

January 13, 2022

Senator Melissa H. Wiklund, Chair (sen.melissa.wiklund@senate.mn)
Senator Paul J. Utke, Ranking Minority Party Member (sen.paul.utke@senate.mn)
Senate Health and Human Services Committee

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

Representative Dave Pinto, Chair (rep.dave.pinto@house.mn)
Representative Brian Daniels, Republican Lead (rep.brian.daniels@house.mn)
House Children and Families Finance and Policy Committee

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

Representative Mohamud Noor, Chair (rep.mohamud.noor@house.mn)
Representative Anne Neu Brindley, Republican Lead (rep.anne.neu@house.mn)
House Human Services Finance Committee

Representative Peter Fischer, Chair (rep.peter.fischer@house.mn)
Representative Debra Kiel, Republican Lead (rep.deb.kiel@house.mn)
House Human Services Policy Committee

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:

Licensing good cause exempt

Summary: Amending rules relating to residential services staff qualifications

The Licensing Division of the Inspector General of the Minnesota Department of Human Services is proposing using the good cause exempt rulemaking process to make the following changes as directed by the legislature in [MN Laws, Chapter 98, Article 12, Section 20](#):

- Amend Minnesota Rules, part 2960.0460, to remove all references to repealed Minnesota Rules, part 2960.0460, subpart 2;
- Amend Minnesota Rules, part 2960.0470, to require license holders to have written personnel policies that describe the process for disciplinary action, suspension, or dismissal of a staff person for violating the drug and alcohol policy described in Minnesota Statutes, section 245A.04, subdivision 1, paragraph (c), and Minnesota Rules, part 2960.0030, subpart 9;
- Amend Minnesota Rules, part 9530.6565, subpart 1, to remove items A and B and the documentation requirement that references these items; and
- Amend Minnesota Rules, part 9530.6570, subpart 1, item D, to remove the existing language and insert language to require license holders to have written personnel policies that describe the process for disciplinary action, suspension, or dismissal of a staff person for violating the drug and alcohol policy described in Minnesota Statutes, section 245A.04, subdivision 1, paragraph (c).

The law also allows for the Department to make these changes using the good cause exempt rulemaking process. These changes were part of a larger Department of Human Services proposal to simplify program personnel policy requirements for staff with substance use problems and aligns these standards in statute for substance use disorder treatment programs and withdrawal management programs in addition to the changes directed for the rules for detoxification programs and children's residential facilities. All related statutory changes are in [MN Laws, Chapter 98, Article 12, Sections 4, 5, 13, 15, and 21](#). Section 21 also repeals Minnesota Rules, parts 2960.0460, subpart 2, and 9530.6565, subpart 22.

Additionally, in these rule parts there are references to Minnesota Statutes, Chapter 148C, which was repealed and replaced with Chapter 148F in 2012. The Licensing Division intends to change these references accordingly using the good cause exempt process as well.

The good cause exempt rulemaking process is governed by Minnesota Statutes, section 14.388. The statute gives state agencies the authority to use a shortened rulemaking process if the agency finds that the standard rulemaking process is unnecessary for amending a rule to "incorporate specific

changes set forth in applicable statutes when no interpretation of law is required. The Licensing Division finds that no interpretation of law is required because the proposed changes follow a directive from the legislature, and align rule with the changes that have been made in the 2022 legislative session to related statutes. As supported by the legislature's allowance for the Department's use of the good cause exempt rulemaking process to make these changes, the Licensing Division finds that the standard rulemaking process is unnecessary and that the good cause exemption applies.

Status

The comment period for this good cause exempt rulemaking will begin January 4, 2023 and end January 10, 2023 at 4:30 p.m. All interested persons must submit comments to the Office of Administrative Hearings via its eComments website at <https://minnesotaoah.granicusideas.com/discussions> or 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

Supporting Documents

[Licensing Good Cause Exempt Rulemaking Notice \(PDF\)](#)

[Proposed Rules \(PDF\)](#)

Contact information

Questions about the rulemaking should be directed to:

Vanessa Vogl, Rulemaking Attorney
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Cost-of-care for clients in state-operated facilities

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

The Department is considering rule amendments to [Minnesota Rules, parts 9515.1000 – 9515.2600](#) 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](#). This project has been placed on hold, but may be revisited in 2023. An update will be posted to this website when the project moves forward.

Supporting documents

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

Contact information

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Retroactive billing

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

The Minnesota Department of Human Services is considering 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. This project has been placed on hold, but may be revisited in 2023. 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

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Definition of 'investigative'

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

The Minnesota Department of Human Services is considering repealing certain parts of Minnesota Rules, chapter 9505 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. This project has been placed on hold, but may be revisited in 2023. An update will be posted to this website when the project moves forward.

Contact information

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OFFICIAL RULEMAKING RECORDS

The Minnesota Department of Human Services adopted two rules in 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:

Child Care Assistance Program

Summary

The Minnesota Department of Human Services adopted rules governing the Child Care Assistance Program (CCAP) using the standard rulemaking process under Minnesota Statutes, Chapter 14. The comment period following publication of the Dual Notice of Intent to Adopt Rules in the Minnesota State Register ended on July 20, 2022. The Department received four valid requests for a hearing. The threshold for holding a hearing is 25 requests, so the Department did not hold a hearing on this matter. The Department made changes to the rules as proposed either in response to comments, to align with recent statutory changes, to better serve the families seeking child care assistance and child care providers, or to make CCAP more efficient with little to no impact on families, child care providers, or CCAP agencies. On Sept. 15, 2022, the Department filed all required documents with the Office of Administrative Hearings (OAH). On Sept. 23, 2022, [Administrative Law Judge Barbara Case approved the rules](#). The Department published the final rules and Notice of Adoption in the [State Register on Oct. 24, 2022](#). The rules went into effect 5 days after publication.

Supporting documents

[CCAP Official Record Part 1 \(PDF\)](#)

[CCAP Official Record Part 2 \(PDF\)](#)

[CCAP Official Record Part 3 \(PDF\)](#)

[CCAP Order Adopting Rules: signed by Chief General Counsel Amy Akbay on Sept. 27, 2022 \(PDF\)](#)

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