



January 15, 2022

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

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

Senator Paul J. Utke, Chair (sen.paul.utke@senate.mn)
Senator Chris A. Eaton, Ranking Minority Party Member (sen.chris.eaton@senate.mn)
Senate Human Services Licensing Policy Committee

Senator Karin Housley, Chair (sen.karin.housley@senate.mn)
Senator Kent Eken, Ranking Minority Party Member (sen.kent.eken@senate.mn)
Senate Aging and Long-Term Care Policy Committee

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

Representative Peter Fischer, Chair (rep.peter.fischer@house.mn)
Representative Keith Franke, Republican Lead (rep.keith.franke@house.mn)
House Behavioral Health Policy Division Committee

Representative Aisha Gomez, Chair (rep.aisha.gomez@house.mn)
Representative Anne Neu Brindley, Republican Lead (rep.anne.neu@house.mn)
Preventing Homelessness Division

VIA ELECTRONIC MAIL

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

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

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

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.

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

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

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

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.

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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

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. This project has been placed on hold, but may be revisited in 2022. An update will be posted to this website when the project moves forward.

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

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'

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 2022. 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
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PO Box 64984
St. Paul, Minnesota 55164-0984
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Written comments, questions, and requests for more information on the rulemaking process should be directed to:

Vanessa Vogl, Rulemaking Attorney
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OFFICIAL RULEMAKING RECORDS

The Minnesota Department of Human Services adopted two rules in 2021 and one on January 3, 2022. All of the recently adopted rules are reflected on the Department's public website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>.

The Department's recently adopted rules, with links to their official records and other important documents, are:

Legal Nonlicensed Child Care Providers – Good Cause

Summary

The Minnesota Department of Human Services adopted rules governing legal nonlicensed child care providers using the good cause exempt process under Minnesota Statutes, section 14.388. The comment period for this good cause exempt rulemaking ended on June 23, 2021. The Department did not receive any comments. The Department filed all relevant documents with the Office of Administrative Hearings on June 28, 2021. Administrative Law Judge Ann O'Reilly reviewed and approved the rules in an Order on July 1, 2021. The Department published the rules in the [State Register on September 27, 2021](#). The rules were adopted and went into effect upon publication. Under Minnesota Statutes, section 14.888, subdivision 1, clause (2), the specific good cause exempt process governing these rules, the rules are effective for two years. The language of the good cause exempt rules as approved and adopted are included in the more extensive rule amendment to Chapter 3400, which the Department anticipates finalizing in 2022. At that time the language will become effective permanently.

Supporting documents

[Legal Nonlicensed Child Care Provider Final Rules \(PDF\)](#)

[Order Adopting Rules: signed by Chief General Counsel Amy Akbay on July 26, 2021 \(PDF\)](#)

[Legal Nonlicensed Child Care Provider Official Record \(PDF\)](#)

Dialectical Behavior Therapy – Good Cause

Summary

The Minnesota Department of Human Services adopted rules governing dialectical behavior therapy using the good cause exempt process under Minnesota Statutes, section 14.388. The comment period for this good cause exempt rulemaking ended on June 15, 2021. The Department did not receive any comments. The Department filed all relevant documents with the Office of Administrative Hearings on July 6-7, 2021. Administrative Law Judge Jessica Palmer-Denig reviewed and approved the rules in an Order on July 15, 2021. The Department published the rules in the [State Register on August 16, 2021](#). The rules were adopted and went into effect upon publication. Under Minnesota Statutes, section 14.388, subdivision 1, clause (3), the specific good cause exempt process governing these rules, the rules remain in effect permanently.

Supporting documents

[Dialectical Behavior Therapy Final Rules \(PDF\)](#)

[Order Adopting Rules: signed by Chief General Counsel Amy Akbay on July 23, 2021 \(PDF\)](#)

[Dialectical Behavior Therapy Official Record \(PDF\)](#)

SIRS Random Sample Extrapolation in Monetary Recovery

Summary

The Minnesota Department of Human Services adopted rules governing the use of random sample extrapolation in monetary recovery using the standard rulemaking process under Minnesota Statutes, Chapter 14. On Jan. 28, 2021, the Department held a hearing on the proposed rule changes. On March 26, 2021, Administrative Law Judge Jessica Palmer-Denig issued a report that disapproved the rules. ALJ Palmer-Denig found that the Department established it has the statutory authority to adopt the proposed rules; however, the Department did not establish that the proposed rules are needed and reasonable. On April 1, 2021, Chief Administrative Law Judge Jenny Starr concurred with the ALJ's findings.

Following the disapproval, the Department made revisions to the proposed rule amendments in response to the reasons for disapproval and suggested changes in ALJ Palmer-Denig's report. The Department submitted these revisions to Chief ALJ Starr on Aug. 9, 2021. [Chief ALJ Starr approved the amended rules as revised on Aug. 17](#). The Department published the final rules and Notice of Adoption in the [State Register on Jan. 3, 2022](#). The rules went into effect 5 days after publication.

Supporting documents

[Random Sample Extrapolation in Monetary Recovery Rules as Initially Proposed \(PDF\)](#)

[Random Sample Extrapolation in Monetary Recovery Final Rules with Changes as Approved \(PDF\)](#)

[Written comments on the proposed rules that include a request for hearing \(PDF\)](#)

[Written comments on the proposed rule that do not include a request for hearing \(PDF\)](#)

[Requests for a hearing that do not include comments on the proposed rule \(PDF\)](#)

[Post hearing comments including rebuttal \(PDF\)](#)

[Order Adopting Rules: signed by Chief General Counsel Amy Akbay on Nov. 8, 2021 \(PDF\)](#)

[Random Sample Extrapolation in Monetary Recovery Official Record \(PDF\)](#)

Please feel free to contact me at 651-431-3168, or 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