



January 15, 2025

Senate Health and Human Services Committee  
Senate Human Services Committee  
House Children and Families Finance and Policy Committee  
House Health Finance and Policy Committee  
House Human Services Finance and 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 (“the Department”) maintains a rulemaking docket on our public website at <https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/>.

The current rulemaking docket is as follows:

### **Residential Treatment Programs for Adults Who Are Mentally Ill**

Summary: Proposed amendments to rules governing the residential treatment programs for adults who are mentally ill.

In accordance with a 2023 directive from the Minnesota Legislature, amendments have been proposed to Minnesota Rules, parts 9520.0500 to 9520.0670, to address the following: (1) updating requirements for Category I programs to align with current mental health practices, client rights for similar services, and health and safety needs of clients receiving services; (2) removing Category II classification and requirements; and (3) adding licensing requirements to the rule for the Forensic Mental Health Program.

#### Status

The Department published a Notice of Request for Comments in the December 2, 2024, State Register. The 60-day comment period will end on January 31, 2025.

#### Contact information

Dustin C. Jones, Associate General Counsel, Minnesota Department of Human Services, Administrative Law, Office, P.O. Box 64254, St. Paul, MN 55164-0254 Phone: Phone: 651-431-2000. Email: [dhsrulecomments@state.mn.us](mailto:dhsrulecomments@state.mn.us).

### **Repeal of Obsolete Rules Governing Recoupment or Recovery of Medical Assistance and MinnesotaCare Benefit Overpayments**

Summary: Proposed repeal of obsolete rules governing assessment and recovery of medical assistance and MinnesotaCare benefit overpayments that were caused by an enrollee/recipient’s own error.

The Department has initiated an obsolete rule repeal process relating to the termination of recoupment or recovery of medical assistance and MinnesotaCare benefit overpayments that were caused by an enrollee/recipient’s error. They are Minnesota Rules, part 9505.2215, subpart 1(B), and part 9505.2200, subpart 1. These rules are obsolete based on guidance from the Centers for Medicare & Medicaid Services (CMS) relating to “unwinding” after the end of the COVID-19 public health emergency. Medicaid (also known as medical assistance) agencies were directed to stop assessing and recovering medical assistance and MinnesotaCare overpayments when the agency has determined

that the overpayments were the result of a recipient/enrollee's own error. Agencies were also directed to stop seeking voluntary repayments of overpaid Medical Assistance and MinnesotaCare benefits.

### Status

A Notice of Intent to Repeal Obsolete Rules was published in the State Register on December 9, 2024. A 60-day period to comment (or request a hearing) ends on February 7, 2025. Other persons or classes of persons who may be significantly affected by the rule repeal have been notified by U.S. Mail, email, or other notice.

Based on subsequent, new guidance from CMS dated December 5, 2024, the final action may be different from the action originally published in the State Register. If so, the Department will publish a copy of the changes in the State Register, as required by Minnesota Statutes, section 14.3895, subdivision 5.

### Contact information

Kevin Slator, Rulemaking Attorney, Minnesota Department of Human Services, Administrative Law Office, P.O. Box 64254, St. Paul, MN 55164-0254, Phone: 651-431-4101, Email: kevin.slator@state.mn.us.

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

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

The Department 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 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**

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

The Department is considering an amendment to the rules governing retroactive billing for Medical Assistance providers and reimbursement of Medical Assistance recipients at Minnesota Rules, 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 of 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 2025. An update will be posted to the Department's public website when the project moves forward.

### 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 Department 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 Minnesota Rules, 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 2025. An update will be posted to the Department’s public website when the project moves forward.

### Contact information

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## OFFICIAL RULEMAKING RECORDS

The Department did not adopt any new rules in 2024. All of the recently adopted rules are reflected on the Department’s public website, <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**

The Department 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, subpart 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.

More information and supporting documents are available on the Department’s public website.

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

The Department 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 on January 4, 2023, and ended on January 10, 2023. No comments were received. On January 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 January 30, 2023. The rules went into effect upon publication.

More information and supporting documents are available on the Department's public website.

Please feel free to contact me at 651-431-4101, or [kevin.slator@state.mn.us](mailto:kevin.slator@state.mn.us) (preferred), with any questions or for additional information.

Sincerely,

*Kevin T. Slator*

Kevin Slator  
Rulemaking Attorney

cc: Amy Akbay, DHS Chief General Counsel  
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