July 15, 2021

VIA EFILING ONLY

Vanessa Vogl
Minnesota Department of Human Services
PO Box 64254
Saint Paul, MN 55164
vanessa.vogl@state.mn.us

Re:  In the Matter of the Proposed Exempt Rules of the Department of Human Services Relating to Dialectical Behavior Therapy, Minn. R. 9505.0372)
OAH 71-9029-37576; Revisor R-4673

Dear Ms. Vogl:

Enclosed herewith and served upon you by mail is the ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400 in the above-entitled matter. The amendments to the rule parts are exempt from the rulemaking requirements of Minn. R. ch. 14 (2019) pursuant to the good cause exemption in Minn. Stat. § 14.388, subd. 3 (2020).

With the approval of the adopted rules, the Office of Administrative Hearings has closed this file and is returning the rule record to the Department of Human Services so that the Department of Human Services can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365 (2020). Upon submission to the Office of Administrative Hearings of the Department of Human Services’s signed order approving the rules, the Office of Administrative Hearings will file the rules with the Secretary of State. The Department of Human Services’s next step is to arrange for publication of the proposed amendments in the State Register as required by Minn. Stat. § 14.388, subd. 1 (2020).

If you have any questions regarding this matter, please contact Denise Collins at (651) 361-7875, denise.collins@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,

Michelle Severson

MICHELLE SEVERSON
Legal Assistant

Enclosure
cc: Legislative Coordinating Commission
Ryan Inman
CERTIFICATE OF SERVICE

In the Matter of the Proposed Exempt Rules of the Department of Human Services Relating to Dialectical Behavior Therapy, Minn. R. 9505.0372

OAH Docket No.
71-9029-37576

Kim Pogue certifies that on July 15, 2021 she served a true and correct copy of the attached ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 and MINN. R. 1400.2400; by courier service, by placing it in the United States mail with postage prepaid, or by electronic mail, as indicated below, addressed to the following individuals:

VIA EFILING ONLY
Vanessa Vogl
Minnesota Department of Human Services
444 Lafayette Rd
Saint Paul, MN  55155
vanessa.vogl@state.mn.us

VIA EMAIL ONLY
Ryan Inman
Office of the Revisor of Statutes
ryan.inman@revisor.mn.gov
jason.kuenle@revisor.mn.gov
cindy.maxwell@revisor.mn.gov

VIA EMAIL ONLY
Legislative Coordinating Commission
lcc@lcc.leg.mn
In the Matter of the Proposed Exempt Rules of the Department of Human Services Relating to Dialectical Behavior Therapy, Minn. R. 9505.0372

ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400

This matter came before Administrative Law Judge Jessica A. Palmer-Denig upon the request of the Minnesota Department of Human Services (Department) for a legal review of the above-entitled rule under Minn. Stat. § 14.388 (2020) and Minn. R. 1400.2400 (2019).

On July 6, 2021, the Department filed required documents with the Office of Administrative Hearings seeking review and approval of its proposed rule. On July 7, 2021, the Department supplemented its submission and the record closed on that date.

Based upon a review of the written submissions by the Department,

IT IS HEREBY DETERMINED THAT:

1. The Department has the statutory authority to adopt the rules using the good cause exempt rulemaking process pursuant to Minn. Stat. § 14.388, subd. 1(3) and (4).


IT IS HEREBY ORDERED THAT:

The adopted rules are APPROVED.

Dated: July 15, 2021

JESSICA A. PALMER-DENIG
Administrative Law Judge
July 7, 2021

The Honorable Jessica Palmer-Denig  
Administrative Law Judge  
Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Exempt Rules of the Department of Human Services Relating to Dialectical Behavior Therapy, Request for Review and Approval of Good Cause Exempt Rules Under Minnesota Statutes, Section 14.388; Revisor’s ID Number 4673

Dear Judge Palmer-Denig:

Please accept as a supplement to the record for the above-named rules, OAH Docket No. 71-9029-37576, this confirmation of notice sent to the Department’s rulemaking list, as required by Minnesota Statutes, section 14.388, subdivision 2. I inadvertently included the incorrect confirmation in my initial submission; my apologies. The correct one is attached to this cover letter.

Enclosed for your review:

(1) Confirmation of Notice sent to Department’s Rulemaking List maintained under Minnesota Statutes, section 14.14, subdivision 1a.

If you have questions about the enclosed document, please contact me by email at vanessa.vogl@state.mn.us or by phone at (651) 431-3168.

Yours very truly,

Vanessa Vogl  
Rulemaking Attorney
This is a courtesy copy of an email bulletin sent by Vanessa Vogl.

This bulletin was sent to the following groups of people:

Subscribers of Rulemaking Notices (4635 recipients)

NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS

You are subscribed to receive communications about rulemaking from the Department of Human Services. The Department has just issued a Notice of Submission of Amendments to Rules Governing Dialectical Behavioral Therapy. Please read further for more information:

TO: ALL PERSONS REGISTERED TO RECEIVE NOTICE OF RULEMAKING BY THE DEPARTMENT OF HUMAN SERVICES

RE: AMENDMENTS TO RULES GOVERNING DIALECTICAL BEHAVIORAL THERAPY, Minnesota Rules, part 9505.0372, subpart 10, item C(1); Revisor’s ID Number 4673

In accordance with Minnesota Statutes, section 14.388, subdivision 2, this Notice is being sent to all persons who have registered with the Department to receive notice of rulemaking proceedings commenced by the Department under Minnesota Statutes, section 14.14, subdivision 1a. This notice is also posted on the Department's website: https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/

PLEASE TAKE NOTICE that the above-cited rules proposed for adoption will be submitted to the Office of Administrative Hearings on the date of this notice, June 8, 2021. A copy of the rule modification is posted on the Department's website.

By Laws of Minnesota 2020, 1st Special Session, chapter 2, article 5, section 38, the Minnesota Legislature requires the Commissioner of the Department of Human Services to amend rules governing dialectical
behavioral therapy (DBT). The Department is seeking only to delete language in rule that limits the DBT Medical Assistance benefit to those 18 years of age or older, so that the benefit will be available regardless of age. This rule change is needed to make rule consistent with state statute and the Minnesota Medicaid State Plan.

All interested persons have five business days after the date of this notice to submit comments to the Office of Administrative Hearings via its eComments website at https://minnesotaaoah.granicusideas.com/discussions or 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620

The Department is using the good cause exemption process under Minnesota Statutes, section 14.388, subd. 1, clause (3), to make the specific change stated in the laws cited above without additional interpretation. Under the good cause exemption process no hearing will take place on this rulemaking.

The agency contact person is: Vanessa Vogl at the Department of Human Services, PO Box 0254, St. Paul, Minnesota, 55164-0254, telephone (651) 431-3168, email vanessa.vogl@state.mn.us. For special accommodation you may contact Vanessa. Questions concerning the rules should be directed to Vanessa.

You are receiving this communication because according to our records, you registered to receive notices of rulemaking proceedings commenced by the Department. If you do not wish to continue receiving such notices from the Department, please notify Vanessa in writing, by email (vanessa.vogl@state.mn.us) or by U.S. mail (Vanessa Vogl, Minnesota Department of Human Services, PO Box 64254, Saint Paul, MN 55164-0254). If you know of others who would be interested in registering to receive notification of agency rulemakings, they can do so by submitting their email address here.
July 6, 2021

The Honorable Jessica Palmer-Denig
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Exempt Rules of the Department of Human Services Relating to Dialectical Behavior Therapy, Request for Review and Approval of Good Cause Exempt Rules Under Minnesota Statutes, Section 14.388; Revisor’s ID Number 4673

Dear Judge Palmer-Denig:

The Minnesota Department of Human Services proposes to adopt the above-named exempt rules relating to dialectical behavior therapy. The Department requests that the Office of Administrative Hearings review and approve the rules under Minnesota Statutes, section 14.388.

Enclosed for your review are the documents required by OAH Rules, part 1400.2400, subpart 2:

(1) Rules with Revisor’s approval
(2) Proposed Order Adopting Rules
(3) Certificate of Mailing of Notice to the Department’s Rulemaking Mailing List and Certificate of Accuracy of the Mailing List
(4) Certificate of Distribution of Notice to Dialectical Behavior Therapy Coalition Group
(5) Certificate of Distribution of Notice to Dialectical Behavior Therapy Intensive Outpatient Program Certified Provider Group.

If you have questions about the enclosed documents or the proposed exempt rules, please contact me by email at vanessa.vogl@state.mn.us or by phone at (651) 431-3168.

After completing your review, please send any correspondence to me at the email noted above.

Yours very truly,

Vanessa Vogl
Rulemaking Attorney
Department of Human Services

Adopted Exempt Permanent Rules Relating to Dialectical Behavior Therapy

9505.0372 COVERED SERVICES.

[For text of subparts 1 to 9, see Minnesota Rules]

Subp. 10. Dialectical behavior therapy (DBT). Dialectical behavior therapy (DBT) treatment services must meet the following criteria:

[For text of items A and B, see Minnesota Rules]

C. To be eligible for DBT, a client must:

(1) be 18 years of age or older;

(2) (1) have mental health needs that cannot be met with other available community-based services or that must be provided concurrently with other community-based services;

(3) (2) meet one of the following criteria:

[For text of units (a) and (b), see Minnesota Rules]

(4) (3) understand and be cognitively capable of participating in DBT as an intensive therapy program and be able and willing to follow program policies and rules ensuring safety of self and others; and

(5) (4) be at significant risk of one or more of the following if DBT is not provided:

[For text of units (a) to (d), see Minnesota Rules]

[For text of items D to F, see Minnesota Rules]

[For text of subpart 11, see Minnesota Rules]
Office of the Revisor of Statutes
Administrative Rules

TITLE: Adopted Exempt Permanent Rules Relating to Dialectical Behavior Therapy

AGENCY: Department of Human Services

REVISOR ID: R-4673

MINNESOTA RULES: Chapter 9505

The attached rules are approved as to form

Emma Meyer
Assistant Revisor
PROPOSED ORDER ADOPTING RULES

Adoption of Rules Governing Dialectical Behavioral Therapy, Minnesota Rules, 9505.0372, subpart 10, item C(1); Revisor’s ID Number 4673

BACKGROUND INFORMATION

1. Minnesota Statutes, section 14.388, subdivision 1 states:

“If an agency for good cause finds that the rulemaking provisions of [chapter 14] are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to... (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or (4) make changes that do not alter the sense, meaning, or effect of a rule, the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4).”

2. The Department of Human Services (Department) for good cause finds that the regular rulemaking provisions of Minnesota Statutes, chapter 14 are unnecessary, impracticable, and contrary to the public interest for the adoption of the proposed rule amendments, and that it is more appropriate to use the exempt rulemaking provisions in Minnesota Statutes, section 14.388 to adopt these amendments.

3. By Laws of Minnesota 2020, 1st Special Session, chapter 2, article 5, section 38, the Minnesota Legislature amended Minnesota Statutes, section 256B.0625, subdivision 5l so that Medical Assistance coverage of dialectical behavior therapy is no longer limited to adults. Accordingly, to align with this statutory change, the Department is amending Minnesota Rules, 9505.0372, subpart 10, by deleting the age requirement for Medical Assistance coverage of dialectical behavioral therapy in item (C)(1). This change incorporates a specific change stated in applicable statutes that requires no interpretation of law. Therefore, the good cause exempt rulemaking process for these rules is authorized by Minnesota Statutes, section 14.388, subdivision 1(3).

4. The Department is also replacing the word “assuring” with the word “ensuring” in part 9505.0372, subpart 10, item C(3). This amendment reflects proper language usage. This change does not alter the sense, meaning, or effect of a rule; indeed, it clarifies meaning by employing the proper word. Therefore, the good cause exempt rulemaking process for these rules is authorized by Minnesota Statutes, section 14.388, subdivision 1(4).

5. The Department has complied with all notice and procedural requirements in the exempt rulemaking process, including Minnesota Statutes, section 14.386, paragraph (a), clauses (1) to (4). In accordance with Minnesota Statutes, section 14.388, subdivision 2, the Department sent notice to all persons who have registered their name with the agency under Minnesota Statutes, section 14.14, subdivision 1a. The Department also gave notice specifically to
dialectical behavior therapy providers and coalition groups. The notice and supporting documents are posted on the Department’s website.

6. The Office of Administrative Hearings received 0 written comments on the rules.

7. This rule change is needed and reasonable.

ORDER

Rules of the Department of Human Services governing dialectical behavioral therapy in the form set out in the Revisor’s draft, file number RD4673, dated August 25, 2020, are adopted under my authority in Minnesota Statutes, section 14.388, subdivision 1(3).

_________________________  ________________________________
Date               Amy Akbay, Chief General Counsel
                        Minnesota Department of Human Services
Minnesota Department of Human Services

CERTIFICATE OF MAILING THE NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING TO THE RULEMAKING MAILING LIST

Proposed Amendments to Rules Relating to Dialectical Behavior Therapy, Minnesota Rules, part 9505.0372, subpart 10, item C(1); Revisor’s ID Number 4673

I certify that on June 8, 2021, in Saint Paul, Ramsey County, Minnesota, I mailed the Notice of Submission of Rules Proposed for Adoption Without a Public Hearing, and the proposed rules, by sending electronic copies via the GovDelivery distribution system to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. A copy of the electronic confirmation that the notice was sent is attached to this Certificate.

Vanessa Vogl
Rulemaking Attorney
Legal Nonlicensed Child Care Providers Good Cause Rulemaking

This is a courtesy copy of an email bulletin sent by Vanessa Vogl.

This bulletin was sent to the following groups of people:

Subscribers of Rulemaking Notices (4652 recipients)

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You are subscribed to receive communications about rulemaking from the Department of Human Services. The Department has just issued a Notice of Submission of Rules, proposed for adoption without a public hearing to the Office of Administrative Hearings using the good cause exempt rulemaking process. The proposed rules govern legal non-licensed child care provider capacity limits. Please read further for more information:

To: Persons Registered to Receive Notification of Department Rulemakings

Re: Notice of Submission of Rules of the Minnesota Department of Human Services Relating to Legal Non-Licensed Child Care Provider Capacity Limits, Minnesota Rules, Part 3400.0120; Revisor’s ID Number 4702

Greetings,

The Department of Human Services Child Care Assistance Program (CCAP) is proposing using the good cause exempt rulemaking process to establish a cap on the number of children cared for by a legal non-licensed child care provider (LNL) who receives a CCAP payment. The resulting rule will bring CCAP into compliance with federal regulations requiring LNL capacity limits.

The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund at 45 C.F.R. § 98.41, require states to establish capacity limits and ratios for all child care providers who receive payments from the Child Care and Development Fund. In order to meet this federal requirement, Minnesota must establish a numerical ratio for the number of children a LNL can serve by September 30, 2021.

The good cause exempt rulemaking process is governed by Minnesota Statutes, section 14.388. Under subdivision 1(2) of the statute, a state agency has the authority to use a shortened rulemaking process if the agency finds that the standard rulemaking process is unnecessary for amending a rule to "comply with...a requirement in federal law in a manner that does not allow for compliance" with the regular rulemaking...
Since 2018 the Department has been in the process of amending Minnesota Rules, Chapter 3400 in its entirety. This portion of proposed rules pertaining to LNL ratios and capacity limits will be included in the overall rule amendment and will go through the formal rulemaking process. Due to the length of Chapter 3400 and the complexity of the amendments, the anticipated finalization of the rule is early 2022. Therefore, the Department finds it necessary to use the good cause exempt rulemaking process to codify the LNL capacity requirement to meet the September 30, 2021 deadline.

As required by Minnesota Statutes, section 14.388, subdivision 2, this Notice is being sent to all persons who have registered with the Department to receive notice of all Department rulemaking proceedings under Minnesota Statutes, section 14.14, subdivision 1a. This notice is also posted on the Department’s website: https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/

The above-cited rules proposed for adoption will be submitted to the Office of Administrative Hearings after the date of this notice, June 16, 2021. A copy of the proposed rule language is posted on the Department's website.

All interested persons have five business days after the date of this notice to submit comments to the Office of Administrative Hearings via its eComments website at https://minnesotaoah.granicusideas.com/discussions or 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620. Under the good cause exemption process no hearing will take place on this rulemaking.

The agency contact person is: Vanessa Vogl at the Department of Human Services, PO Box 0254, St. Paul, Minnesota, 55164-0254, telephone (651) 431-3168, email vanessa.vogl@state.mn.us. For special accommodation you may contact Vanessa. Questions concerning the rules should be directed to Vanessa.

You are receiving this communication because according to our records, you registered to receive notices of rulemaking proceedings commenced by the Department. If you do not wish to continue receiving such notices from the Department, please notify Vanessa in writing, by email (vanessa.vogl@state.mn.us) or by U.S. mail (Vanessa Vogl, Minnesota Department of Human Services, PO Box 64254, Saint Paul, MN 55164-0254). If you know of others who would be interested in registering to receive notification of agency rulemakings, they can do so by submitting their email address here.

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Courtesy Copy Legal Nonlicensed Child Care Providers Good Cause Rulemaking.htm[6/28/2021 1:36:02 PM]
Minnesota Department of Human Services

CERTIFICATE OF ACCURACY OF THE MAILING LIST

Proposed Amendments to Rules Relating to Dialectical Behavior Therapy, Minnesota Rules, part 9505.0372, subpart 10, item C(1); Revisor’s ID Number 4673

I certify that the list of persons and associations who have requested that their names be placed on the Department of Human Services rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of June 8, 2021.

Vanessa Vogl
Rulemaking Attorney
Minnesota Department of Human Services

CERTIFICATE OF DISTRIBUTION OF THE NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING TO THE DIALECTICAL BEHAVIOR THERAPY COALITION GROUP

Proposed Amendments to Rules Governing Dialectical Behavior Therapy, Minnesota Rules, part 9505.0372, subpart 10, item C(1); Revisor’s ID Number 4673

I certify that on June 7, 2021, in Saint Paul, Ramsey County, Minnesota, I distributed the Notice of Submission of Rules Proposed for Adoption Without a Public Hearing, and the proposed rules, to Dialectical Behavior Therapy Coalition Group by sending an electronic copy via email to the group administrator ahead of the group’s meeting on June 8, 2021.

Suzannie James-Sveback, MA, LMFT, CCTP
Behavioral Health Division
Minnesota Department of Human Services

CERTIFICATE OF DISTRIBUTION OF THE NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING TO THE DIALECTICAL BEHAVIOR THERAPY IOP CERTIFIED PROVIDER GROUP

Proposed Amendments to Rules Governing Dialectical Behavior Therapy, Minnesota Rules, part 9505.0372, subpart 10, item C(1); Revisor's ID Number 4673

I certify that on June 9, 2021, in Saint Paul, Ramsey County, Minnesota, I distributed the Notice of Submission of Rules Proposed for Adoption Without a Public Hearing, and the proposed rules, by announcing the information to members of the Dialectical Behavior Therapy Intensive Outpatient Program Certified Provider Group at their virtual monthly meeting and including the information in the meeting minutes following the meeting. Approximately 30 providers attended the meeting and 80 providers received the meeting minutes.

Suzannie James-Sveback, MA, LMFT, CCTP
Behavioral Health Division
OAH Docket Number: __________________

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Good Cause Rulemaking – Amendment to
Rules Governing Dialectical Behavioral
Therapy, Minnesota Rules, Parts 9505.0372,
subpart 10, itemC(1); Revisor’s ID 4702

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings’ e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.¹

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party’s/Agency’s Name: __Minnesota Department of Human Services, c/o Vanessa Vogl, Rulemaking Attorney__
Email: _vanessa.vogl@state.mn.us_ ____________ Telephone: _(651) 431-3168_
Mailing Address: _PO Box 64254, Saint Paul, MN 55164-0254_ ________________

Party’s/Agency’s Attorney: ________________________________________________________________
Firm Name: ____________________________________________
Email: ____________________________________________ Telephone: __________________
Mailing Address: _______________________________________________________________________

Respondent’s/Opposing Party’s Name: ________________________________________________
Email: ____________________________________________ Telephone: __________________
Mailing Address: _______________________________________________________________________

Dated: ______ 5/25/2021 ____________________________________________________________
Signature of Party/Agency or Attorney

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.