



January 12, 2024

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

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

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

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

Representative Peter Fischer, Chair ([rep.peter.fischer@house.mn](mailto:rep.peter.fischer@house.mn))  
Representative Debra Kiel, Republican Lead ([rep.deb.kiel@house.mn](mailto: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:

### **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 considered rule amendments to [Minnesota Rules, parts 9515.1000 – 9515](#) 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.

#### Status

The Department published a Notice of Request for Comments in the [June 4, 2018 State Register](#). This project was then placed on hold. The Direct Care and Treatment Administration at the Department of Human Services is now in the process of becoming a stand-alone department in Minnesota, and the authority to adopt these rules will transfer from the Commissioner of Human Services to the Board of Direct Care and Treatment. The Department has determined that the most prudent course of action at this time is to officially withdraw these rules in 2024, and start the rulemaking process over for these rules under the authority of the Board after the Department of Direct Care and Treatment is officially established, should the new department choose to pursue a rulemaking.

#### Contact information

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### **Retroactive billing**

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#### 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 2024. 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'**

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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 2024. 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 2023. 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:

## **Repeal of rules governing personal care services**

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The Minnesota Department of Human Services used the obsolete rule repeal process in Minnesota Statutes, section 14.3895 to repeal rules governing personal care services, Minnesota Rules, part 9505.0335, and related health services records, Minnesota Rules, part 9505.2175, subp. 7. The comment period started July 17, 2023 and ended Sept. 22, 2023. No comments were received. On Oct. 26, Chief Administrative Law Judge Jenny Starr approved the rules. The Department published a Notice of Adopted Repeal of Obsolete Rules in the [State Register on Nov. 20, 2023](#). The rule repeal went into effect 5 days after publication.

## Supporting documents

[PCA Rule Repeal Official Record \(PDF\)](#)

[PCA Order Repealing Rules: signed by DHS Rulemaking Attorney Vanessa Vogl on Oct. 26, 2023 \(PDF\)](#)

## Adoption of rules related to licensing (good case exempt)

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The Minnesota Department of Human Services adopted rules relating to residential services staff qualifications for licensing using the good cause exempt rulemaking process under Minnesota Statutes, Chapter 14.388. The comment period started Jan. 4, 2023 and ended Jan. 10, 2023. No comments were received. On Jan. 13, 2023, Administrative Law Judge James E. LaFave approved the rules. The Department published the final rules and Notice of Adoption in the State Register on Jan. 30, 2023. The rules went into effect upon publication.

### Supporting documents

[Licensing Good Cause Exempt Rule Approval dated Jan. 13, 2023 \(PDF\)](#)

[Licensing Good Cause Exempt Order Adopting Rules: signed by Chief General Counsel Amy Akbay on Jan. 19, 2023 \(PDF\)](#)

[Licensing Good Cause Exempt Adopted Rules \(PDF\)](#)

## Child Care Assistance Program

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### 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 \(PDF\)](#)

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,

A handwritten signature in black ink, appearing to read "Vanessa Vogl". The signature is fluid and cursive, with the first name "Vanessa" written in a larger, more prominent script than the last name "Vogl".

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