



January 15, 2021

Senator Michelle R. Benson, Chair ([sen.michelle.benson@senate.mn](mailto:sen.michelle.benson@senate.mn))  
Senator Melissa Wiklund, Ranking Minority Party Member ([sen.melissa.wiklund@senate.mn](mailto:sen.melissa.wiklund@senate.mn))  
Senate Health and Human Services Finance and Policy Committee

Senator Jim Abeler, Chair ([sen.jim.abeler@senate.mn](mailto:sen.jim.abeler@senate.mn))  
Senator John Hoffman, Ranking Minority Party Member ([sen.john.hoffman@state.mn.us](mailto:sen.john.hoffman@state.mn.us))  
Senate Human Services Reform Finance and Policy Committee

Representative Jennifer Schultz, Chair ([rep.jennifer.schultz@house.mn](mailto:rep.jennifer.schultz@house.mn))  
Representative Tony Albright, Republican Lead ([rep.tony.albright@house.mn](mailto:rep.tony.albright@house.mn))  
House Human Services Finance and Policy Committee

Representative Tina Liebling, Chair ([rep.tina.liebling@house.mn](mailto:rep.tina.liebling@house.mn))  
Representative Joe Schomacker, Republican Lead ([rep.joe.schomacker@house.mn](mailto:rep.joe.schomacker@house.mn))  
Health Finance and Policy Committee

VIA ELECTRONIC MAIL ONLY

**Re: Minnesota Department of Human Services Annual Rulemaking Docket Notice to the Legislature pursuant to Minnesota Statutes §14.116(a)**

Dear Legislators:

Minnesota Statutes §14.116(a) states:

By January 15 each year, each agency must submit its rulemaking docket maintained under section 14.366, and the official rulemaking record required under section 14.365 for any rule adopted during the preceding calendar year, to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule.

This letter will serve as our notice, as required.

RULEMAKING DOCKET

The Minnesota Department of Human Services maintains a rulemaking docket on our public website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>.

The current rulemaking docket is:

## Child Care Assistance Program

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### Summary: Amending rules governing the Child Care Assistance Program

The Minnesota Department of Human Services requests comments on its possible amendments to the rules governing the child care assistance program (CCAP), [Minnesota Rules, parts 3400.0010 – 3400.0235](#).

During the 2017 legislative session, many changes were made to CCAP. Most of the changes were required under the Child Care and Development Block Grant (CCDBG) Act of 2014. The Department is considering amending the rules to align with these federal and state statutory changes, adding clarity and consistency. The proposed rules amendments will focus on providing equal access to stable child care for low-income children and strengthening requirements to protect the health and safety of children in child care and receiving CCAP funding. The rules amendments will address determination of income for eligibility, frequency of redetermination, determination of copayments, maintaining consistent child care authorizations for children, reporting responsibilities for participants, provider requirements, and payment policies.

### Status

The Department published a Notice of Request for Comments in the September 24, 2018 State Register. Interested persons or groups may submit comments or information on these possible rules amendments in writing or orally until further notice is published in the State Register that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until at least 60 days have elapsed from the date of this request for comments. The Department has appointed an advisory committee to comment on the possible amendments to the child care assistance rules.

The Department is currently working on drafting the language of the amendment and the Statement of Need and Reasonableness, and will make those documents available on this website when complete.

### Supporting Documents

Possible Amendment to Rules Governing Child Care Assistant Program [Request for Comments \(PDF\)](#)

### Contact information

Direct written or oral comments, questions, and requests for more information on this possible rules amendment to Andrea Lentini; direct questions about the rulemaking process to Vanessa Vogl.

Andrea Lentini  
Minnesota Department of Human Services

Child Care Services  
PO Box 64962 Saint Paul, MN 55164-0962  
Phone: 651-431-4045  
Email: [Andrea.Lentini@state.mn.us](mailto:Andrea.Lentini@state.mn.us)

Vanessa Vogl  
Minnesota 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](mailto:Vanessa.Vogl@state.mn.us)

TTY users may call the Department at (800) 627-3529. You can also submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

## **Surveillance and Integrity Review Section (SIRS)**

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### Summary: Amending rules governing use of random sample extrapolation in monetary recovery

The Minnesota Department of Human Services is proposing amendments to rules governing the use of random sample extrapolation in monetary recovery found in [Minnesota Rules, part 9505.2220](#). The proposed rule amendments remove reliance on an outdated textbook, clarify the sampling and extrapolation methodologies that are acceptable, and remove the requirement that the provider be notified of the sampling method before a sample is drawn.

### Status

The Department published a Dual Notice of Intent to Adopt Rules in the Minnesota State Register on Nov. 23, 2020. The time to comment and request a hearing ended at 4:30 p.m. on Thursday, Dec. 31, 2020.

The Department received more than 25 valid requests for a hearing; therefore, the Department will hold a virtual public hearing on the proposed rule changes.

Administrative Law Judge Jessica Palmer-Denig will conduct the hearing virtually using WebEx starting at 9:30 a.m. on Thursday, Jan. 28, 2021.

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

Go to: <https://minnesota.webex.com>

Meeting number: 146 976 9291

Meeting password: TsYYgtyA232

For audio connection only, join the hearing by phone:

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

Access code: 146 976 9291

Direct questions about the hearing to Vanessa Vogl (contact information below). The Department published a Request for Comments for this rulemaking in the Minnesota State Register on Sept. 9, 2019.

#### Supporting documents

- [Dual Notice \(PDF\)](#)
- [Proposed Rules \(PDF\)](#)
- [Statement of Need and Reasonableness \(PDF\)](#)
- [Request for Comments \(PDF\)](#)

#### Contact information

Direct written or oral comments, questions, and requests for more information on the content of this possible rules amendment to Elizabeth Oji; direct questions about the rulemaking process to Vanessa Vogl.

Elizabeth Oji  
Minnesota Department of Human Services  
Office of Inspector General  
PO Box 64242  
Saint Paul, MN 55164-0242  
Phone: 651-431-6316  
Fax: 651-431-7569  
Email: [Elizabeth.Oji@state.mn.us](mailto:Elizabeth.Oji@state.mn.us)

Vanessa Vogl, Rulemaking Attorney  
Minnesota 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](mailto:Vanessa.Vogl@state.mn.us)

## **Cost-of-care for clients in state-operated facilities**

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### Summary: Amending rules governing cost-of-care for clients in state-operated facilities

The Minnesota Department of Human Services requests comments on a possible amendment to the rules governing the reimbursement for cost of care in state facilities at [Minnesota Rules, parts 9515.1000 – 9515.2600](#).

The Department is considering rule amendments that update and clarify the process used to determine the ability of patients, clients, and relatives to pay for the cost of care in a state facility when no other payer is available or when the only payer available is a public payer. The proposed rule amendments would clarify how the state may verify a patient's personal assets using credit checks and personal income tax information; clarify when a financial interview is needed and, if needed, when and how the interview would occur; clarify the frequency of the determination of ability to pay calculation; and remove outdated tables embedded in the rules. This amendment would also align information requests with current Health Insurance Portability and Accountability Act (HIPAA) and financial institution requirements for asset verification.

### Status

The Department published a Notice of Request for Comments in the June 4, 2018 State Register. Interested persons or groups may submit comments or information on the possible amendment in writing or orally until further notice is published in the State Register that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The Department is not appointing an advisory committee to comment on the proposed amendment. The Department is currently working on drafting the language of the amendment and the Statement of Need and Reasonableness, and will make those documents available on this website when complete.

### Supporting documents

[Request for comments \(PDF\)](#)

### Contact information

Direct written or oral comments, questions, and requests for more information on the content of this possible rules amendment to Michelle Tenney; direct questions about the rulemaking process to Vanessa Vogl.

Michelle Tenney  
Minnesota Department of Human Services  
Direct Care and Treatment Financial Services  
PO Box 65979  
Saint Paul, MN 55164-0979  
Phone: (651) 431-3701  
Email: [Michelle.Tenney@state.mn.us](mailto:Michelle.Tenney@state.mn.us)

Vanessa Vogl  
Minnesota 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](mailto:Vanessa.Vogl@state.mn.us)

TTY users may call the Department at 800-627-3529. You can also submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

## **Retroactive billing**

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### Summary: Amending rule governing retroactive MA provider billing and recipient reimbursement

The Minnesota Department of Human Services is proposing an amendment to the rules governing retroactive billing for Medical Assistance providers and reimbursement of Medical Assistance recipients at part 9505.0540, subpart 3. Under the current rule, if a recipient was determined retroactively eligible for Medical Assistance, and has made payments to a provider for services received during a retroactive eligibility time period, the provider has the option of billing Medical

Assistance and refunding the recipient, but only up to the amount paid by Medical Assistance. The proposed rules amendment would require providers to reimburse recipients for any amounts paid by a recipient for covered services during a retroactive period, regardless of whether the provider bills Medical Assistance or the amount paid by Medical Assistance. The amendment would also allow the recipient to appeal a provider's failure to refund the recipient. The department believes that with the amendment the rules part will better align with federal requirements regarding retroactive coverage.

### Status

The Department requested comments on the proposed amendment, and that comment period ended May 22, 2017. The Department is currently working on drafting the Statement of Need and Reasonableness, and is considering issuing another Request for Comments. UPDATE: This project has been placed on hold.

### Supporting documents

[Request for Comments \(PDF\)](#)

[Draft of the possible rule amendments \(PDF\)](#)

### Contact information

Written comments, questions, and requests for more information on the content of the rule amendment should be directed to:

Vanessa Vogl  
Minnesota 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](mailto:Vanessa.Vogl@state.mn.us)

TTY users may call the Department of Human Services at 800-627-3529. Written comments may also be posted on the Office of Administrative Hearings website.

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Department contact person listed above.

## **Definition of 'investigative'**

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Summary: Repealing obsolete rule governing definition of "Investigative" for purpose of health care program payment

Regarding: Minnesota Rules, parts 9505.0175, 9505.0220, 9505.0277, 9505.0310, 9505.0325, 9505.0335, and 9505.5005 Revisor's ID Number 4480

The Minnesota Department of Human Services is considering amending rules governing administration of the Medical Assistance program that establish the health care services, durable medical equipment, and medical supplies for which providers are eligible to receive payment. Notably, the Department would like to revise the meaning of "investigational" as it pertains to health care services, durable medical equipment, and medical supplies that are not eligible for payment under Medical Assistance. The rule as currently written relies upon the National Blue Cross and Blue Shield Association Medical Advisory Committee determination of whether a health service procedure is "investigative." The rule amendments are necessary because the National Blue Cross and Blue Shield Association Medical Advisory Committee no longer exists.

### Status

In August 2014, the Department proposed repealing obsolete language from rule part 9505.5005 that refers to the National Blue Cross and Blue Shield Association Medical Advisory Committee because the committee no longer exists. In 2016, the Department determined that, in addition to deleting the reference to the National Blue Cross and Blue Shield Association Medical Advisory Committee, it wanted to make further, related revisions to additional rule parts governing health care services, durable medical equipment, and medical supplies that are eligible to receive Medical Assistance payments. The department abandoned the obsolete rule repeal process accordingly and will instead pursue the full rulemaking process.

This project has been placed on hold, but may be revisited in 2020. An update will be posted to this website when the project moves forward.

### Contact information

Written comments, questions, and requests for more information on the content of the rule amendment should be directed to:

Camille Miller  
Minnesota Department of Human Services  
PO Box 64984  
St. Paul, Minnesota 55164-0984  
Phone 651-431-4866  
Fax 651-431-7426  
Email [Camille.Miller@state.mn.us](mailto:Camille.Miller@state.mn.us)

Written comments, questions, and requests for more information on the rulemaking process should be directed to:

Vanessa Vogl, Rulemaking Attorney  
Department of Human Services, Administrative Law Office

PO Box 64254  
St. Paul, MN 55164-0254  
Phone 651-431-3168  
Fax 651-431-7714  
Email: [Vanessa.Vogl@state.mn.us](mailto:Vanessa.Vogl@state.mn.us)

OFFICIAL RULEMAKING RECORDS

The Minnesota Department of Human Services did not adopt any new rules during calendar year 2020, so there are no official rulemaking records included in this report.

Please feel free to contact me at 651-431-3168, or [vanessa.vogl@state.mn.us](mailto:vanessa.vogl@state.mn.us) (preferred), with any questions or for additional information.

Sincerely,

Vanessa Vogl  
Rulemaking Attorney

cc: Amy Akbay, DHS Chief General Counsel  
Rick Figueroa, DHS Senior Counsel  
Karen Sullivan Hook, DHS Administrative Law Office Manager  
Matt Burdick, DHS Legislative Relations Director