Office of Inspector General, Surveillance and Integrity Review Section

Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, *Minnesota Rules*, Part 9505.2220; Revisor’s ID 4567

OAH Docket number 71-9029-35836

**EXHIBIT I-2:**

WRITTEN COMMENTS ON THE PROPOSED RULE THAT INCLUDE A REQUEST FOR HEARING
December 20, 2020

ATTN: Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am the owner of Rainbow Health Kare, Inc., a PCA agency located in St. Paul, MN. Rainbow Health Kare, Inc. has been in business since 2003 and provides PCA services to clients throughout Minnesota and Wisconsin. Our clients are people with developmental, intellectual, and physical disabilities including autism, traumatic brain injury, and mental health needs. Our services allow people with disabilities to continue to live at home and to be a part of their communities. Rainbow Health Kare, Inc.’s clients come from diverse communities. The majority of them are Hmong, Laotian, Cambodian, Vietnamese, Karen, Burmese, Hispanic, Indian, and African-Americans. Personal care assistance is the most diverse long-term service and support in Minnesota; and, it is growing more diverse over time. In January of 2018, 61% of people who used personal care assistance were people of color or American Indian.

This letter is Rainbow Health Kare, Inc.’s response to the notice of possible amendment to rules of the Minnesota Department of Human Services governing the use of random sample extrapolation in monetary recovery (MN Rules, Parts 9505.2220; Revisor’s ID Number 4567).

We believe the rule in its current form is robust and provides greater protection for providers against erroneous extrapolated recoveries than the proposed revision. The current language requires adherence to specific statistical procedures for drawing systematic random samples of claims, calculating values, and performing extrapolation as published in a specific reference. The rule was last amended in 2008 and has been applied by the Commissioner as recently as 2017 in reversing an erroneous extrapolation that used an inadequate sample size. In that case (In the Matter of the SIRS Appeal of The Lazarus Project), the Commissioner also held that the federal Medicare Program Integrity Manual (PIM) “methodology does not conflict with the methodology found in Minn. R. 9550.2220.” We are concerned that recoveries based on less rigorous statistical methodologies could put well-intentioned providers acting in good faith out of business, especially providers that are minority-owned and women-owned.

The current rule further protects providers by requiring the Department to tell the provider the sampling method intended to be used prior to drawing the sample. This allows the provider to obtain an analysis of the proposed sampling method, if they so choose, to challenge it based on valid statistical arguments.

Thank you for the opportunity to comment as part of this process. Please feel free to contact me with any questions at phvang@rainbowhealthkare.com or (651) 292-9900.

Sincerely,

Pang Vang  
Owner/Office Manager.
December 29, 2020

ATTN: Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am Mai Tia Ly, an owner of Big Brother’s Home Health Care, LLC, a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like Big Brother’s Home Health Care, LLC therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 651-494-9058.

Sincerely,

Mai Tia Ly,  
Big Brother’s Home Health Care, LLC
ATTN: Vanessa Vogl, Rulemaking Attorney
Department of Human Services, Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Phone 651-431-3168
Fax 651-431-7714
Email: Vanessa.Vogl@state.mn.us

AND

ATTN: Elizabeth Oji
Minnesota Department of Human Services
Office of Inspector General
PO Box 64982
Saint Paul, MN 55164-0982
Phone: 651-431-6316
Fax: 651-431-7569
Email: Elizabeth.Oji@state.mn.us

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

Hello Ms. Vogel and Ms. Oji,

Partners In Excellence does not support the proposed rules for Minnesota Rules, part 9505.2220 and requests this decision be moved to a public hearing. We understand the virtual public hearing is already set for Thursday, January 28th, 2021 at 9:30 am. We want to ensure the proposed amendments will not unfairly water down the statistical requirements for extrapolations in SIRS audits.

Around the country there is an increasing frequency of audits of Medicaid claims for ABA services, and this could easily apply to our CTSS or EIDBI services to persons with autism.

You will recall that, in 2012, several ATAM providers had their CTSS claims for 2007 through 2011 audited. It took over a year for the auditors from Maryland to complete their audit of a small sample of claims in their offices. Then it took another year and a half to receive the results of their audit.
that report in 2015, the auditors found a very small number of inconsequential errors. They found errors in data entry (for example, the wrong dates on progress notes), errors in personnel files (for example, a missing transcript), and errors in quality of documents (for example, no mention of “progress,” or an incomplete diagnostic workup).

However they extrapolated the small error rate in their sample, by multiplying the error rate across all of the claims over the five year period. That resulted in a SIRS recoupment order that each provider repay several million dollars each. This typically amounted to more than half of the agency’s annual income. Therefore the providers were forced to contest the results in order to survive. It took another three years to mediate and then win a successful reversal in a hearing with an Administrative Law Judge. The final result of the process was that each provider repaid only the actual erroneous claims, which amounted to an average of twenty thousand dollars. Of course the legal and administrative costs were immense. In addition, the providers had been forced to hire a national expert statistician to successfully contest the very complex statistical extrapolation procedure.

These audits were conducted under Section 6034 of the Deficit Reduction Act of 2005 (DRA) Medicaid Integrity Program, through the Centers for Medicare & Medicaid Services (CMS). This authority continues under Section 1936(d) of the Social Security Act (the Act), which directs the Secretary of Health and Human Services (HHS) to establish, on a recurring 5-fiscal year basis, a comprehensive plan for ensuring the integrity of the Medicaid program by combatting fraud, waste, and abuse.

Should we be part of a SIRS Audit, we want to ensure any errors found do not cause undue hardship on our organization so we can continue to serve the Autism Community and achieve our mission: to positively impact the life of each child through our unparalleled commitment and desire to see our clients reach their greatest potential.

Please contact myself or my Administrative Assistant with any questions.

Thank you for your consideration,
Deborah Thomas
Owner
Partners In Excellence
1509 Southcross Drive W
Burnsville, MN 55306
952-261-8426
dthomas@partnersmn.com

Carrie Mortensen
Administrative Assistant
Partners In Excellence
1509 Southcross Drive W
Burnsville, MN 55306
952-491-9884
December 31, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

RE: Proposed Amendment to the Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, Part 9505.2220; Revisor’s ID Number 4567

Dear Ms. Vogl:

Request for a Hearing

The Minnesota Department of Human Services (MDHS) issued a notice that it 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.

My name is Jennifer Larson and I am the Chief Executive Officer at the Holland Center. My address is 10273 Yellow Circle Drive, Minnetonka MN 55343.
I hereby request that the Department hold a hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220. I oppose the entire set of rules.

The reason for the request for a hearing and my proposed changes to proposed rules are more fully set forth in my comments, below.

Comments in Opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220

The Minnesota Department of Human Services (MDHS) requested comments on its possible amendments to the rules governing the use of random sample extrapolation in monetary recovery. 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).

MDHS alleges that, 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.

MDHS alleges that 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.

I am submitting the following comments in opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220.

Holland Center opposes the rule in general and specifically any recoupment that is based on a lack of evidence of overt, confirmed patterns of fraud.

Instead we would like MDHS to consider the following proposals suggested by my colleague Jay O’Neill, President of Behavioral Dimensions.

Agencies should be required to have policies and procedures in place to address potential fraudulent billing by their employees and incidental errors. These policies would follow CMS guidelines to follow the five basic self-audit rules behavioral health practitioners:

1. Develop and implement a solid medical record documentation policy if there is not one in place. If there is one in place, make sure the policy covers meeting Federal and State Medicaid regulations. The policy should address what actually happens in everyday practice.

2. Develop or use one of the available standard medical audit tools. The tool should cover the documentation policy criteria and coding standards as part of the review.
3. Choose a staff member who understands documentation and coding principles to select a random sample of records for a specific time period. Decide how many records should be reviewed, and then pull every “nth” chart for that time period.

4. Resist being the one to choose and audit your own charts. Most professionals can read their own writing and understand the meaning of records they wrote even if the documentation is not in the record. Removing bias is important. For best results, make the audit as realistic as possible.

5. Use the self-audit results for improving practice compliance. There is no real value in conducting a self-audit unless discovered issues are resolved. Review and analyze the audit findings. Identify the common documentation, coding, and billing problems, and solve the problems found. Then educate staff members and hold them accountable for making changes.

After implementing any corrective action, audit the process again to ensure improved compliance and successful implementation.

Have an internal auditing procedure that is followed

Correction plans

Evidence of Reimbursement of incorrect claims

Evidence of implementing correction plans as directed by state department of human service certifying and licensing agencies

Agencies with confirmed polies in place that are being implemented would not be eligible for any extrapolation calculations in cases where errors occur that are not shown to be a pattern of malpractice.

Minnesota Statutes Chapter 256B – Medical Assistance – contains no reference to the use of random sample extrapolation in monetary recovery. Random sample extrapolation in monetary recovery is not a requirement of state statutes and should not be used to calculate the amount of monetary recovery from a vendor.

The proposed language provides that “for the purposes of part 9505.2215, the commissioner is authorized to calculate the amount of monetary recovery from a vendor based upon extrapolation from a random sample of claims submitted by the vendor and paid by the program or programs.”

Part 9505.2215 provides that “the commissioner shall seek monetary recovery...from a vendor, if payment for a recipient’s health service under a program was the result of fraud, theft, abuse, or error on the part of the vendor, department, or local agency.”

The use of extrapolation from a random sample of claims to calculate the amount of monetary recovery from a vendor should be limited to instances where the commissioner is seeking
monetary recovery from a vendor if payment for a recipient’s health service under a program was the result of fraud or theft.

**The Department Failed to Follow the Guidance Provided by Its Own Expert**

The Department sought guidance from a statistician at the University of Minnesota in its preparation of the proposed rule amendment. The Department sent the statistician its draft of the proposed language and asked that the statistician provide an opinion on the coherence and mathematical integrity of the Department’s proposed rule. [See MDHS Statement of Need and Reasonableness (SONAR) p.7].

The statistician advised the Department to place the following parameters around the sample size determination:

The sampling plan and extrapolation method shall be chosen so that the anticipated margin of error for the population overpayment based on the full sample is no more than the larger of $ZZ$ or $XX\%$ of the total claims paid. The Department may, at its discretion, limit the full sample size to at most $YYYY$ claims. [Id.]

The statistician suggested that including this language would provide further guidance on the Department’s sampling procedures. The statistician recommended that the Department choose set values for $ZZ$, $XX\%$ and $YYYY$, and include those values in the proposed rule language. The statistician explained that both $ZZ$ and $XX\%$ required set values because choosing just one value for $ZZ$, or one value for $XX\%$, could result in a margin of error that would either be too small for a large provider, or too large for a small provider. Choosing a value for both $ZZ$ and $XX\%$ would allow the Department to adjust its sample size according to the size of the provider under review, such that a small provider could be subject to a sample size with a margin of error of $ZZ$, and a larger provider could be subject to a sample size with the margin of error determined by $XX\%$. This language would balance the need for accuracy against the time and cost of sampling. [Id.]

However, despite the specific recommendations of the statistician the Department consulted to ensure the mathematical integrity of the Department’s proposed rule, the Department did not follow their statistician’s advice. The Department asserted that it “believes that the determination of the margin of error is a decision that is best made on a case by case basis.”

The Department rejected the specific recommendations of its own statistician regarding the determination of sample sizes and sampling procedures. The complete abandonment of its statistician’s recommendations regarding setting parameters for sample size and margin of error is both arbitrary and capricious.

Very truly yours,

[Signature]

Jennifer Larson
Chief Executive Officer
Dear Ms. Vogl,

I am writing to request a public hearing on the proposed amendment to rules governing use of random sample extrapolation in monetary recovery, Minnesota Rules, part 9505.2220.

I respectfully request that Minnesota Department initiate a full rule making hearing to adjudicate whether proposed amendments to Minn. R. 9505.2220 are reasonable and necessary.

The reason I am requesting this hearing is that my agency The Lazarus Project has already fought to keep a non-statistically sound judgement against our agency from putting us out of business. Random human errors (not fraud) were conglomerated together to seek a massive extrapolated Notice of Agency Action against us seeking to turn $6,620.85 in error into a $369,979 recovery. When you go after small providers with small staff and few resources, you make the job we do caring for and improving the lives of children nearly impossible. We are small agency who will undoubtedly make errors again- we will not and have not committed fraud! There is no provision in the proposed rule as amended to properly distinguish between small errors VS a large scale attempt to commit fraud.

Small providers need support and protections. We are serving a vulnerable population and are providing excellent care for our clients. This has to remain our focus, not cowering in fear that a missed initial or transposed date is going to put us out of business.

Please consider our request.

Sincerely,
Peggy Howell
Executive Director
The Lazarus Project
2520 Pilot Knob Road
Suite 190
Mendota Heights, MN 55120
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Dear Ms. Vogl,

My name is Claire Anderson and I’m the Clinical Director at Behavioral Dimensions. On behalf of Behavioral Dimensions, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Behavioral Dimensions is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Thank you,

Claire Anderson, M.S., BCBA
Clinical Director
Behavioral Dimensions, Inc.
7010 Hwy. 7
St. Louis Park, MN 55426
Office: 952-814-0207
Cell: 952-491-6845
Fax: 952-938-8838
canderson@behavioraldimensions.com

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From: Dr. Eric Larsson  
To: Vogl, Vanessa M (DHS)  
Subject: Request for a public hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220  
Date: Wednesday, December 30, 2020 2:40:25 PM

Dear Ms. Vogl,

I am writing to request a public hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.

I have several concerns regarding the proposed amendment. First, the proposed amendment does not provide enough information to me to understand the potential financial implications of the extrapolation process.

Second, I believe that the proposed extrapolation process may well be excessively punitive, to the point where it would put honest service providers out of business, when all they have done is commit innocent and inconsequential errors in their documentation. We have experience in the past where a small number of simple data entry errors were counted as the basis for recoupment, which when extrapolated resulted in the potential penalty of over one million dollars.

Third, there is no provision in the proposed rule as amended to adequately distinguish between a small, unavoidable rate of innocent errors, and a large-scale attempt to commit waste, fraud, or abuse. In the case of small providers, such as ourselves, when billing Medicaid for services, we are forced to operate on a very narrow financial margin, due to the extensive unreimbursed costs of the regulatory requirements imposed upon us. As a result, any large recoupment would simply put us out of business, thus denying access to badly needed services to the Medicaid recipients. Yet the complexity of those regulatory requirements virtually guarantee that there will be an unavoidable rate of innocent documentation errors.

Certainly, when a provider is intentionally abusing the process, wasting funds on ineffective services, or purposely defrauding Medicaid, that provider should suffer a significant penalty, if not be purposefully put out of business. The monetary recovery penalties should transparently distinguish between the former and these latter cases.

Fourth, the Medicaid system would be better served if the SIRS process was used to identify providers who are struggling to meet the regulatory requirements and targeted them for technical assistance and grants to give them the capacity to meet the Medicaid requirements. This would result in increased access to needed services, rather than interference with access to needed services.

Thank you for your consideration.

Best,

Eric

Eric V. Larsson, PhD, LP, BCBA-D  
Executive Director, Clinical Services  
The Lovaas Institute for Early Intervention  
Midwest Headquarters  
2925 Dean Parkway, Suite 300  
Minneapolis, MN 55416  
elarsson@lovaas...  
Assistant Professor, Clinical Faculty  
Department of Psychology  
University of Minnesota - Twin Cities  
N-218 Elliott Hall  
75 East River Road  
Minneapolis, MN 55455  
larss003@umn.edu  
Mobile: 612.281.8331  
Minnesota office: 612.925.8365  
Nebraska office: 402.328.0283  
Kansas office: 785.856.0250  
Fax: 612.925.8366  
Follow me on Twitter: twitter.com/elarsson  
Lovaas Institute West Headquarters  
Los Angeles Office  
6167 Bristol Parkway, Suite 130  
Culver City, California 90230  
Office: 310.410.4450  
Fax: 310.410.4455
Dear Ms. Vogl,

On behalf of Behavioral Dimensions, Inc., I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. As a long-time employee of Behavioral Dimensions, I am concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample.”

Thank you for your consideration in this matter.

Sincerely,

Traci Enger
Revenue Cycle Management Director
Behavioral Dimensions, Inc.
(952)938-1206

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12/18/2020

ATTN: Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am the owner and CEO of Life Fountain Home Healthcare, Inc a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor's ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like Life Fountain Home Healthcare, Inc therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at wilmar@lifohhc.com or 651-271-4092.

Sincerely,

Wilmar Delgado, CEO
December 30, 2020

RE: Proposed Amendment to the Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, Part 9505.2220; Revisor’s ID Number 4567

Dear Ms. Vogl:

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My name is Jay O’Neill and I am owner and President at Behavioral Dimensions, Inc. My address is 7010 Highway 7, St. Louis Park MN 55426.

I hereby request that the Department hold a hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220. I oppose the entire set of rules.

The reason for the request for a hearing and my proposed changes to proposed rules are more fully set forth in my comments, below.

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Instead we would like MDHS to consider the following proposals

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2. Develop or use one of the available standard medical audit tools. The tool should cover the documentation policy criteria and coding standards as part of the review.

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4. Resist being the one to choose and audit your own charts. Most professionals can read their own writing and understand the meaning of records they wrote even if the documentation is not in the record. Removing bias is important. For best results, make the audit as realistic as possible.

5. Use the self-audit results for improving practice compliance. There is no real value in conducting a self-audit unless discovered issues are resolved. Review and analyze the audit findings. Identify the common documentation, coding, and billing problems, and solve the problems found. Then educate staff members and hold them accountable for making changes.

After implementing any corrective action, audit the process again to ensure improved compliance and successful implementation

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The proposed language provides that “for the purposes of part 9505.2215, the commissioner is authorized to calculate the amount of monetary recovery from a vendor based upon extrapolation from a random sample of claims submitted by the vendor and paid by the program or programs.”

Part 9505.2215 provides that “the commissioner shall seek monetary recovery...from a vendor, if payment for a recipient's health service under a program was the result of fraud, theft, abuse, or error on the part of the vendor, department, or local agency.”

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**The Department Failed to Follow the Guidance Provided by Its Own Expert**

The Department sought guidance from a statistician at the University of Minnesota in its preparation of the proposed rule amendment. The Department sent the statistician its draft of the proposed language and asked that the statistician provide an opinion on the coherence and mathematical integrity of the Department’s proposed rule. [See MDHS Statement of Need and Reasonableness (SONAR) p.7].

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The sampling plan and extrapolation method shall be chosen so that the anticipated margin of error for the population overpayment based on the full sample is no more than the larger of $ZZ or XX% of the total claims paid. The Department may, at its discretion, limit the full sample size to at most YYYY claims. [Id.]

The statistician suggested that including this language would provide further guidance on the Department’s sampling procedures. The statistician recommended that the Department choose set values for $ZZ, XX% and YYYY, and include those values in the proposed rule language. The statistician explained that both $ZZ and XX% required set values because choosing just one value for $ZZ, or one value for XX%, could result in a margin of error that would either be too small for a large provider, or too large for a small provider. Choosing a value for both $ZZ and XX% would allow the Department to
adjust its sample size according to the size of the provider under review, such that a small provider could be subject to a sample size with a margin of error of $ZZ, and a larger provider could be subject to a sample size with the margin of error determined by XX%. This language would balance the need for accuracy against the time and cost of sampling. [Id.]

However, despite the specific recommendations of the statistician the Department consulted to ensure the mathematical integrity of the Department’s proposed rule, the Department did not follow their statistician’s advice. The Department asserted that it “believes that the determination of the margin of error is a decision that is best made on a case by case basis.”

The Department rejected the specific recommendations of its own statistician regarding the determination of sample sizes and sampling procedures. The complete abandonment of its statistician’s recommendations regarding setting parameters for sample size and margin of error is both arbitrary and capricious.

Very truly yours,

Jay O’Neill
7010 Highway 7
St. Louis Park, Mn
55426

Jay O’Neill
President
Behavioral Dimensions, Inc.
612-889-0278
952-491-6979

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January 11, 2021

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

RE: Proposed Amendment to the Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, Part 9505.2220; Revisor’s ID Number 4567

Dear Ms. Vogl:

Request for a Hearing

The Minnesota Department of Human Services (MDHS) issued a notice that it 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.

My name is Justin Larstra and I am a program coordinator at Autism Matters. My address is 115 5th ST. NE Minneapolis MN, 55413.

I hereby request that the Department hold a hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220. I oppose the entire set of rules.

The reason for the request for a hearing and my proposed changes to proposed rules are more fully set forth in my comments, below.
Comments in Opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220

The Minnesota Department of Human Services (MDHS) requested comments on its possible amendments to the rules governing the use of random sample extrapolation in monetary recovery. 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).

MDHS alleges that, 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.

MDHS alleges that 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.

I am submitting the following comments in opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220.

[Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.]

BDI example: Behavioral Dimension opposes the rule in general and specifically any recoupment that is based on a lack of evidence of overt, confirmed patterns of fraud.

Instead we would like MDHS to consider the following proposals

Agencies should be required to have policies and procedures in place to address potential fraudulent billing by their employees and incidental errors. These policies would follow CMS guidelines to follow the five basic self-audit rules behavioral health practitioners:

1. Develop and implement a solid medical record documentation policy if there is not one in place. If there is one in place, make sure the policy covers meeting Federal and State Medicaid regulations. The policy should address what actually happens in everyday practice.

2. Develop or use one of the available standard medical audit tools. The tool should cover the documentation policy criteria and coding standards as part of the review.

3. Choose a staff member who understands documentation and coding principles to select a random sample of records for a specific time period. Decide how many records should be reviewed, and then pull every “nth” chart for that time period.
4. Resist being the one to choose and audit your own charts. Most professionals can read their own writing and understand the meaning of records they wrote even if the documentation is not in the record. Removing bias is important. For best results, make the audit as realistic as possible.

5. Use the self-audit results for improving practice compliance. There is no real value in conducting a self-audit unless discovered issues are resolved. Review and analyze the audit findings. Identify the common documentation, coding, and billing problems, and solve the problems found. Then educate staff members and hold them accountable for making changes.

After implementing any corrective action, audit the process again to ensure improved compliance and successful implementation.

Have an internal auditing procedure that is followed:
- Correction plans
- Evidence of Reimbursement of incorrect claims
- Evidence of implementing correction plans as directed by state department of human service certifying and licensing agencies

Agencies with confirmed polies in place that are being implemented would not be eligible for any extrapolation calculations in cases where errors occur that are not shown to be a pattern of malpractice.

Minnesota Statutes Chapter 256B – Medical Assistance – contains no reference to the use of random sample extrapolation in monetary recovery. Random sample extrapolation in monetary recovery is not a requirement of state statutes and should not be used to calculate the amount of monetary recovery from a vendor.

The proposed language provides that “for the purposes of part 9505.2215, the commissioner is authorized to calculate the amount of monetary recovery from a vendor based upon extrapolation from a random sample of claims submitted by the vendor and paid by the program or programs.”

Part 9505.2215 provides that “the commissioner shall seek monetary recovery…from a vendor, if payment for a recipient's health service under a program was the result of fraud, theft, abuse, or error on the part of the vendor, department, or local agency.”

The use of extrapolation from a random sample of claims to calculate the amount of monetary recovery from a vendor should be limited to instances where the commissioner is seeking monetary recovery from a vendor if payment for a recipient's health service under a program was the result of fraud or theft.

**The Department Failed to Follow the Guidance Provided by Its Own Expert**

The Department sought guidance from a statistician at the University of Minnesota in its preparation of the proposed rule amendment. The Department sent the statistician its draft of the proposed language and asked that the statistician provide an opinion on the coherence and
mathematical integrity of the Department’s proposed rule. [See MDHS Statement of Need and Reasonableness (SONAR) p.7].

The statistician advised the Department to place the following parameters around the sample size determination:

The sampling plan and extrapolation method shall be chosen so that the anticipated margin of error for the population overpayment based on the full sample is no more than the larger of $ZZ or XX% of the total claims paid. The Department may, at its discretion, limit the full sample size to at most YYYY claims. [Id.]

The statistician suggested that including this language would provide further guidance on the Department’s sampling procedures. The statistician recommended that the Department choose set values for $ZZ, XX% and YYYYY, and include those values in the proposed rule language. The statistician explained that both $ZZ and XX% required set values because choosing just one value for $ZZ, or one value for XX%, could result in a margin of error that would either be too small for a large provider, or too large for a small provider. Choosing a value for both $ZZ and XX% would allow the Department to adjust its sample size according to the size of the provider under review, such that a small provider could be subject to a sample size with a margin of error of $ZZ, and a larger provider could be subject to a sample size with the margin of error determined by XX%. This language would balance the need for accuracy against the time and cost of sampling. [Id.]

However, despite the specific recommendations of the statistician the Department consulted to ensure the mathematical integrity of the Department’s proposed rule, the Department did not follow their statistician’s advice. The Department asserted that it “believes that the determination of the margin of error is a decision that is best made on a case by case basis.”

The Department rejected the specific recommendations of its own statistician regarding the determination of sample sizes and sampling procedures. The complete abandonment of its statistician’s recommendations regarding setting parameters for sample size and margin of error is both arbitrary and capricious.

Very truly yours,

Justin Larstra
115 5th St. NE, Minneapolis MN, 55413
Dear Ms. Vogl:

LeadingAge Minnesota is a long-term care provider association, representing close to 1,000 providers of nursing facility, assisted living, adult day and other community-based services to older adults. We have significant concerns about the Minnesota Department of Human Services ("DHS") proposed amendments to Minn. R. 9505.2220 and the impact those changes could have on our provider members.

We respectfully request that DHS initiate a full rule-making hearing to adjudicate whether the proposed amendments to Minn. R. 9505.2220 are reasonable and necessary, and whether those amendments are consistent with SIRS enabling legislation.

There are two reasons why we request a rule-making hearing. First, the proposed amendments are inconsistent with SIRS’ enabling legislation in our opinion. No Minnesota statute authorizes SIRS to enforce extrapolated monetary recoveries when auditing providers and vendors under Minn. Stat. § 256B.064. Second, the proposed amendments undermine statistical validity by conferring subjective authority to SIRS auditors. This is of particularly significant concern since it allows recoveries to be based on unsound statistical methods.

Thanks for your attention to this matter.

Sincerely,

Jeff Bostic
Director of Data and Financial Policy
LeadingAge Minnesota
(612) 743-9751
jbostic@leadingagemn.org
Dear Ms. Vogl,

On behalf of Behavioral Dimensions, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Behavioral Dimensions is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

Dianne Beckendorf
Behavioral Dimensions
Clinical Supervisor, Senior Therapist
507-530-0825

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”The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Thank you for your time,

Mike Gunter
Program Implementation Manager
Behavioral Dimensions, Inc.
651-262-6317

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“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Lindsay Kitner  
Program Implementation Manager  
763-370-1141  
Behavioral Dimensions, Inc.  
7010 Hwy. 7  
St. Louis Park, MN  55426

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“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Michaela Gehring MA, LPCC, BCBA
Clinical Supervisor
Cell: 952.454.8087

**Please note that I honor and respect boundaries around personal time. Should you receive an email from me during that time, please protect your time and wait to respond until the next time you are working. I believe that we should prioritize joy and well-being, not email, when and where we can. **

Behavioral Dimensions, Inc.
7010 Highway 7
St. Louis Park, MN 55426
Cell: 952.454.8087

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12/27/2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am owner of Best Care Inc., a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like Best Care Inc. therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at nazneen.khatoon@bestcareus.com

Sincerely,

Nazneen Khatoon
Administrator
Best Care Inc.
Dear Ms. Vogl,

On behalf of Behavioral Dimensions, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Behavioral Dimensions is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used.

Jacki Harth MS, Licensed Psychologist, BCBA
Clinical Lead- Intensive Behavioral Intervention Services
Behavioral Dimensions, Inc.
651-271-8084
jharth@behavioraldimensions.com

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On behalf of Behavioral Dimensions, Inc., I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Behavioral Dimensions is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Trish Wolff
Director of Staff Development
Behavioral Dimensions, Inc.
612-578-3370

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Sincerely,

Colleen Friedrich
Program Implementation Manager
Behavioral Dimensions, Inc.
952.454.8960

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Dear Ms. Vogl,

On behalf of the Rochester Center for Autism (RCA), I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. RCA is concerned about all of the changes and feels it would be appropriate to schedule a public hearing.

Sincerely,

Jon Sailer
Rochester Center for Autism
3640 9th St NW
Rochester, MN 55901
December 28, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:

• The proposed rule removes the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” that assure statistical validity.
• The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements such as:
  o generally accepted statistical standards and practices
  o generally accepted sampling software and methods
• The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Arlan Swanson, HSE
Administrator/CEO
December 28, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

RE: Proposed Amendment to the Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, Part 9505.2220; Revisor’s ID Number 4567

Dear Ms. Vogl:

**Request for a Hearing**

The Minnesota Department of Human Services (MDHS) issued a notice that it 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.

My name is Jeff Nichols and I am Chief Executive Officer at the Minnesota Autism Center. My address is 5868 Baker Road, Minnetonka MN 55345.

I hereby request that the Department hold a hearing on the Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220. I oppose the entire set of rules.

The reason for the request for a hearing and my proposed changes to proposed rules are more fully set forth in my comments, below.
Comments in Opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220

The Minnesota Department of Human Services (MDHS) requested comments on its possible amendments to the rules governing the use of random sample extrapolation in monetary recovery. 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).

MDHS alleges that, 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.

MDHS alleges that 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.

I am submitting the following comments in opposition to the Proposed Amendment to Minnesota Rules Part 9505.2220.

[Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.]

BDI example: Behavioral Dimension opposes the rule in general and specifically any recoupment that is based on a lack of evidence of overt, confirmed patterns of fraud.

Instead, we would like MDHS to consider the following proposals

Agencies should be required to have policies and procedures in place to address potential fraudulent billing by their employees and incidental errors. These policies would follow CMS guidelines to follow the five basic self-audit rules behavioral health practitioners:

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The proposed language provides that “for the purposes of part 9505.2215, the commissioner is authorized to calculate the amount of monetary recovery from a vendor based upon extrapolation from a random sample of claims submitted by the vendor and paid by the program or programs.”

Part 9505.2215 provides that “the commissioner shall seek monetary recovery…from a vendor, if payment for a recipient's health service under a program was the result of fraud, theft, abuse, or error on the part of the vendor, department, or local agency.”

The use of extrapolation from a random sample of claims to calculate the amount of monetary recovery from a vendor should be limited to instances where the commissioner is seeking monetary recovery from a vendor if payment for a recipient's health service under a program was the result of fraud or theft.

**The Department Failed to Follow the Guidance Provided by Its Own Expert**

The Department sought guidance from a statistician at the University of Minnesota in its preparation of the proposed rule amendment. The Department sent the statistician its draft of the proposed language and asked that the statistician provide an opinion on the coherence and mathematical integrity of the Department’s proposed rule. [See MDHS Statement of Need and Reasonableness (SONAR) p.7].

The statistician advised the Department to place the following parameters around the sample size determination:

The sampling plan and extrapolation method shall be chosen so that the anticipated margin of error for the population overpayment based on the full sample is no more than the larger of $SZZ$ or $XX\%$ of the total claims paid. The Department may, at its discretion, limit the full sample size to at most YYYY claims. [Id.]
The statistician suggested that including this language would provide further guidance on the Department’s sampling procedures. The statistician recommended that the Department choose set values for $ZZ$, $XX\%$ and $YYYY$, and include those values in the proposed rule language. The statistician explained that both $ZZ$ and $XX\%$ required set values because choosing just one value for $ZZ$, or one value for $XX\%$, could result in a margin of error that would either be too small for a large provider, or too large for a small provider. Choosing a value for both $ZZ$ and $XX\%$ would allow the Department to adjust its sample size according to the size of the provider under review, such that a small provider could be subject to a sample size with a margin of error of $ZZ$, and a larger provider could be subject to a sample size with the margin of error determined by $XX\%$. This language would balance the need for accuracy against the time and cost of sampling. [Id.]

However, despite the specific recommendations of the statistician the Department consulted to ensure the mathematical integrity of the Department’s proposed rule, the Department did not follow their statistician’s advice. The Department asserted that it “believes that the determination of the margin of error is a decision that is best made on a case by case basis.”

The Department rejected the specific recommendations of its own statistician regarding the determination of sample sizes and sampling procedures. The complete abandonment of its statistician’s recommendations regarding setting parameters for sample size and margin of error is both arbitrary and capricious.

Very truly yours,

[Signature]

Jeff Nichols
5868 Baker Road, Minnetonka MN 55345
Dear Ms. Vogl,

As a PCA Choice, FMS and a Licensed 245D provider, MRCI is requesting that a public hearing be held for the proposed changes to the adopted amendments of the rules governing the extrapolation of monetary recovery by the Surveillance and Integrity Review Section and the Office of Inspector General. Our agency does not agree with the portion of the proposed language and the language does not clearly indicate if they provider will be aware of the take back prior to the occurrence. It is stated in the notice given to MRCI that we need to have a written request in by December 31st to have a public hearing, please accept this as our written notice.

If you have further questions please feel free to contact our offices.

Julie Lux  
Strategic Relations Manager  
MRCI  
1961 Premier Drive, Suite 318 | Mankato, MN 56001  
D: 507.386.5745 | T: 800.829.7110 | F: 888.800.7336  
jlux@MyMRCI.org

Mankato | Chaska | Fairmont | New Ulm | Rosemount | Shakopee

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Dear Ms. Vogl,

On behalf of Nolan’s Place, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Nolan’s Place is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used.

Thank you for hearing our voices.

--

Sallie Graves | Nolan’s Place

1604 S. 1st St. Suite 120

Willmar, MN 56201

320.403.5247
12/28/2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am the owner and CEO of Best Care, a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like Best Care therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at andre@bestcaremn.com.

Sincerely,

Andre Best,
CEO, Best Care
Dear Ms. Vogl,

I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. I am concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Thank you for your consideration,

Shawn Girtler, MS, BCBA
she/her
Dear Ms. Vogl,

On behalf of Nolan's Place, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. Nolan's Place is concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used.

Thank you for your time in reading this email. I hope you and your family have a very happy new year!

Jill Fellows | Nolan's Place
1604 S. 1st St. Suite 120
Willmar, MN 56201
P: 320.403.5247
F: 320.403.5249
December 23, 2020

VIA EMAIL & U.S. MAIL: VANESSA.VOGL@STATE.MN.US

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254

Re: Request for Rule-Making Hearing Regarding DHS’s Proposed Amendments to Minn. R. 9505.2220

Dear Ms. Vogl:

I represent providers and medical vendors who are subject to audit by the Surveillance and Integrity Review Section (“SIRS”). I was counsel of record in requests for contested case proceedings that challenged extrapolated recoveries by SIRS against two of my clients, Dungarvin and The Lazarus Project. The Dungarvin extrapolation was settled on June 28, 2013, and the Lazarus Project extrapolation was reversed by the Commissioner of Human Services because SIRS’ outside auditor failed to conduct a statistically valid random sample as required by either Minn. R. 9505.2220 or RAT-STATS.

I respectfully request that the Minnesota Department of Human Services (“DHS”) initiate a full rule-making hearing to adjudicate whether the proposed amendments to Minn. R. 9505.2220 are reasonable and necessary, and whether those amendments are consistent with SIRS enabling legislation. If DHS conducts a rule making hearing I will appear and submit a legal memorandum and exhibits on behalf of my client ARRM.

There are two main reasons why I request a rule-making hearing. First, the proposed amendments are inconsistent with SIRS’ enabling legislation. No Minnesota statute authorizes SIRS to enforce extrapolated monetary recoveries when auditing providers and vendors under Minn. Stat. § 256B.064. A duly promulgated rule cannot be enforced if it conflicts with the agency’s enabling legislation. See, e.g., Leisure Hills of Grand Rapids v. Levine, 366 N.W.2d 302 (Minn. Ct. App. 1985) (holding DHS could not enforce Minn. R. 9510.0140 [repealed] because its appeal deadline was inconsistent with DHS’s enabling legislation). As a result of this rule-making proposal, if SIRS elects to enforce extrapolated recoveries that are upheld by the Commissioner, then this legal impediment will likely be asserted as a defense in the Court of Appeals by any knowledgeable provider.
Second, the proposed amendments undermine statistical validity by conferring additional unbridled subjective authority in the auditors. The proposed amendments would ratify and approve the type of errors committed by the Lazarus auditors. In Lazarus, the sampling methodology required by W. Cochran (3rd Ed. 1977) directed that in order to attain a statistically valid result SIRS’s auditor should have analyzed 203 randomly selected claims.

The Lazarus auditor claimed that his analysis was consistent with RAT-STATS, which has been adopted by the Centers for Medicare and Medicaid Services (“CMS”) for Medicare extrapolations. In fact, RAT-STATS required that the auditor in Lazarus should have analyzed 206 randomly selected claims.

Instead of strictly adhering to established criteria necessary to assure that the extrapolation is statistically valid, the Lazarus auditor followed his own inclination to review a smaller sample. He based his extrapolation on a mere 150 claims. He attempted to justify that obvious departure from the statistical experts by rationalizing he was lessening the provider’s burden, who would have had to produce an additional fifty-three files for analysis. The Commissioner’s final decision in Lazarus identified other flaws, as well.

Thank you for your attention to this matter.

Sincerely,

[Signature]

Samuel D. Orbovich
Direct Dial: 612.492.7376
Email: sorbovich@fredlaw.com

SDO/jcd

cc: S. Schettle
December 23, 2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

Southeastern Minnesota Center for Independent Living (SEMCIL) is a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like SEMCIL, therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact Jacob Schuller, Executive Director, with any questions at 507-285-3912

Sincerely,

Shari Kirkham
PCA Program Manager
Dear Ms. Vogl,

I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. I am concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Thank you for your consideration,

Timothy R. Moore PhD, LP, BCBA-D
Dear Ms. Vogl,

I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities. I am concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Thank you for your consideration,

Brooke Anderson, MA, LMFT, BCBA
December 22, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:
- The proposed rule removes the valid and accepted sampling techniques that assure statistical validity.
- The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements.
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of DHS.

We do not support the proposed changes that will permit DHS to no longer abide by the statistical validity requirements adopted in Minnesota law.

Sincerely,

Tim Swoboda, Administrator  
Good Samaritan Society – St James
December 21st, 2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am owner of All Home Health, Inc., a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like ours, therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 952-814-7400

Sincerely,

Nick Walters
Owner
All Home Health, Inc.
December 21, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:

- The proposed rule removes the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” that assure statistical validity.
- The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements such as:
  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Lynn Hogendorf  
Regional Director of Operations  
Monarch Healthcare Management
December 19, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:

- The proposed rule removes the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” that assure statistical validity.
- The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements such as:
  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law. The current pandemic has created much uncertainty and ongoing changes – this would be yet another change that would cause more uncertainty.
ALL GOOD HOME CARE Inc.
9250 Lakewood Shore Rd
Rice, MN 56367
aghc1212@jetup.net

12/18/2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,
I am the owner of All Good Home Care Inc. a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like All Good Home Care Inc. therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 320-393-2406

Sincerely,

[Signature]

Randi Allgood (owner)
MN Home Care  
14775 Edgewood Drive  
Baxter, MN 56425  
218-963-8899  

12-18-2020  

ATTN: Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254  

Dear Ms. Vogl,  

I am the owner of a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.  

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.  

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like MN Home Care therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.  

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 218-963-8899.  

Sincerely,  

Terrie Getty/ Owner
December 18, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

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  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Mike Marchant
Vice President of Operations (Minnesota)
Villa Healthcare
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

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  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Juliana Lundberg  
RN, Administrator Designee  
The Waterview Pines
December 17, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

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  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.
December 17, 2020

ATTN: Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am the President for the Minnesota First Provider Alliance (“The Alliance”) which is a trade association of personal care assistance (“PCA”) agencies and waiver service providers. The PCA program is a critical service that assists over 40,000 Minnesotans in their home and community. Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program, and the other waiver services provided by our members are vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services.

I am writing in response to the letter, dated November 18, 2020, from the Department of Human Services regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

On behalf of The Alliance and its members, I want to express my concern about the proposed change that this rule makes and am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule and the Department’s process used is robust and provides greater protection for providers against extrapolation recoveries conducted in error by providing agencies with information about the sampling method that will be used prior to drawing the sample. This allows providers the opportunity to analyze the proposed sampling method, and if needed challenge the method based on valid information. With the proposed change in process, well intentioned providers, acting in good faith, could be put out of business.

Due to our concerns about the changes being proposed in this rule, we request that there be a public hearing so Minnesota Health Care Providers and the associations that represent them have the opportunity to be heard.
I appreciate the opportunity to provide comments on behalf of our members. If you have any questions, feel free to contact me at: dena@adenallic.com or 612-328-1152.

Sincerely,

Dena Belisle
December 17, 2020

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am the owner/CEO of 4U Home Health Care and 4U Home Health Care South LLC, Personal Care Assistance (PCA) agencies that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like 4U Home Health Care and 4U Home Health Care South LLC. Therefore, before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 218.326.0095 or chenning@4uhhc.com

Sincerely,

Carla Herming, CEO
Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:

- The proposed rule removes the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” that assure statistical validity.

- The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements such as:
  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods

- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,
Dear Ms. Vogl,

I am the owner of Lake Country Home Care, a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like Lake Country Home Care therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment about the proposed rule and the need for a public hearing.

Sincerely,

Adele Lausten, Owner/Manager
12/17/2021

ATTN: Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

Dear Ms. Vogl,

I am Judy Cliche/President of North Country Home Care, a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their home and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020 regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor’s ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well intentioned providers acting in good faith out of business.

Historically, the PCA program has been one of the lowest reimbursed services with a reimbursement rate that is much lower than similar waiver services. The PCA program is vital to ensuring that Minnesotans with disabilities and older adults can safely remain in their homes and avoid the need for more costly services. The change you are proposing could do further financial harm to already struggling agencies like North Country Home Care therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.
Thank you for the opportunity to comment about the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 763-856-9955

Sincerely,

Judy Cliche

President
Dear Ms. Vogl,

I am Benjamin Edison-Edebor, manager of Anchor House LLC, a Personal Care Assistance (PCA) agency that provides services to people with disabilities and older adults in their homes and community. I am writing in response to the letter that we received from the Department of Human Services on Nov. 18, 2020, regarding the Notice of Proposed Amendment to Rules of the Minnesota Department of Human Services Governing the Use of Random sample Extrapolation in Monetary Recovery, Minnesota Rules, Parts 9505.2220; Revisor's ID Number 4567.

I am concerned about the proposed change that this rule makes and therefore am writing to request that there be a public hearing prior to adopting amendments to rules governing the use of random extrapolation in monetary recovery. The current rule provides agencies with information about the sampling method that will be used prior to drawing the sample, this allows for more transparency. Without this transparency, the process could put well-intentioned providers acting in good faith out of business.

The change you are proposing could do further financial harm to already struggling agencies like Anchor House LLC therefore before this rule goes into effect there needs to be an opportunity for a public hearing to express our concerns.

Thank you for the opportunity to comment on the proposed rule and the need for a public hearing. Feel free to contact me with any questions at 763 843 1469.

Sincerely,

Benjamin Edison-Edebor
Manager
Anchor House LLC
7638431469
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services' (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:

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  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

M Kilian
RN, Administrator Designee  
Hillcrest Rehabilitation Center  
Monarch Healthcare Management
December 16, 2020

Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164

Ms. Vanessa Vogl

The Minnesota Dental Association (MDA) respectively requests a hearing on the proposed amendment to rules governing use of random sample extrapolation in monetary recovery, Minnesota Rules, part 9505.2220. The MDA has concerns about the impact of the proposed changes on transparency. In particular, the MDA is concerned about the potential impact of removing the requirement to notify providers of the methodology being used. We believe that a hearing is critical to understanding the intent of the proposal and minimizing unintended consequences.

Thank you,

Carissa Kemp, MPP
Government Affairs Manager, Minnesota Dental Association
Address: 1335 Industrial Blvd NE, Minneapolis, MN 55413
Phone: 715-573-1234
Email: ckemp@mndental.org
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

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We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Blake Dehnke  
The Emeralds at Grand Rapids  
218.326.3431 Ext 111
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

[Signature]

Michaela Hagenow, LNHA  
Administrator  
The Emeralds at St. Paul – Monarch Healthcare Management  
P: 651-224-2368 | F: 651-224-0140
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Becky Jenniges  
Administrator  
River Valley Health and Rehabilitation
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Lorna L. Craig-Paulson, LNHA
Campus Administrator
Laurels Peak Rehabilitation Center
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Katelyn Paget
Administrator
The Estates at Rush City
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Jill Lubbesmeyer
Administrator
The Estates at Roseville
Monarch Healthcare Management
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

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Sincerely,

Sarah Coil
Administrator
The Estates at Fridley
5700 East River Rd., Fridley, MN 55432
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

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Sincerely,

Derek Rivard
Administrator in Training
Monarch Healthcare
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Lydia Rasmussen, LNHA
Campus Administrator
Mala Strana Rehabilitation Center and Assisted Living
Dear Ms. Vogl,

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Sincerely,

Ryan Onstad
Ryan Onstad
Administrator
Parmly on the Lake
28210 Old Towne Rd
Chisago City, MN 55013
P: 651-257-7324
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Michael Carlson
Administrator
Estates at Greeley
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Tara Dicus  
Administrator  
Green Prairie Rehabilitation and Assisted Living Campus/Monarch Healthcare Management
December 16, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Talia Fletcher
Administrator
The Estates at St. Louis Park
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Tom Stevens  
Administrator  
The Gardens at Foley  
253 Pine Street. Foley, MN 56329  
P: (320) 968-6201  
TStevens@MonarchMN.com
December 16, 2020

Ms. Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254

Sent via Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

In follow-up to the Minnesota Department of Human Services’ (DHS), “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),” we are writing to request a formal hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

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Sincerely,

[Signature]

Stuart Eklund
President
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Jessica Miska, LSW  
Administrator  
The Estates at Twin Rivers
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

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Sincerely,

Dan Strittmater  
Vice President of Operations  
Monarch Healthcare Management  
638 Southbend Ave., Mankato, MN 56001  
507-381-0273
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Sincerely,

Andrea Ross
Administrator
Monarch Healthcare Management
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Sincerely,

Brenna Hoffman
Administrator
Monarch Healthcare Management
Dear Ms. Vogl,

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Sincerely,

Tori Klimek
Administrator
The Estates at Bloomington
tklimek@monarchmn.com
952-28-2710
December 16, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” I am writing to request a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

We oppose the proposed amendment for several reasons:
- The proposed rule removes the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” that assure statistical validity.
- The current rule directs DHS to rely on clear, robust, and statistically valid methods. The proposed amendment replaces this clarity with broad and undefined statements such as:
  - generally accepted statistical standards and practices
  - generally accepted sampling software and methods
- The proposed amendment will allow for reviews that are unclear, lacking in definition, and create recoveries based on the whimsy of the extrapolation selected.

We do not support the proposed changes that will permit DHS to no longer abide by the longstanding statistical validity requirements adopted in Minnesota law.

Sincerely,

Matthew Fischer  
Administrator  
Bethany on the Lake
Hello Vanessa,

I am writing on behalf of Residential Services of Northeastern MN, Inc. to request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220.

I am concerned with the change to random sample extrapolation to calculate the amount of money that may be recovered for overpayment. This change will reduce the accuracy and the removal of the requirement that providers be notified of the sampling method will make it more difficult to determine if a provider should appeal the judgement.

Because of these concerns, I oppose the entire set of changes to the rule.

Jon Nelson, Executive Director
Residential Services Inc. (RSI)
Nurturing Abilities

2900 Piedmont Ave.
Duluth, MN 55811
T : 218.740.7606
F : 218.206.2630
www.residentialservices.org
Facebook - Twitter - Instagram - LinkedIn
Dear Vanessa,

On behalf of Volunteers of America of Minnesota, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. I oppose the entire set of changes to the rule. Transparency, especially in the rate process is vital to these essential services.

Thank you!

Sincerely,

Julie Manworren

Julie Manworren | President and Chief Executive Officer
(she/her/hers)
Volunteers of America – Minnesota and Wisconsin | www.voamnwi.org
7625 Metro Blvd, Edina MN 55439
Direct: (952) 945-4004
Cell: (612) 423 - 4326

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December 10, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

The basis of this request is an objection to the substantive change that is proposed in its entirety. I am particularly concerned as to scope, method of calculation proposed, and in particular the relevance and significance of probe sample on providers of varying size and impact on each type or size of provider.

Thank you.

Sincerely,

Lori Benson
Regional Director
REM South Central Services
REM Minnesota Community Services
Ms. Vogl:

As the representative of Merrick, Inc., and as instructed by the Notice to Adopt Rules Without a Public Hearing, I oppose the entire set of rules for the following reasons:

1. Random extrapolation is not a proven method to identify potential fraud, abuse or error whereas a well-defined algorithm can search claims for patterns worthy of investigation;
2. It is presumptive to assume that every provider is guilty of making fraudulent or errant claims requiring them to spend their time and money to prove compliance; and
3. There needs to be a limit on the “look-back” window for SIRS along with a provision that providers may recover any unpaid claims for that same window of time.

Therefore, I respectfully request a public hearing so that vendors have the opportunity to offer input on any rule changes that DHS heretofore has not sought to gather or consider.

Please confirm that my request has been received and will be counted

“A leader is best when people barely know he exists. When his work is done, his aim fulfilled, they will say we did it ourselves.” ~ Bud Grant

John Wayne Barker
3210 Labore Road
St. Paul, MN 55110
Executive Director
651.789.6209
www.merrickinc.org
December 10, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Wade Welper  
Regional Director  
REM Minnesota
December 5, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Eston Brown  
Regional Director  
REM Woodvale
December 10, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Stephanie Kalbach
Executive Director
REM Minnesota
December 9, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN  55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Kandice Virnig  
Regional Director  
REM Central Lakes
December 7, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN  55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

Dear Ms. Vogl:

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Thank you.

Sincerely,

[Signature]

Curt Bossert
Regional Director
December 9, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Scott Rodwell  
Regional Director  
REM Hennepin
December 9, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN  55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

Ronna Butler  
Regional Director  
REM Arrowhead, Inc.
December 8, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN  55164-0254

SUBJECT:  Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

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Thank you.

Sincerely,

Margaret Aho,  
Regional Director  
REM North Star, Bemidji, MN
December 8, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

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Thank you.

Sincerely,

Lisa M. Thelen, Executive Director  
REM Minnesota, Inc.
December 8, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

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Thank you.

Sincerely,

Lori Larson  
Regional Director  
REM Heartland, Inc.
December 8, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN  55164-0254  

SUBJECT:  
Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220  

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

The basis of this request is an objection to the substantive change that is proposed in its entirety. I am particularly concerned as to scope, method of calculation proposed, and in particular the relevance and significance of probe sample on providers of varying size and impact on each type or size of provider.

Thank you.

Sincerely,

Devin Nelson  
Executive Director  
REM Minnesota / Habilitative Services LLC
December 8, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
Saint Paul, MN 55164-0254
Email: Vanessa.Vogl@state.mn.us

Dear Ms. Vogl,

As instructed by the Minnesota Department of Human Services’ (DHS), “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),” Care Providers of Minnesota is requesting a hearing on the “Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220.”

Care Providers of Minnesota is a non-profit membership association with the mission to Lead Members to Excellence. Our 900+ members across Minnesota represent non-profit and for-profit organizations providing services along the full spectrum of post-acute care and long-term services and support. We are the state affiliate for the American Health Care Association/National Center for Assisted Living, and with our national partners we help members succeed.

After reviewing of the, “Proposed Permanent Rules for Surveillance and Integrity and Review: Monetary Recovery; Random Sample Extrapolation (11/04/2020),” and comparing to the proposed possible amendment published by DHS in 2019, Care Providers of Minnesota strongly opposes the proposed amendment to the rules governing the use of random sampling extrapolation in monetary recovery. We provided detailed comments to the agency in 2019 to the proposed possible amendment; our concerns were virtually ignored. The proposed changes remove long-held regulatory requirements that assure statistical validity.

The proposed amendment will create a random sample extrapolation regime that is unclear and lacking in definition by replacing the valid and accepted sampling techniques contained in W. Cochran’s textbook “Sampling Techniques” with broad and undefined statements such as:

1. The sampling plan and extrapolation shall be chosen and performed according to generally accepted statistical standards and practices.
2. The Department shall use tools which include but are not limited to RAT-STATS, SAS or any other generally accepted sampling software and methods.

Audit extrapolation techniques have the capability of generating six or seven figure overpayment calculations based on a small subset of claims that are actually examined by DHS’s
auditors. It is conceivable that by extrapolating $15,000 in claims, an auditor could compute an alleged $1.5 million overpayment. Such extrapolated overpayments have the capability of financially sinking and ending the missions of many well-intentioned providers who, at the time of billing, held a good-faith and reasonable belief that their claims were consistent with DHS’s lawful requirements. For that reason, extrapolated recoveries should be rare, and auditors should be required to abide by the longstanding statistical validity requirements adopted in Minnesota law.

DHS’s proposed rule deviates from the legal position adopted by the Commissioner of Human Services in the Final Order issued In the Matter of the SIRS Appeal of The Lazarus Project, OAH Docket no. 68-1800-33278 (Nov. 28, 2017). In Lazarus, the Commissioner reversed an extrapolated recovery proposed by the Surveillance and Integrity Review Section (“SIRS”). The Commissioner reversed the extrapolation in part because the auditor failed to base the recovery on a sufficient sample size as required by both Minn. R. 9505.2220 and the Cochran Treatise. Moreover, the auditor’s inexplicably small sample size offered in evidence by SIRS was not only less that the size required by Cochran and Minnesota’s rule, it was also less than the size required by the analogous federal Medicare Program Integrity Manual (“PIM”), which relies on an extrapolation software program developed by the U.S. Office of Inspector General known as RAT-STATS.

SIRS failure to follow the statistical sample size required by Cochran, by Minn. R. 9505.2220 and by RAT-STATS demonstrates the real risk presented by audit extrapolations: unless the extrapolation requirements in the rules are clear, robust, and statistically valid by independent expert standards, over-eager auditors will cut corners with the intent of generating greater recoveries.

Additional changes made by the DHS proposed amendment move Minnesota’s sampling and extrapolation regime from one of clarity and validity to one of uncertainty.

- Regarding stratified sampling, the current rule states, “Samples must consist of at least 50 claims. Each stratum in a stratified sample must contain at least 30 claims or, if a population stratum contains less than 30 claims, all of the claims in that population stratum.”
  - The current use of at least 30 claims for a population stratum assures statistical confidence in the findings. The deletion of this requirement by the proposed DHS amendment removes any assurance of statistical confidence.
- The proposed definition of, “Random Sample of Claims” also discusses probability proportional to size sampling and cluster sampling, but does not define the observations required for such sampling methods.
- The following statement does not provide the test used (e.g. one-side, two-sided etc.) to determine a 95% confidence interval:
  - The vendor shall be required to pay an overpayment identified under this section only if the overpayment identified has a ninety-five percent confidence interval that does not contain $0.
• Finally, the DHS proposal offers no reason for removing the requirement that the provider be notified of the sampling method before the sample is drawn.
  - Under this change, DHS may use multiple sampling methods. While one sample method may not yield a ninety-five percent confidence interval that does not contain $0$, another sampling method might.

Sincerely,

Patti Cullen, CAE
President/CEO
Care Providers of Minnesota
pcullen@careproviders.org
952-851-2487

Cc: Paula Rocheleau, Chair, Board of Directors
    Todd Bergstrom, Director of Research & Data Analysis
Ms. Vogl,

My apologies for the oversight. We are concerned about all of the changes and most specifically about removing the language that requires notice to the provider of the sampling method that is being used:

“The department shall tell the 2.18 provider the sampling method the department is using prior to drawing the sample”

Please let me know if you need additional information.

Have a good day,

Abby

---

Dear Ms. Vavra,

Thank you for your email and request for a hearing. Unfortunately, your request does not meet the one of the three requirements to be considered a valid request.

Under Minnesota Statutes, section 14.25, subdivision 1, and reflected in the Dual Notice of Intent to Adopt Rules on page 3 (attached here for your reference), a valid request must:

1. be in writing,
2. include the name and address of the person requesting the public hearing; and
3. include the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule.

Your request does not fulfill the third requirement. If you would like your hearing request to count as valid, please resubmit and let us know what portion or portions of the rule to which you object or include a statement that you oppose the entire rule. This will help to give the Department a sense of what is most concerning to the people who are requesting a hearing.
The deadline for submitting a valid request is December 31, 2020, at 4:30 p.m. If you have any questions, please let me know.

Thank you!
~Vanessa

---

From: Abigail Mayer Vavra <Abigail.Vavra@fraser.org>
Sent: Thursday, December 3, 2020 10:18 AM
To: Vogl, Vanessa M (DHS) <vanessa.vogl@state.mn.us>
Subject: Request for Hearing

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Dear Ms. Vogl,

On behalf of Fraser, I request the Department of Human Services hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. These proposed changes could have significant adverse effects on services for Minnesotans with disabilities.

Thank you for your consideration,
Abby

Abigail Vavra
Public Policy and Compliance Counsel

abigail.vavra@fraser.org
612.767.7565
www.fraser.org

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December 7, 2020

Vanessa Vogl  
Minnesota Department of Human Services  
Administrative Law Office  
PO Box 64254  
St. Paul, MN  55164-0254  

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220  

Dear Ms. Vogl:

I am writing to request a hearing concerning the above captioned proposed rule amendment.

The basis of this request is an objection to the substantive change that is proposed in its entirety. I am particularly concerned as to scope, method of calculation proposed, and in particular the relevance and significance of probe sample on providers of varying size and impact on each type or size of provider.

Thank you.

Sincerely,

[Signature]

Chris DeVos  
Sr. Business Director
December 5, 2020

Vanessa Vogl
Minnesota Department of Human Services
Administrative Law Office
PO Box 64254
St. Paul, MN 55164-0254

SUBJECT: Proposed Amendment to Rules Governing use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rule 9505.2220

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Thank you.

Sincerely,

[Signature]
December 3, 2020

Vanessa Vogl  
Rulemaking Attorney  
Administrative Law Office/General Counsel's Office  
PO Box 64254  
Saint Paul, MN 55164-0254  
Submitted via email at Vanessa.Vogl@state.mn.us

Dear Atty. Vogl:

On behalf of Bethesda Lutheran Communities, I request the Department of Human Services (DHS) hold the scheduled public hearing on the proposed changes to MN Rule 9505.2220. I oppose the entire set of changes to the rule.

It is critical that any proposed revisions that impact participants and providers in Minnesota healthcare programs be reviewed and discussed in an open, honest and transparent manner. With providers in precarious financial positions due to Medicaid rates that have historically been insufficient to cover operated costs, any change in the payment system must be considered in a careful and deliberate manner.

Minnesota Rule 9505.2220 addresses how the commissioner of DHS may use random sample extrapolation to calculate the amount of money they may recover from a provider if there is an overpayment and, in its current form, spells out detailed requirements for the method of sampling, and specifies that DHS shall tell the provider how they will conduct the sampling before the sample is drawn.

I am concerned that DHS can use the proposed changes to shield information regarding the statistical processes from providers. And, removal of the requirement that providers be notified of the sampling method before it is done eliminates an important level of transparency and accountability to ensure fairness throughout the process. While providers would have the ability to appeal any judgements, it is always much more difficult to challenge unfair or problematic findings after the fact rather than before the process begins.

I join Monica Schmidt, Bethesda’s Senior Director of Operations, in objecting to this change and in
requesting a public hearing. We look forward to the open hearing on January 28, 2021 at which time we will be submitting more detailed comments.

Best regards,

Mark Hagen
Corporate Director of Public Policy
Bethesda Lutheran Communities
1600 Arboretum Blvd.
P.O. Box 130
Victoria, MN 55386

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To Whom it may concern:

I am reaching out to you to express concerns regarding the proposed amendments to rules governing use of random extrapolation in monetary recovery at Minnesota Rules, part 9505.2220. We are requesting that a rule making hearing is conducted to assure that the amendments do not water down the statistical requirements for extrapolations in SIRS audits in an unfair manner.

If you have any questions, I can be reached at 651-900-2210.

Thank you for your time,

Camille Heyman and Paige Berland

Camille Heyman / Clinical Director
Office: 651-900-2210 / Direct: 612-289-2941 / Fax: 612-448-9105
Minnesota Behavioral Specialists / 4635 Nicols Rd. Suite 104 / Eagan, MN 55122
cheyman@mnbehavioral.com / www.mnbehavioral.com
Vanessa Vogl  
MN Department of Human Services  
Administrative Law Office  
P.O. Box 64254  
St Paul, MN 55164-0254

Dear Ms. Vogl,

We are writing in reference to the Notice of Intent to Adopt Rules without a public hearing unless 25 or more persons request a hearing. We request a hearing Revisor ID number 4567. We are concerned about this change and wish there to be more discussion before changes are made. We are especially concerned about the portion that removes the requirement that the provider be notified of the sampling method before the sample is drawn. We are not fully sure of how that would affect us, but want to make sure the process is vetted out fully before adopting any changes.

Sincerely,
Todd Devine  
Finance Director  
Bear Creek Services  
toddd@bearcreekservices.org  
507-288-7195
Re: Proposed Amendment to Rules Governing Use of Random Sample Extrapolation in Monetary Recovery, Minnesota Rules, part 9505.2220

I am writing this email to contest adopting any rules without a public hearing. **I request that there be a public hearing.**

Further, I request the following be implemented in this statute:

- Give all providers the option to use a defined sampling method OR to use individual invoices.
- Notify the provider be notified of the sampling method before the sample is drawn.
- Only allow SIRS to recoup monies from vendors AFTER they have proven fraud.

Respectfully,

Joan Vaughn, President
Communities of Care
Interchange Office Building
2355 Fulham Street, Suite 400
p. 651-482-0549
f. 651-482-0280
joanv@communitiesofcaremn.com
www.communitiesofcaremn.com

Like us on Facebook. https://link.zixcentral.com/u/5d83e731/XgBlfEE96hGEbb_gsebghQ?
u=https%3A%2F%2Fwww.facebook.com%2Fpg%2FCommunities-of-Care-457371144420451%2Fposts%2F3F%3Fref%3Dpage_internal

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To whom it may concern;

My name is Ahmed Muhumud. I'm the manager of Preferred Choice Home Care, LLC (PCHC). PCHC is a registered MHCP provider for personal care and waiver services. I like to take this opportunity to register my strong opposition to the proposed rule change by DHS' SIRS department in its entirety.

SIRS practices are already fraught with selective, arbitrary and intentional targeting of certain marginalized groups and communities which often leads to waste of limited resources that would be best used against actual credible fraud and waste. The proposed changes are likely to result even more egregious abuse of their power, not based on actual evidence or likelihood of fraud, but based on a hearsay and fishing expedition. If the proposed changes take place, they will do this without even a reasonable notice to the impacted providers many of whom are often blindsided and their businesses ruined with flimsy and speculative reasoning only to have their rights restored after lengthy and fruitless investigation fails to yield any evidence of fraud. Unfortunately, by this time, these businesses are effectively destroyed.

I'm a strong proponent of strong action against anyone who is credibly accused of committing fraud, waste and abuse. I believe strongly my role as steward of the limited resources available for services among the most vulnerable in our society. I believe there is room to strengthen the delivery and oversight of the MHCP program. Having said that, the current proposal does very little to implement meaningful and systematic improvement of the process and gives more leeway to an entity that has very little credibility and is met with scorn by large segment of the providers due to their pattern of abuse of power, selective and arbitrary punishment of certain providers while ignoring others and their reluctance to engage providers in meaningful and productive improvements.

ONCE AGAIN, I'm registering my strong objection to the proposed rule change in its entirety and request a hearing if it continues to progress.

Sincerely,

Ahmed Muhumud
Manager
Preferred Choice Home Care