

11/23/92

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Permanent
Rules of the Department of Human
Services Governing a Medical Care
Surcharge on Health Care Providers;
Minnesota Rules, Parts 9510.2000
to 9510.2050

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

Laws of Minnesota 1991, chapter 292, article 4, section 20 created a provider surcharge fund; section 21 established a surcharge on nursing facilities, hospitals, and health plans; section 67 established special payments to nursing facilities, hospitals, health plans, and other providers; and section 77 established contingent budget reductions in the event federal financial participation was not available for the special payments under section 67.

The provider surcharge program began on July 1, 1991. The legislature directed the Commissioner to implement the law without complying with the Administrative Procedures Act but to begin emergency rule making within 30 days (Chapter 292, article 4, section 67, subdivision 10). The Department began rulemaking on July 22, 1991, by publishing in the State Register a Notice of Solicitation of Outside Information or Opinion (16 S.R. 141). On December 23, 1991, the Department published in the State Register the Adopted Emergency Rules Relating to the Medical Care Surcharge and Special Payments (16 S.R. 1557).

The 1991 surcharge legislation was amended in 1992. Laws of Minnesota 1992, chapter 513, article 7, section 16 amended the surcharge on nursing facilities; section 17 required the Department to seek waivers; section 18 amended the surcharge on hospitals; section 19 amended the surcharge on health plans; section 123 deleted the special payments to hospitals; and section 124 deleted some of the special payments to nursing facilities. The amendments were necessary to comply with changes in the federal law, and substantially changed the provider surcharge. The provider surcharge legislation is essentially self-implementing. The legislation identifies providers who are to be assessed a surcharge, sets forth the amount to surcharge and states the requirements governing notice, appeal, and enforcement.

The purpose of the permanent rule is to implement Laws of Minnesota 1991, chapter 292, article 4, sections 21 and 67, as amended by Laws of Minnesota 1992, chapter 513, article 7, sections 16 to 19, and sections 123 and 124.

The Legislative Commission to
Review Administrative Rules

NOV 19 1992

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The Department has considered the small business consideration requirements under Minnesota Statutes, section 14.115. The proposed permanent rule implements the Non-Minnesota Care provider surcharge tax imposed by the legislature on nursing homes, Minnesota hospitals, and health maintenance organizations. The legislation identifies providers who are to be assessed a surcharge, sets forth the amount to surcharge and states the requirements governing notice, appeal, and enforcement. Adoption of less stringent requirements for small businesses would be contrary to the statutory objectives that are the basis of the proposed rulemaking. In addition, the Department believes that Minnesota Statutes, section 14.115, does not apply to these rules under the exclusion in Minnesota Statutes, section 14.115, subdivision 7, clause (3).

IMPACT ON AGRICULTURAL LANDS

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land to comply with additional statutory requirements. The proposed permanent rule governing a Non-Minnesota Care provider surcharge tax has no impact on agricultural land and, therefore, the additional statutory provisions do not apply.

FISCAL NOTE DISCUSSION

There are administrative costs associated with the implementation and maintenance of the provider surcharge program. The legislature appropriated funds to address these costs under Laws of Minnesota 1991, chapter 292, article 1, section 2, subdivision 9 and article 4, section 67, subdivision 7. The Department does not anticipate costs beyond those identified in the legislative authorization.

RULE DEVELOPMENT PROCEDURES

The provider surcharge program began on July 1, 1991. The legislature directed the Commissioner to implement the law without complying with the Administrative Procedures Act but to begin emergency rule making within 30 days (Chapter 292, article 4, section 67, subdivision 10). The Department began rulemaking on July 22, 1991, by publishing in the State Register a Notice of Solicitation of Outside Information or Opinion (16 S.R. 141). On December 23, 1991, the Department published in the State Register the Adopted Emergency Rules Relating to the Medical Care Surcharge and Special Payments (16 S.R. 1557). The emergency rule expires on December 6, 1992.

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On June 29, 1992, the Department published in the State Register a Notice of Solicitation of outside Information or Opinions Regarding Proposed Permanent Rules Governing a Non-HealthRight Provider Surcharge on Health Care Providers (16 S.R. 2987).

Since the provider surcharge statutes are generally self-implementing, the rule is short. The rule defines terms used in the surcharge legislation; addresses how the surcharge will be administered for facilities that close, change owners or enter into receivership, or begin operation after October 1, 1992; describes the appeals process; and sets forth the enforcement mechanism.

On August 31, 1992, the Department published in the State Register a Notice of Intent to Adopt a Rule Without a Public Hearing (17 S.R. 431) and received 25 requests for a public hearing. Therefore, a public hearing will be held on the proposed rules.

MEDICAL CARE SURCHARGE ON HEALTH PROVIDERS (DHS RULE 45)

9510.2000 PURPOSE AND SCOPE.

This part states the purpose of the rule and the scope of applicability.

Subpart 1. **Purpose.** This subpart is necessary to identify the purpose of the rule. The purpose is to govern the administration of the medical care surcharge as imposed by Laws of Minnesota 1991, chapter 292, article 4, sections 21 and 67, as amended by Laws of Minnesota 1992, chapter 513, article 7, sections 16 to 19, and sections 123 and 124.

Subp. 2. **Scope.** This subpart is necessary to clarify that the entire sequence of parts 9510.2000 to 9510.2050 apply to nursing homes, Minnesota hospitals and health maintenance organizations (HMOs) operating on or after October 1, 1992. This subpart is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, sections 16, 18, and 19.

9510.2010 DEFINITIONS.

This part defines words and phrases that have meanings specific to parts 9510.2000 to 9510.2050, that otherwise may have several possible

interpretations or that need exact definition to be consistent with statute or other department rules.

Subpart 1. **Scope.** This subpart is necessary to clarify that the definitions apply to the entire sequence of parts 9510.2000 to 9510.2050. This subpart and the definitions that follow in subparts 2 to 13 are necessary to inform providers of the meaning of specific words used in this rule.

Subp. 2. **Appeal.** This definition is necessary to specify what constitutes an appeal, who can make an appeal, and that it relates to the procedure for contested case hearing under Minnesota Statutes, chapter 14. The definition is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

Subp. 3. **Closed or closing.** This definition is necessary to clarify a term used in the rule. It is necessary to inform affected providers how the surcharge will be implemented in the event a nursing home or hospital closes. Therefore, the term "closed" or "closing" must be defined. This definition is reasonable because the meaning of closed or closing is very specific to the rule and is directly related to the suspension of services.

Subp. 4. **Commissioner.** This subpart is necessary to clarify a term used in the rule. The "commissioner" is named in the Laws of Minnesota 1991, chapter 292, article 4, and Laws of Minnesota 1992, chapter 513, article 7, as the individual responsible for the implementation of the provider surcharge. The commissioner's powers and duties are described in Minnesota Statutes, section 256.01. It is necessary to include designated representative within the definition since it is impossible for the commissioner herself to perform all the responsibilities assigned to her in law. Including this delegation of responsibility in the definition informs interested parties of the delegation. It is reasonable to substitute "commissioner" for "Commissioner of the Department of Human Services" to shorten the length of the rule.

Subp. 5. **Department.** This definition is necessary to clarify a term used in the rule and to identify the state agency which, under the direction of the commissioner, implements the provider surcharge program. It is reasonable to substitute "department" for "Minnesota Department of Human Services" to shorten the length of the rule.

Subp. 6. **Federal Indian Health Service facility.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, subdivision 2, 1991 Supp., specifically exempts a "federal Indian health service facility" from the surcharge, but does not define the term. Therefore, it is necessary to define the term. The term is reasonable because it identifies facilities and medical services that are operated by the federal Indian Health Services or by an Indian tribe or tribal organization.

Subp. 7. **Health maintenance organization.** This definition is necessary to clarify a term used in the rule. Laws of Minnesota 1992, chapter 513, article 7, section 19 imposes a surcharge on "health maintenance organizations" with a certificate of authority issued by the Commissioner of Health under chapter 62D. The definition is

reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 19.

Subp. 8. **Hospital.** This definition is necessary to clarify a term used in the rule. Hospital is defined in several places in law and rule, and the provider surcharge is specific to "hospitals" as defined in Minnesota Rules, part 9505.0175, subpart 16, excluding federal Indian Health Service facilities and regional treatment centers. The definition is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 18.

Subp. 9. **Medical care surcharge.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, 1991 Supp., created the provider surcharge. Although the surcharge law was amended in 1992, the surcharge tax continues. The definition is reasonable because it distinguishes the provider surcharge from other fees or taxes.

Subp. 10. **Minnesota hospital.** This definition is necessary to clarify a term used in the rule. The term "hospital" is defined in subpart 8. The provider surcharge is specific in its applicability to Minnesota hospitals, but excludes federal Indian Health Service Facilities and regional treatment centers. Therefore, the term hospital is defined with the modifier "Minnesota" to identify those hospitals located in Minnesota. This definition is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 18.

Subp. 11. **Nursing home.** This definition is necessary to clarify a term used in the rule. Under Laws of Minnesota 1992, chapter 513, article 7, section 16, specific reference is made to a nursing home as licensed under Minnesota Statutes, chapter 144A. This definition is reasonable because it references the statutory definition of "nursing home" and is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 16.

Subp. 12. **Regional treatment center.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, subdivision 2, 1991 Supp., specifically exempts a "regional treatment center" from the surcharge, but does not define the term. The term "regional treatment center" is not specifically defined in Minnesota Statutes, but it is included within the definition of "state facility" under Minnesota Statutes, section 246.50, subdivision 3. This definition is reasonable because it references the definition under Minnesota Statutes, section 246.50, subdivision 3.

Subp. 13. **Settle-up.** This definition is necessary to clarify a term used in the rule. The term is used to describe the action of resolving an appeal, and determining the amount that needs to be paid by the provider or refunded by the department. This definition is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2020 MEDICAL CARE SURCHARGE.

This parts sets forth the surcharge on nursing homes, Minnesota hospitals, and health maintenance organizations.

Subpart 1. **Nursing homes.** This subpart is necessary to describe how the provider surcharge applies to nursing homes. This subpart details when the surcharge will be billed, identifies the surcharge amount and when it will be effective, consistent with Laws of Minnesota 1992, chapter 513, article 7, sections 16 and 20. This subpart is reasonable because it is consistent with Laws of Minnesota 1992.

Subp. 2. **Minnesota hospitals.** This subpart is necessary to describe how the provider surcharge applies to hospitals. This subpart details when the surcharge will be billed, identifies the surcharge amount and when it will be effective, pursuant to Laws of Minnesota 1992, chapter 513, article 7, sections 18 and 20. This subpart also defines terms used in Laws of Minnesota 1992, chapter 513, article 7, section 18 that are exclusive to this subpart. This subpart deviates from the law, in that the law requires the surcharge to be based on calendar year revenue, two years prior to the current year. However, only fiscal year revenue data is available from the information system cited in statutes.

With the exception of Item C, the definitions in Items A to D are terms defined in Minnesota Rules, chapter 4650. It is reasonable to use the definitions in chapter 4650 for Minnesota hospitals because all acute care hospitals and freestanding outpatient surgical centers licensed under Minnesota Statutes, sections 144.50 to 144.58 are subject to the Minnesota health care cost information system established by parts 4650.0102 to 4650.0176 (See part 9650.0104).

Item A. The definition of "fiscal year" is reasonable because it references the meaning given it under Minnesota Rules, chapter 4650 governing the Health Care Cost Information System.

Item B. The definition of "Health Care Cost Information System" is reasonable because it references Minnesota Rules, parts 4650.0102 to 4650.0176 which governs the Health Care Cost Information System.

Item C. The definition of "Net Medicare revenues" is reasonable because it identifies patient revenue that is attributable to the Social Security Act, Title XVIII. Title XVIII governs Health Insurance for the Aged and Disabled (Medicare).

Item D. The definition of "Net patient revenue" is reasonable because it references the meaning given "revenue" under Minnesota Rules, part 4650.0102, subpart 36 which is the definition section for the Health Care Cost Information System.

This subpart is reasonable because it clarifies the law and is consistent with the intent of Minnesota Laws 1992, chapter 513, article 7, sections 18 and 20.

Subp. 3. **Health maintenance organizations.** This subpart is necessary to describe how the provider surcharge applies to health maintenance organizations. This part details when the surcharge will be billed, identifies the surcharge amount and when it will be effective, pursuant to Laws of Minnesota 1992, chapter 513, article 7, sections 19 and 20. This subpart also defines a term used in Laws of Minnesota 1992, chapter 513, article 7, section 19 that is exclusive to this subpart, "total premium revenues".

The definition of total premium revenue has the meaning given "premium" in Minnesota Rules, part 4685.1930, subpart 3. It is reasonable to use the Department of Health's definition of premium since that is the definition used by health maintenance organizations in preparing their annual reports to the Department of Health.

As noted in subpart 2, this subpart also deviates from the law, in that the law requires the surcharge to be based on calendar year revenues, two years prior to the current year. However, such a system would be impossible to implement since only fiscal year revenue data is available from the information system.

This subpart is reasonable because it clarifies the law and is consistent with the intent of Minnesota Laws 1992, chapter 513, article 7, sections 19 and 20.

Subp. 4. Closed or closing nursing homes and hospitals. This subpart is necessary to address how the surcharge will be applied for closed or closing nursing homes and hospitals. Minnesota Statutes does not specifically address this question. Therefore, this subpart is necessary to inform providers of the department's actions in the event a closing occurs.

In the event that the nursing home or hospital closes before October 1, 1992, the surcharge law as amended does not apply. This is reasonable because the surcharge under Laws of Minnesota 1992 does not take effect until October 1, 1992.

In the event that a nursing home or hospital closes after October 1, 1992, the nursing home is subject to the surcharge for each month after October 1, 1992, in which the nursing home operates and maintains nursing beds; a hospital is subject to the surcharge until the first month after the hospital is completely closed. It is reasonable to have a policy to end the surcharge in the event that a nursing home or hospital closes. The preceding policy is reasonable because it provides that the surcharge will end upon ceasing operation.

Subp. 5. Nursing homes and hospitals that change ownership or enter into receivership. This subpart is necessary to address how the surcharge will be applied for nursing homes and hospitals that change ownership or enter into receivership. Minnesota Statutes does not specifically address this question. Therefore, this subpart is necessary to inform providers of the department's actions in the event a nursing home or hospital changes ownership or enters into receivership. It is reasonable to continue the surcharge as long as the basis for the surcharge continues, regardless of change of ownership or receivership. Without such a provision, the surcharge tax could be avoided by changing ownership or entering into receivership.

Subp. 6. Nursing homes, hospitals and health maintenance organizations that begin operations after October 1, 1992. This part is necessary to inform providers who begin operation after October 1, 1992, that the surcharge applies to them as well as those providers in existence on October 1, 1992.

Item A states that the surcharge will be applied to nursing homes on July 1st after the nursing home becomes licensed. It is necessary to apply the surcharge on July 1st after the nursing home becomes licensed because Laws of Minnesota 1992, chapter 513, article 7, section 16 imposes the surcharge based on the beds licensed on July 1.

Item B states that the surcharge will be applied to hospitals and HMO's when data has been reported to the Health Care Cost Information System for the fiscal year two years prior to the year of the surcharge. It is necessary to apply the surcharge based on the data reported to the Health Care Cost Information System because that is the basis for imposing the surcharge under Laws of Minnesota 1992, chapter 513, article 7, sections 18, 19, and 20. This subpart is reasonable because it is consistent with the provider surcharge provisions in Laws of Minnesota 1992.

9510.2030 NOTIFICATION OF SURCHARGE AMOUNT.

This part identifies the notification requirement the commissioner is required to give to providers.

Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states, in part:

"At least 30 days prior to the date the payment is due, the commissioner shall give each provider a written notice of each payment due."

This part informs providers of the duty of the commissioner. This part is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2040 SURCHARGE APPEALS.

This part describes the process for appealing the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states:

"At least 30 days prior to the date the payment is due, the commissioner shall give each provider a written notice of each payment due. A provider may request a contested case hearing under chapter 14 within 30 days of receipt of the notice. The decision of the commissioner regarding the amount due stands until the appeal is decided. The provider shall pay the contested payment at the time of appeal with settle-up at the time of appeal resolution."

Subpart 1. **When allowed.** This subpart is necessary to inform providers of the right to appeal under Minnesota Statutes, section 256.9657 the amount of each surcharge payment assessed. This subpart is reasonable because it is consistent with Minnesota Statutes

Subp. 2. **Criteria.** This subpart is necessary to inform providers of the criteria for requesting an appeal. An appeal request must comply with items A and B.

Item A. This item sets forth a time limit for requesting an appeal. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., requires that an appeal must be requested within 30 days of receipt of the notice by the provider. For purposes of determining the date or receipt of the surcharge notice, the presumption is that the surcharge notice will be received three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing home, hospital, or health maintenance organization can establish a different date of receipt. It is reasonable to establish a standard timeframe for determining receipt of the notice so providers will know when the 30 day time period begins.

Item B. This item is necessary to establish a uniform format for requesting an appeal. The format identifies for the provider information necessary to appeal and provides information to the department necessary to resolve the dispute or necessary for the Office of Administrative Hearings to hear the appeal.

Subitem (1) requires a provider to indicate what is being disputed. The basis of the dispute is necessary for the department to understand what aspect of the surcharge is being questioned by a provider.

Subitem (2) is necessary to require the provider to identify the computation and the amount of the surcharge the appealing party believes to be correct. When a provider indicates that the surcharge amount is incorrect, it is reasonable to assume that the provider has computed a different amount for the surcharge. Disputed surcharges will most likely be due to differences in information used to compute the surcharge. Therefore, it is reasonable for the provider to identify the computation used to determine the amount of the surcharge he or she believes to be correct.

Subitem (3) is necessary to identify the contact for ongoing discussions on the appeal. This subitem is reasonable because it ensures information regarding the dispute is relayed to the proper individual within the provider organization.

Subitem (4) is necessary to establish the date on which the payment notice was received. This subpart is reasonable because Minnesota Statutes, section 256.9657, subdivision 6, restricts appeals to within 30 days of the receipt of the notice. The rule presumes the notice is received three days after it is mailed, excluding Sundays and holiday, unless the provider can establish a different date of receipt. The statement under oath is reasonable because that statement indicates to the provider the importance of accurately stating the date on which the payment notice was received.

Subp. 3. **Resolution.** This subpart is necessary to inform the providers that if an informal resolution of the appeal is not possible, the appeal will proceed under chapter 14. It is reasonable to allow for informal resolution of a dispute upon agreement of both parties since many disputes may be resolved informally. An informal resolution of a dispute can avoid the expense of a contested case for both the provider and the state. If a dispute cannot be resolved on an informal basis, the appeal will be heard according to the contested case provisions in Minnesota Statutes, chapter 14. This subpart is reasonable because it is consistent with Minnesota Statutes, section

256.9657, subdivision 6, which grants providers the right to request a contested case hearing under Minnesota Statutes, chapter 14.

Subp. 4. **Surcharge payment during appeal.** This subpart is necessary to inform providers that they must pay the surcharge by the date due even though an appeal is pending. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states, in part: "The decision of the commissioner regarding the amount due stands until the appeal is decided. The provider shall pay the contested payment at the time of appeal with settle-up at the time of appeal resolution." This subpart is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

Subp. 5. **Resolution of appeal.** Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states: "The provider shall pay the contested payment at the time of appeal with settle-up at the time of the appeal resolution". This subpart informs the provider when the settle-up must occur. To clarify when settle-up will occur, this subpart includes a definition for the term "exhaustion of the appeal process". Definition of exhaustion of the appeal process is necessary to inform providers when they can expect settle-up.

Subp. 6. **Monthly appeal.** This subpart clarifies that an appeal must occur each time a provider receives an invoice. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2050 **ENFORCEMENT.**

This part is necessary to inform providers of the enforcement mechanism authorized by the legislature to ensure compliance with the surcharge tax. Laws of Minnesota 1992, chapter 513, article 7, section 21, states:


"The provisions of sections 289A.35 to 289A.50 relating to the authority to audit, assess, collect, and pay refunds of other state taxes may be implemented by the commissioner of human services with respect to the tax, penalty, and interest imposed by this section and section 147.01, subdivision 6. The commissioner of human services shall impose civil penalties for violation of this section or section 147.01, subdivision 6, as provided in section 289A.60, and the tax and penalties are subject to interest at the rate provided in section 270.75."

This subpart is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 21.

EXPERT WITNESS:

If this rule should go to public hearing, the Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 11/3/92



NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

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The purpose of the permanent rule is to implement Laws of Minnesota 1991, chapter 292, article 4, sections 21 and 67, as amended by Laws of Minnesota 1992, chapter 513, article 7, sections 16 to 19, and sections 123 and 124.

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IMPACT ON AGRICULTURAL LANDS

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land to comply with additional statutory requirements. The proposed permanent rule governing a Non-Minnesota Care provider surcharge tax has no impact on agricultural land and, therefore, the additional statutory provisions do not apply.

FISCAL NOTE DISCUSSION

There are administrative costs associated with the implementation and maintenance of the provider surcharge program. The legislature appropriated funds to address these costs under Laws of Minnesota 1991, chapter 292, article 1, section 2, subdivision 9 and article 4, section 67, subdivision 7. The Department does not anticipate costs beyond those identified in the legislative authorization.

RULE DEVELOPMENT PROCEDURES

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On July 22, 1991, the Department published in the State Register a Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing a Provider Surcharge for Certain Providers Who Participate in the Medical Assistance Program (16 S.R. 141). No information or opinions were received.

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Since the provider surcharge statutes are generally self-implementing, the rule is short and is not perceived as controversial. The rule defines terms used in the surcharge legislation; addresses how the surcharge will be administered for facilities that close, change owners or enter into receivership, or begin operation after October 1, 1992; describes the appeals process; and sets forth the enforcement mechanism.

MEDICAL CARE SURCHARGE ON HEALTH PROVIDERS (DHS RULE 45)

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This part defines words and phrases that have meanings specific to parts 9510.2000 to 9510.2050, that otherwise may have several possible interpretations or that need exact definition to be consistent with statute or other department rules.

Subpart 1. **Scope.** This subpart is necessary to clarify that the definitions apply to the entire sequence of parts 9510.2000 to 9510.2050. This subpart and the definitions that follow in subparts 2 to 13 are necessary to inform providers of the meaning of specific words used in this rule.

Subp. 2. **Appeal.** This definition is necessary to specify what constitutes an appeal, who can make an appeal, and that it relates to the procedure for contested case hearing under Minnesota Statutes, chapter 14. The definition is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

Subp. 3. **Closed or closing.** This definition is necessary to clarify a term used in the rule. It is necessary to inform affected providers how the surcharge will be implemented in the event a nursing home or hospital closes. Therefore, the term "closed" or "closing" must be defined. This definition is reasonable because the meaning of closed or closing is very specific to the rule and is directly related to the suspension of services.

Subp. 4. **Commissioner.** This subpart is necessary to clarify a term used in the rule. The "commissioner" is named in the Laws of Minnesota 1991, chapter 292, article 4, and Laws of Minnesota 1992, chapter 513, article 7, as the individual responsible for the implementation of the provider surcharge. The commissioner's powers and duties are described in Minnesota Statutes, section 256.01. It is necessary to include designated representative within the definition since it is impossible for the commissioner herself to perform all the responsibilities assigned to her in law. Including this delegation of responsibility in the definition informs interested parties of the delegation. It is reasonable to substitute "commissioner" for "Commissioner of the Department of Human Services" to shorten the length of the rule.

Subp. 5. **Department.** This definition is necessary to clarify a term used in the rule and to identify the state agency which, under the direction of the commissioner, implements the provider surcharge program. It is reasonable to substitute "department" for "Minnesota Department of Human Services" to shorten the length of the rule.

Subp. 6. **Federal Indian Health Service facility.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, subdivision 2, 1991 Supp., specifically exempts a "federal Indian health service facility" from the surcharge, but does not define the term. Therefore, it is necessary to define the term. The term is reasonable because it identifies facilities and medical services that are operated by the federal Indian Health Services or by an Indian tribe or tribal organization.

Subp. 7. **Health maintenance organization.** This definition is necessary to clarify a term used in the rule. Laws of Minnesota 1992, chapter 513, article 7, section 19 imposes a surcharge on "health maintenance organizations" with a certificate of authority issued by the Commissioner of Health under chapter 62D. The definition is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 19.

Subp. 8. **Hospital.** This definition is necessary to clarify a term used in the rule. Hospital is defined in several places in law and rule, and the provider surcharge is specific to "hospitals" as defined in Minnesota Rules, part 9505.0175, subpart 16, excluding federal Indian Health Service facilities and regional treatment centers. The definition is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 18.

Subp. 9. **Medical care surcharge.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, 1991 Supp., created the provider surcharge. Although the surcharge law was amended in 1992, the surcharge tax continues. The definition is reasonable because it distinguishes the provider surcharge from other fees or taxes.

Subp. 10. **Minnesota hospital.** This definition is necessary to clarify a term used in the rule. The term "hospital" is defined in subpart 8. The provider surcharge is specific in its applicability to Minnesota hospitals, but excludes federal Indian Health Service Facilities and regional treatment centers. Therefore, the term hospital is defined with the modifier "Minnesota" to identify those hospitals located in Minnesota. This definition is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 18.

Subp. 11. **Nursing home.** This definition is necessary to clarify a term used in the rule. Under Laws of Minnesota 1992, chapter 513, article 7, section 16, specific reference is made to a nursing home as licensed under Minnesota Statutes, chapter 144A. This definition is reasonable because it references the statutory definition of "nursing home" and is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 16.

Subp. 12. **Regional treatment center.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 256.9657, subdivision 2, 1991 Supp., specifically exempts a "regional treatment center" from the surcharge, but does not define the term. The term "regional treatment center" is not specifically defined in Minnesota Statutes, but it is included within the definition of "state facility" under Minnesota Statutes, section 246.50, subdivision 3. This definition is reasonable because it references the definition under Minnesota Statutes, section 246.50, subdivision 3.

Subp. 13. **Settle-up.** This definition is necessary to clarify a term used in the rule. The term is used to describe the action of resolving an appeal, and determining the amount that needs to be paid by the provider or refunded by the department. This definition is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2020 **MEDICAL CARE SURCHARGE.**

This part sets forth the surcharge on nursing homes, Minnesota hospitals, and health maintenance organizations.

Subpart 1. **Nursing homes.** This subpart is necessary to describe how the provider surcharge applies to nursing homes. This subpart details when the surcharge will be billed, identifies the surcharge amount and when it will be effective, consistent with Laws of Minnesota 1992, chapter 513, article 7, sections 16 and 20. This subpart is reasonable because it is consistent with Laws of Minnesota 1992.

Subp. 2. **Minnesota hospitals.** This subpart is necessary to describe how the provider surcharge applies to hospitals. This subpart details when the surcharge will be billed, identifies the surcharge amount and

when it will be effective, pursuant to Laws of Minnesota 1992, chapter 513, article 7, sections 18 and 20. This subpart also defines terms used in Laws of Minnesota 1992, chapter 513, article 7, section 18 that are exclusive to this subpart. This subpart deviates from the law, in that the law requires the surcharge to be based on calendar year revenue, two years prior to the current year. However, only fiscal year revenue data is available from the information system cited in statutes.

With the exception of Item C, the definitions in Items A to D are terms defined in Minnesota Rules, chapter 4650. It is reasonable to use the definitions in chapter 4650 for Minnesota hospitals because all acute care hospitals and freestanding outpatient surgical centers licensed under Minnesota Statutes, sections 144.50 to 144.58 are subject to the Minnesota health care cost information system established by parts 4650.0102 to 4650.0176 (See part 9650.0104).

Item A. The definition of "fiscal year" is reasonable because it references the meaning given it under Minnesota Rules, chapter 4650 governing the Health Care Cost Information System.

Item B. The definition of "Health Care Cost Information System" is reasonable because it references Minnesota Rules, parts 4650.0102 to 4650.0176 which governs the Health Care Cost Information System.

Item C. The definition of "Net Medicare revenues" is reasonable because it identifies patient revenue that is attributable to the Social Security Act, Title XVIII. Title XVIII governs Health Insurance for the Aged and Disabled (Medicare).

Item D. The definition of "Net patient revenue" is reasonable because it references the meaning given "revenue" under Minnesota Rules, part 4650.0102, subpart 36 which is the definition section for the Health Care Cost Information System.

This subpart is reasonable because it clarifies the law and is consistent with the intent of Minnesota Laws 1992, chapter 513, article 7, sections 18 and 20.

Subp. 3. Health maintenance organizations. This subpart is necessary to describe how the provider surcharge applies to health maintenance organizations. This part details when the surcharge will be billed, identifies the surcharge amount and when it will be effective, pursuant to Laws of Minnesota 1992, chapter 513, article 7, sections 19 and 20. This subpart also defines a term used in Laws of Minnesota 1992, chapter 513, article 7, section 19 that is exclusive to this subpart, "total premium revenues".

The definition of total premium revenue has the meaning given "premium" in Minnesota Rules, part 4685.1930, subpart 3. It is reasonable to use the Department of Health's definition of premium since that is the definition used by health maintenance organizations in preparing their annual reports to the Department of Health.

As noted in subpart 2, this subpart also deviates from the law, in that the law requires the surcharge to be based on calendar year revenues, two years prior to the current year. However, such a system

would be impossible to implement since only fiscal year revenue data is available from the information system.

This subpart is reasonable because it clarifies the law and is consistent with the intent of Minnesota Laws 1992, chapter 513, article 7, sections 19 and 20.

Subp. 4. Closed or closing nursing homes and hospitals. This subpart is necessary to address how the surcharge will be applied for closed or closing nursing homes and hospitals. Minnesota Statutes does not specifically address this question. Therefore, this subpart is necessary to inform providers of the department's actions in the event a closing occurs.

In the event that the nursing home or hospital closes before October 1, 1992, the surcharge law as amended does not apply. This is reasonable because the surcharge under Laws of Minnesota 1992 does not take effect until October 1, 1992.

In the event that a nursing home or hospital closes after October 1, 1992, the nursing home is subject to the surcharge for each month after October 1, 1992, in which the nursing home operates and maintains nursing beds; a hospital is subject to the surcharge until the first month after the hospital is completely closed. It is reasonable to have a policy to end the surcharge in the event that a nursing home or hospital closes. The preceding policy is reasonable because it provides that the surcharge will end upon ceasing operation.

Subp. 5. Nursing homes and hospitals that change ownership or enter into receivership. This subpart is necessary to address how the surcharge will be applied for nursing homes and hospitals that change ownership or enter into receivership. Minnesota Statutes does not specifically address this question. Therefore, this subpart is necessary to inform providers of the department's actions in the event a nursing home or hospital changes ownership or enters into receivership. It is reasonable to continue the surcharge as long as the basis for the surcharge continues, regardless of change of ownership or receivership. Without such a provision, the surcharge tax could be avoided by changing ownership or entering into receivership.

Subp. 6. Nursing homes, hospitals and health maintenance organizations that begin operations after October 1, 1992. This part is necessary to inform providers who begin operation after October 1, 1992, that the surcharge applies to them as well as those providers in existence on October 1, 1992.

Item A states that the surcharge will be applied to nursing homes on July 1st after the nursing home becomes licensed. It is necessary to apply the surcharge on July 1st after the nursing home becomes licensed because Laws of Minnesota 1992, chapter 513, article 7, section 16 imposes the surcharge based on the beds licensed on July 1.

Item B states that the surcharge will be applied to hospitals and HMO's when data has been reported to the Health Care Cost Information System for the fiscal year two years prior to the year of the surcharge. It is necessary to apply the surcharge based on the data

reported to the Health Care Cost Information System because that is the basis for imposing the surcharge under Laws of Minnesota 1992, chapter 513, article 7, sections 18, 19, and 20. This subpart is reasonable because it is consistent with the provider surcharge provisions in Laws of Minnesota 1992.

9510.2030 NOTIFICATION OF SURCHARGE AMOUNT.

This part identifies the notification requirement the commissioner is required to give to providers.

Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states, in part:

"At least 30 days prior to the date the payment is due, the commissioner shall give each provider a written notice of each payment due."

This part informs providers of the duty of the commissioner. This part is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2040 SURCHARGE APPEALS.

This part describes the process for appealing the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states:

"At least 30 days prior to the date the payment is due, the commissioner shall give each provider a written notice of each payment due. A provider may request a contested case hearing under chapter 14 within 30 days of receipt of the notice. The decision of the commissioner regarding the amount due stands until the appeal is decided. The provider shall pay the contested payment at the time of appeal with settle-up at the time of appeal resolution."

Subpart 1. **When allowed.** This subpart is necessary to inform providers of the right to appeal under Minnesota Statutes, section 256.9657 the amount of each surcharge payment assessed. This subpart is reasonable because it is consistent with Minnesota Statutes

Subp. 2. **Criteria.** This subpart is necessary to inform providers of the criteria for requesting an appeal. An appeal request must comply with items A and B.

Item A. This item sets forth a time limit for requesting an appeal. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., requires that an appeal must be requested within 30 days of receipt of the notice by the provider. For purposes of determining the date of receipt of the surcharge notice, the presumption is that the surcharge notice will be received three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing home, hospital, or health maintenance organization can establish a different date of receipt. It is reasonable to establish a standard timeframe

for determining receipt of the notice so providers will know when the 30 day time period begins.

Item B. This item is necessary to establish a uniform format for requesting an appeal. The format identifies for the provider information necessary to appeal and provides information to the department necessary to resolve the dispute or necessary for the Office of Administrative Hearings to hear the appeal.

Subitem (1) requires a provider to indicate what is being disputed. The basis of the dispute is necessary for the department to understand what aspect of the surcharge is being questioned by a provider.

Subitem (2) is necessary to require the provider to identify the computation and the amount of the surcharge the appealing party believes to be correct. When a provider indicates that the surcharge amount is incorrect, it is reasonable to assume that the provider has computed a different amount for the surcharge. Disputed surcharges will most likely be due to differences in information used to compute the surcharge. Therefore, it is reasonable for the provider to identify the computation used to determine the amount of the surcharge he or she believes to be correct.

Subitem (3) is necessary to identify the contact for ongoing discussions on the appeal. This subitem is reasonable because it ensures information regarding the dispute is relayed to the proper individual within the provider organization.

Subitem (4) is necessary to establish the date on which the payment notice was received. This subpart is reasonable because Minnesota Statutes, section 256.9657, subdivision 6, restricts appeals to within 30 days of the receipt of the notice. The rule presumes the notice is received three days after it is mailed, excluding Sundays and holiday, unless the provider can establish a different date of receipt. The statement under oath is reasonable because that statement indicates to the provider the importance of accurately stating the date on which the payment notice was received.

Subp. 3. **Resolution.** This subpart is necessary to inform the providers that if an informal resolution of the appeal is not possible, the appeal will proceed under chapter 14. It is reasonable to allow for informal resolution of a dispute upon agreement of both parties since many disputes may be resolved informally. An informal resolution of a dispute can avoid the expense of a contested case for both the provider and the state. If a dispute cannot be resolved on an informal basis, the appeal will be heard according to the contested case provisions in Minnesota Statutes, chapter 14. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, which grants providers the right to request a contested case hearing under Minnesota Statutes, chapter 14.

Subp. 4. **Surcharge payment during appeal.** This subpart is necessary to inform providers that they must pay the surcharge by the date due even though an appeal is pending. Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states, in part: "The decision of the commissioner regarding the amount due stands until the appeal is decided. The provider shall pay the contested payment at the time of appeal with settle-up at the time of appeal resolution." This subpart

is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

Subp. 5. **Resolution of appeal.** Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp., states: "The provider shall pay the contested payment at the time of appeal with settle-up at the time of the appeal resolution". This subpart informs the provider when the settle-up must occur. To clarify when settle-up will occur, this subpart includes a definition for the term "exhaustion of the appeal process". Definition of exhaustion of the appeal process is necessary to inform providers when they can expect settle-up.

Subp. 6. **Monthly appeal.** This subpart clarifies that an appeal must occur each time a provider receives an invoice. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256.9657, subdivision 6, 1991 Supp.

9510.2050 **ENFORCEMENT.**

This part is necessary to inform providers of the enforcement mechanism authorized by the legislature to ensure compliance with the surcharge tax. Laws of Minnesota 1992, chapter 513, article 7, section 21, states:

"The provisions of sections 289A.35 to 289A.50 relating to the authority to audit, assess, collect, and pay refunds of other state taxes may be implemented by the commissioner of human services with respect to the tax, penalty, and interest imposed by this section and section 147.01, subdivision 6. The commissioner of human services shall impose civil penalties for violation of this section or section 147.01, subdivision 6, as provided in section 289A.60, and the tax and penalties are subject to interest at the rate provided in section 270.75."

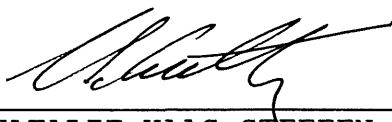
This subpart is reasonable because it is consistent with Laws of Minnesota 1992, chapter 513, article 7, section 21.

REPEALER: Emergency rules parts 9510.2000 to 9510.2070 expire on December 6, 1992. The Department anticipates that the noncontroversial permanent rules parts 9510.2000 to 9510.2050 will be effective before December 6, 1992. Therefore, it is necessary to repeal the emergency rules governing the provider surcharge.

EXPERT WITNESS:

If this rule should go to public hearing, the Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 4/24/92



NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Permanent
Rules of the Department of Human
Services Governing a Medical Care
Surcharge on Health Care Providers;
Minnesota Rules, Parts 9510.2000
to 9510.2050

FISCAL NOTE

I. ESTIMATED COSTS	State*	County
FY 1992	\$ 950,000	\$ 0
FY 1993	490,000	0
	\$1,440,000	\$ 0
TOTAL		

* State -- State costs represent program costs appropriated by the Legislature under Laws of Minnesota 1991, chapter 292, article 1, section 2, subdivision 9 and article 4, section 67, subdivision 7.

II. BACKGROUND INFORMATION ON THE RULE

Laws of Minnesota 1991, chapter 292, article 4, section 20 created a provider surcharge fund; section 21 established a surcharge on nursing facilities, hospitals, and health plans; section 67 established special payments to nursing facilities, hospitals, health plans, and other providers; and section 77 established contingent budget reductions in the event federal financial participation was not available for the special payments under section 67.

The provider surcharge began on July 1, 1991. The legislature directed the Commissioner to implement the law without complying with the Administrative Procedures Act but to begin emergency rule making within 30 days (Chapter 292, article 4, section 67, subdivision 10). The Department began rulemaking on July 22, 1991, by publishing in the State Register a Notice of Solicitation of Outside Information or Opinion (16 S.R. 141).

On December 23, 1991, the Department published in the State Register the Adopted Emergency Rules Relating to the Medical Care Surcharge and Special Payments (16 S.R. 1557).

Provider Surcharge
Fiscal Note

The 1991 surcharge legislation was amended in 1992. Laws of Minnesota 1992, chapter 513, article 7, section 16 amended the surcharge on nursing facilities; section 17 required the Department to seek certain federal waivers; section 18 amended the surcharge on hospitals; section 19 amended the surcharge on health plans; section 123 deleted the special payments to hospitals; and section 124 deleted the special payments to nursing facilities. The legislative amendments were necessary to comply with changes in the federal law, and substantially changed the provider surcharge program.

On June 15, 1992, the Department published in the State Register a Amended Notice of Continuation of Emergency Rule Governing Medical Care Surcharge and Special Payments, *Minnesota Rules*, Parts 9510.2000 to 9510.2070. This extended the Emergency Rule through December 6, 1992 (16 S.R. 2742).

On June 29, 1992, the Department published in the State Register a Notice of Solicitation of Outside Information or Opinions Regarding Proposed Permanent Rules Governing a Non-HealthRight Provider Surcharge on Health Care Providers (16 S.R. 2987).

1. PURPOSE OF THE RULE

The purpose of the permanent rule is to implement Laws of Minnesota 1991, chapter 292, article 4, sections 21 and 67, as amended by Laws of Minnesota 1992, chapter 513, article 7, sections 17 to 19, and sections 123 and 124. Pursuant to section 67, subdivision 10, the provider surcharge began on July 1, 1991. An emergency rule was subsequently adopted which expires on December 7, 1992. A permanent rule needs to be adopted to replace the emergency rule.

2. STATUTORY AUTHORITY

The statutory authority for the rule is Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 10.

III. METHODOLOGY FOR ESTIMATING COSTS

The cost estimate for implementing the provider surcharge program is based on legislative authorizations. Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 7 authorizes the Commissioner to expend up to \$1,700,000 for the administrative costs associated with sections 256.9657 and 256B.74.

The provider surcharge legislation is essentially self-implementing. The legislation identifies providers who are to be

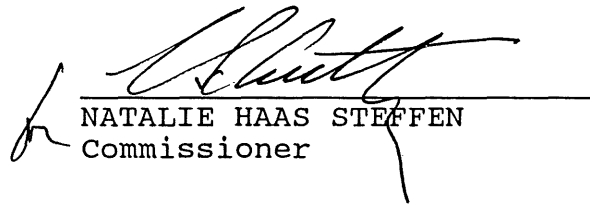
Provider Surcharge
Fiscal Note

assessed a surcharge, sets forth the amount to surcharge and requirements governing notice, appeal, and enforcement. The costs associated with implementing the provider surcharge rule are essentially the cost of implementing the statute.

The Department does not anticipate state costs beyond those identified in the legislative authorization.

DATE:

4/12/92


NATALIE HAAS STEFFEN
Commissioner