Minnesota Rules, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for January 28, 2021, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also contact Vanessa Vogl after December 31, 2020 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Jessica A. Palmer-Denig is assigned to conduct the hearing. Judge Palmer-Denig can be reached at the Office of Administrative Hearings, 600 North Robert

Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments and responses to do so using the [Administrative Hearings' Rulemaking eComments website](https://minnesotaoah.granicusideas.com/discussions) <https://minnesotaoah.granicusideas.com/discussions>. If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by fax addressed to Judge Palmer-Denig at the address or fax number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the Department of Human Services or on the agency's website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>. This rule hearing procedure is governed by Minnesota Rules, parts 1400.2000 to 1400.2240, and Minnesota Statutes, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. The SONAR is also available on the Department of Human Service's website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>.

Lobbyist Registration. Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

9/10/2020

Date



Amy Akbay

Chief General Counsel

Minnesota Department of Human Services