

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

* Potential OK Problem

Emergency Rule
10 Business Days

MJM 12/4/91

RULE REVIEW CHECKLIST

MJM

File No. 1870

DATE RECEIVED 11-26-91

REVIEW DATE 12-6-91

DUE DATE 12-6-91

~~(DIS)~~APPROVED Dec 6 91

WITH~~DRAWN~~

Docket No. 05 0009 0866

ADOPTED W/O HEARING

EMERGENCY RULE

TO REVISOR ON 12-4-91

REVISOR (DIS)APPROVED

FILED W/SEC. OF STATE 12/9/91

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
July 22, 1991 Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
MN Laws 1991 Chap 292 Statutory Authority article 4 sec. 67, subd 10
Small Business Statement
✓ Expenditure of public money statement
10-4-91 Signature

Statement of Need and Reasonableness (if applicable)
NA Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Oct 16, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
Oct 21, 1991 Date 30/25 days before adoption

? 180-day deadline from:
see my notes Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
November 25, 1991 Date

Written Requests, Submissions or Comments

✓ Declaration of Attorney
Kim Drechsel Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: December 6, 1991

TO: JULIE ELHARD
Department of Human Services
Health Care Support Division
444 Lafayette Road
St. Paul

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Medical Care Surcharge and Special Payments

The above-referenced rule has been approved as to its legality by the Attorney General on December 6, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJM:sc
Enclosures
cc: Kim Buechel Mesun
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Emergency Rules Relating to Medical Care Surcharge and Special Payments

Rules as Adopted

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under Minnesota Statutes, section 256.9657, and to implement the special payment provisions under Minnesota Statutes, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under Minnesota Statutes, chapter 14, regarding the amount of the medical care

surcharge.

Subp. 4. **Children's health plan.** "Children's health plan" means the program authorized under Minnesota Statutes, section 256.936.

Subp. 5. **Closed or closing.** "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Cost of living increase.** "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under Minnesota Statutes, section 256B.35.

Subp. 8. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 9. **Federal financial participation.** "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. **Federal Indian Health Service facility.** "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. **Hospital.** "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal

Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under Minnesota Statutes, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under Minnesota Statutes, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under Minnesota Statutes, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult;

prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in Minnesota Statutes, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in

the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. **Resolution.** If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. **Surcharge payment during appeal.** The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. **Resolution of appeal.** If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at

the time of appeal resolution.

Subp. 6. **Monthly appeals.** An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under Minnesota Statutes, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with Minnesota Statutes, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. **Indigent care payment.** Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per

diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in Minnesota Statutes, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in Minnesota Statutes, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in Minnesota Statutes, section 256B.74, subdivision 6.

9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the State Register identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

APPROVED AS TO FORM AND LEGALITY

Dec 6 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 06 1991

Joan Anderson Growe
Secretary of State

1:45 PM
PRB

Roc
11-26-91

State of Minnesota

Department of Human Services

Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Jim Schmidt, Rulemaker
Department of Human Services

SUBJECT: Attorney General's Review of Emergency Rule

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0400 for your review of an emergency rule for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register. No public comments were received on the notice of solicitation.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt an emergency rule as mailed.

4. The affidavit of mailing the notice of intent to adopt an emergency rule. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.30, is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list.

5. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register.

6. Four copies of the emergency rule as adopted. No modifications were made to the proposed rules.

7. The findings of fact, conclusions, and order adopting the emergency rule.

8. No written requests, submissions, or comments on the rule were received by the Department.

9. The declaration of the attorney in the attorney general's office who represents the agency.

10. No requests were received for notice of submission of the rule to the attorney general.

If you have any questions on this submitted material, please call me at 296-7815.

ATTY GENERAL
27 NOV 91 1 13

Statutory Authority MN Laws 1991, Chapter 292, Article 4, Sec 67, Subd 10
(it is enclosed)

The commissioner shall begin to adopt emergency rules to implement this article within 30 days

there is no effective period so it would be August 1, 1991 - the Notice of Intent was signed Oct 4, 1991 - is that the beginning or since they published the Notice of ~~Solicitation~~ Solicitation on July 22, 1991 did they meet the deadline?

Rules 9510.2020

Effective July 1, 1991 - payments were ~~suppose~~ to start in August 15 - the rules haven't even been adopted - are they retroactive? There is no authority for retroactively

I don't know what the last sentence means in the authority - Emergency and permanent rules adopted to implement this article supersede any provisions adopted to implement this article supersede any provisions adopted under the exemption from rulemaking requirements in this section?

over

(1) Patty: I believe the July 22 date is OK.

(2) The APA ~~tal~~ discusses "exemptions". This is one of them. Basically they get to use policies to implement the act until emergency + perm. + ~~pe~~ rules are in place.

(3) cant collect retroactively **but** ~~Date OK.~~ they had auth to do it from July 1 w/o rules. It's OK.

harges, not to exceed the medicare upper payment limit. this payment methodology are emergency room facility and those services for which there is a federal maximum

AN REIMBURSEMENT. The commissioner shall make services rendered on or after July 1, 1992, as follows:

evel one Health Care Finance Administration's common tem (HCPCS) codes titled "office and other outpatient ventive medicine new and established patient," "delivery, rtum care," caesarean delivery, and pharmacologic man- psychiatric patients and HCPCS level three codes for prenatal high risk shall be calculated at the lower of (1) (2) the median charges in 1989 minus 20 percent. If the ent results in a decrease to rates in effect June 30, 1991, natal services, the rate on those codes in effect on June 30, d by an additional five percent.

evel one HCPCS codes titled "critical care" initial or sub- ll be calculated at the lower of (1) submitted charges, or in 1989 minus 30 percent.

ll other services shall be calculated at the lower of (1) sub- the median charges in 1989 minus 40 percent.

the payment rates in paragraphs (a) to (c), rates for obstet- adjusted by the ten percent increase in Laws 1989, chapter 2, subdivision 5, and rates for obstetrical and pediatric ted by the 15 percent increase in Laws 1990, chapter 568, bdivision 7.

NG FACILITY REIMBURSEMENT. For rate years begin- , 1991, the commissioner shall reimburse nursing facilities edical assistance program as follows:

owance of $1.44 per resident day shall be paid. For a h an operating lease on the nursing facility, the capital shall not be the property of the lessor but shall be the ed provider for the duration of the operating lease or any of the operating lease; and

efficiency incentive per diem payment established annu- 6B.431, subdivision 2b, paragraph (d), shall be increased to 1991, and $2.20 effective July 1, 1992.

ONAL NEEDS ALLOWANCE. The commissioner shall increases in the personal needs allowance under section

Subd. 5. **DENTISTS.** The commissioner shall increase reimbursement to dentists for services rendered on or after July 1, 1992, by 20 percent for preventative services and five percent for all other services.

Subd. 6. **HEALTH PLANS.** Effective for services rendered after July 1, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract by the amount necessary to accommodate the equivalent value of the reimbursement increase established under subdivisions 1, 2, and 5.

Subd. 7. **ADMINISTRATIVE COST.** The commissioner may expend up to $1,700,000 for the administrative costs associated with sections 256.9657 and 256B.74.

Subd. 8. **CONTINGENT ON FEDERAL FINANCIAL PARTICIPATION.** The provisions of this section and section 256.9657 apply only as long as federal financial participation under Title XIX of the Social Security Act is available for medical assistance payments made under this section. In the event federal financial participation is denied for payments under this section, the commissioner shall discontinue collections from providers under section 256.9657, eliminate payments to providers and recipients under this section, and implement the contingent budget reductions in section 77, effective immediately.

Subd. 9. **NO ADJUSTMENTS WHILE FEES IN EFFECT.** The commissioner shall not adjust the payments under this section as long as the surcharges under section 256.9657 remain in effect. The commissioner shall report to the legislature when submitting the budget forecast regarding the amount of actual and anticipated surcharge collections and provider payments. The report must include recommendations for improving the operation of this section and section 256.9657, including any changes in surcharges or payments necessary to ensure that payments under this section do not exceed collections under section 256.9657.

Subd. 10. **IMPLEMENTATION; RULEMAKING.** The commissioner shall implement sections 256.9657 and 256B.74 on July 1, 1991, without complying with the rulemaking requirements of the administrative procedure act. The commissioner shall begin to adopt emergency rules to implement this article within 30 days, and may adopt permanent rules to implement this article. Emergency and permanent rules adopted to implement this article supersede any provisions adopted under the exemption from rulemaking requirements in this section.

Sec. 68. Minnesota Statutes 1990, section 256D.03, subdivision 3, is amended to read:

Subd. 3. **GENERAL ASSISTANCE MEDICAL CARE; ELIGIBILITY.** (a) General assistance medical care may be paid for any person who is age 18 or older and who is not eligible for medical assistance under chapter 256B, including eligibility for medical assistance based on a spend-down of excess income according to section 256B.056, subdivision 5, and:

: retroactive eligibility for general assistance medical care recipi-
ıot residents of institutions for mental diseases from three months

:overage for over the counter drugs for general assistance medical
s residing in institutions for mental diseases to insulin, aspirin,
ucts for the treatment of lice, and acetaminophen, and limit cov-
al services to $150 a year; and

ish the following coverage limitations for general assistance medi-
ents who are not residents in institutions for mental diseases:

ractic services, vision care, podiatry services, allergy testing, spe-
ation, case management for persons with serious and persistent
, and Medicare premiums, coinsurance, and deductibles are not

logy, occupational therapy, and speech therapy are not covered,
provider type;

ical therapy is limited to five treatment modalities, regardless of
;

ces of a Medicare-certified rehabilitation agency, except physical
:es under item (iii), are not covered;

age for dental services is limited to $100 annually;

rage for physician services is limited to 14 physician visits;

erage for mental health therapy, including psychological services
ic services is limited to ten hours annually. For purposes of this
ours of group therapy count as one hour;

erage for legend drugs is limited to those prescribed by a physician
d in a general assistance medical care drug formulary established by
oner in the manner used to establish and publish the formulary in
0625, subdivision 13;

atient hospital services are covered to the extent otherwise pro-
this paragraph; and

a emergency room visit that does not result in an inpatient admis-
rsement for the emergency room visit shall be reduced by $5 and
may collect that amount from the recipient. The hospital may not
to the recipient for failure to pay the copayment amount.

s with prepaid health plans to provide health care services to recipi-
al assistance medical care may include, without limitation, the ser-
h in clause (3), items (iii), (v), (vi), (viii), and (x). The commissioner

may seek a waiver according to Minnesota Statutes, section 62D.30, in order to execute contracts for the benefit package in this subdivision.

Subd. 21. **REIMBURSEMENT FOR SHORT STAY FACILITIES.** The commissioner shall not implement section 57.

Sec. 78. **INSTRUCTION TO REVISOR.**

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C. The revisor shall also correct any cross-references to Minnesota Statutes, section 256.969, subdivision 6a, that appear in Minnesota Rules.

Column A	Column B	Column C
256.969, subd. 3a	256.969, subd. 6a, paragraph (a), clause (5) or (6)	256.969, subds. 10 and 11
256.9695, subd. 3	256.969, subd. 6a, paragraph (a), clause (3)	256.969, subd. 8
256.9695, subd. 3, paragraph (a)	256.969, subd. 6a, paragraph (a), clauses (1), (2), (4), (5), (6), and (8)	256.969, subds. 7, 9, 10, 11, and 13
256.9695, subd. 3, paragraph (a)	256.969, subd. 6a, paragraph (a), clause (7), and paragraph (i)	256.969, subds. 12 and 20
256.9695, subd. 3, paragraph (c)	256.969, subd. 6a, paragraphs (g) and (h)	256.969, subd. 19, paragraphs (a) and (b)

Sec. 79. **REPEALER.**

Subdivision 1. **CONTINGENT MEDICAL ASSISTANCE REDUCTIONS.** Section 77 is repealed effective July 1, 1993.

Subd. 2. **REGIONAL TREATMENT CENTER CHEMICAL DEPENDENCY UNIT FUNDING.** Minnesota Statutes 1990, section 246.18, subdivisions 3 and 3a, are repealed.

Sec. 80. **EFFECTIVE DATES.**

Subdivision 1. **SPECIAL CATEGORIES OF ELIGIBILITY.** (a) Those portions of sections 35, 36, and 38 regarding publication of federal poverty guidelines are effective retroactive to the date the 1991 change in the federal poverty guidelines became effective.

(b) Sections 37 and 39 are effective retroactive to January 1, 1991.

Subd. 2. **ADMISSION CRITERIA.** That portion of section 5 requiring the commissioner of human services to establish criteria for admission to chemical dependency units is effective the day following final enactment.

Subd. 3. **AVAILABILITY OF INCOME.** The deduction for reparation payments in section 40 is effective retroactive to January 1, 1991. The deduction for veterans pensions in section 40 is effective the month in which the Veteran's Administration implements the change at section 8003 of the Omnibus Budget Reconciliation Act of 1990.

Subd. 4. **HOSPITAL-ATTACHED CONVALESCENT AND NURSING CARE FACILITIES.** Section 58 takes effect the day after its final enactment and applies to facilities whose attached hospitals suspend operation before or after its effective date.

Subd. 5. **FEDERALLY QUALIFIED HEALTH CENTER.** Section 49, paragraph (b), is effective retroactive to July 1, 1990.

no effective Date so Aug 1, 1991 listed

ARTICLE 5

ASSISTANCE PAYMENTS

Section 1. Minnesota Statutes 1990, section 13.46, subdivision 2, is amended to read:

Subd. 2. **GENERAL.** (a) Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used, or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to court order;

(3) pursuant to a statute specifically authorizing access to the private data;

(4) to an agent of the welfare system, including a law enforcement person, attorney, or investigator acting for it in the investigation or prosecution of a criminal or civil proceeding relating to the administration of a program;

(5) to personnel of the welfare system who require the data to determine eligibility, amount of assistance, and the need to provide services of additional programs to the individual;

(6) to administer federal funds or programs;

(7) between personnel of the welfare system working in the same program;

(8) the amounts of cash public assistance and relief paid to welfare recipients in this state, including their names and social security numbers, upon request by the department of revenue to administer the property tax refund law, supplemental housing allowance, and the income tax;

(9) to the Minnesota department of jobs a monitoring the eligibility of the data subject for for any employment or training program admin by that agency, or for the purpose of administer whether alone or in conjunction with the welfare energy assistance for the telephone assistance pl

(10) to appropriate parties in connection wi the information is necessary to protect the heal other individuals or persons;

(11) data maintained by residential facilitie may be disclosed to the protection and advocac pursuant to Part C of Public Law Number 9 human rights of persons with mental retardatio live in residential facilities for these persons if tem receives a complaint by or on behalf of tha have a legal guardian or the state or a designee of the person; ~~or~~

(12) to the county medical examiner or the locating relatives or friends of a deceased pers

(13) data on a child support obligor wh agency may be disclosed to the higher educ extent necessary to determine eligibility under clause (5).

(b) Mental health data shall be treated as p 9, but is not subject to the access provisions o

Sec. 2. Minnesota Statutes 1990, secti amended to read:

Subd. 2. **ELIGIBILITY FOR GRANTS.** sidered for a grant, regardless of the applican origin, or ancestry, under sections 136A.095 t the applicant:

(1) is a resident of the state of Minnesota

(2) is a graduate of a secondary school or or over, and has met all requirements for ad college or technical college of choice as 136A.131;

(3) has met the financial need criteria est

(4) is not in default, as defined by the bo educational loan; and

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, Parts 9510.2000 to 9510.2070

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 10. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 15, 1991, after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Julie Elhard, Department of Human Services, Health Care Support Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3850 or calling (612) 296-7699.

A copy of the proposed emergency rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816 or calling (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jim Schmidt, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

The Minnesota

State Register

Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 22 July 1991

Volume 16, Number 4

Pages 125-156

Department of Human Services

Health Care Support Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing a Provider Surcharge for Certain Providers Who Participate in the Medical Assistance Program

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of an emergency rule governing a provider surcharge for certain providers who participate in the medical assistance program. Adoption of the rule is authorized by *Laws of Minnesota 1991*, Chapter 292, Article 4, Section 67, Subdivision 10, which directs the Commissioner to adopt emergency rules to implement *Minnesota Statutes*, sections 256.9657 and 256B.82.

The Department of Human Services proposes to adopt emergency rules to implement *Laws of Minnesota 1991*, Chapter 292, Article 4, Sections 21 and 67. The proposed rule will impose a monthly surcharge on Medical Assistance enrolled licensed nursing facilities, inpatient hospitals, certain outpatient hospital services, and prepaid health plans; will implement the statutory provider surcharge; will establish standards governing provider notice and appeals; will establish repayment procedures for providers who prevail in an appeal; will implement special provider and recipient payments; will establish procedures for discontinuation of collections and special payments if federal financial participation is denied; and will establish procedures to assure provider compliance with the surcharge program.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Ms. Julie Elhard, Health Care Support Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3850. Oral statements will be received during regular business hours over the telephone at (612) 296-7699 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 12 July 1991

Jim Schmidt, Rulemaker
Department of Human Services

Office of the Secretary of State

Notice of Vacancies in Multi-Member Agencies

NOTICE IS HEREBY GIVEN to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minnesota Statutes* 15.0597, subdivision 4. Application forms may be obtained from the Office of the Secretary of State, Open Appointments, 180 State Office Building, St. Paul, MN 55155-1299; (612) 297-5845, or in person at Room 174 of the State Office Building. More specific information about these vacancies may be obtained from the agencies listed below. The application deadline is August 13, 1991.

Minnesota Indian Scholarship Committee

727 Capitol Square Bldg., St. Paul 55101 612-296-6458
Minnesota Statutes 124.48

APPOINTING AUTHORITY: Board of Education. COMPENSATION: Reimbursed for expenses.
VACANCY: One member to be representative of the MN Chippewa Tribe and endorsed by the MN Indian Affairs Council.

The committee advises the State Board of Education on amounts and types of scholarships granted to American Indian post-secondary students, and in the state board's duties administering the Indian post-secondary programs; making recommendations on approval and funding of PSPP programs and the Indian Teacher Training program to Minnesota schools. Members include representatives of the Duluth, Mpls., and the Bemidji area, the Bureau of Indian Affairs higher education office, the Minnesota Chippewa and Sioux tribes, and the Red Lake education division.

(8) The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

The Provider Surcharge and Special Payments rule is a state administered rule. Adoption of these rules will not result in additional spending by local public bodies in the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date:

George J. Steffen
for NATALIE HAAS STEFFEN
Commissioner

10-4-91

Department of Human Services

Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

Rules as Proposed (all new material)

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under Minnesota Statutes, section 256.9657, and to implement the special payment provisions under Minnesota Statutes, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under Minnesota Statutes, chapter 14, regarding the amount of the medical care

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surcharge.

Subp. 4. Children's health plan. "Children's health plan" means the program authorized under Minnesota Statutes, section 256.936.

Subp. 5. **Closed or closing.** "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Cost of living increase.** "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under Minnesota Statutes, section 256B.35.

Subp. 8. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 9. Federal financial participation. "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. **Federal Indian Health Service facility.** "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. **Hospital.** "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal

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Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under Minnesota Statutes, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under Minnesota Statutes, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under Minnesota Statutes, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult;

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prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in Minnesota Statutes, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

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A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in

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the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

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A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. Resolution. If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. Surcharge payment during appeal. The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. Resolution of appeal. If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at

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the time of appeal resolution.

Subp. 6. **Monthly appeals.** An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under Minnesota Statutes, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with Minnesota Statutes, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. **Indigent care payment.** Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per

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diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in Minnesota Statutes, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in Minnesota Statutes, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in Minnesota Statutes, section 256B.74, subdivision 6.

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9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the State Register identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9510

The attached rules are approved for publication in the State Register

Ron Ray
Senior Assistant Revisor

Department of Human Services

Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

Rules as Proposed (all new material)

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under Minnesota Statutes, section 256.9657, and to implement the special payment provisions under Minnesota Statutes, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under Minnesota Statutes, chapter 14, regarding the amount of the medical care

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surcharge.

Subp. 4. **Children's health plan.** "Children's health plan" means the program authorized under Minnesota Statutes, section 256.936.

Subp. 5. **Closed or closing.** "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Cost of living increase.** "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under Minnesota Statutes, section 256B.35.

Subp. 8. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 9. **Federal financial participation.** "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. **Federal Indian Health Service facility.** "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. **Hospital.** "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal

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Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under Minnesota Statutes, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under Minnesota Statutes, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under Minnesota Statutes, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult;

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prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in Minnesota Statutes, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

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A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in

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the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

Approved by Revisor _____

A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. Resolution. If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. Surcharge payment during appeal. The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. Resolution of appeal. If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at

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the time of appeal resolution.

Subp. 6. **Monthly appeals.** An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under Minnesota Statutes, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with Minnesota Statutes, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. **Indigent care payment.** Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per

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diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in Minnesota Statutes, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in Minnesota Statutes, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in Minnesota Statutes, section 256B.74, subdivision 6.

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9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the State Register identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

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by Revisor _____

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

The Provider Surcharge and Special Payments rule is a state administered rule. Adoption of these rules will not result in additional spending by local public bodies in the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date:

NATALIE HAAS STEFFEN
Commissioner

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, Parts 9510.2000 to 9510.2070

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 10. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 15, 1991, after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Julie Elhard, Department of Human Services, Health Care Support Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3850 or calling (612) 296-7699.

A copy of the proposed emergency rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816 or calling (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jim Schmidt, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, parts 9510.2000 to 9510.2070

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Bishop, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 16th day of October, 1991.

That on the 16th day of October, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

KATHY ANN McDONOUGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 16, 1992

Nancy L. Bishop

Subscribed and sworn to before me this 17th day of October, 1991.

Kathy Ann McDonough

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9510

The attached rules are approved for publication in the State Register

Ron Ray
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, parts 9510.2000 to 9510.2070

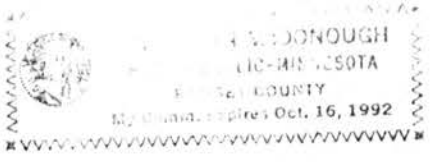
AFFIDAVIT OF ADDITIONAL MAILING

Nancy Bishop, being first duly sworn, deposes and says:

That on the 16th day of October, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- The 87 Minnesota County Human Services Agencies

- The attached list of individuals and organizations



Nancy L. Bishop

Subscribed and sworn to before me
this 17th day of October, 1991
Kathy Ann McDonough

ADDITIONAL MAILING LIST

RULE 45 MEDICAL CARE SURCHARGE AND SPECIAL PAYMENTS

Dave Giel
Senate Legislative Analyst
State Capitol, Room G-17
St. Paul, Minnesota 55155

Rick Carter
Care Providers of Minnesota
2850 Metro Drive, Suite 200
Bloomington, Minnesota 55425

Richard B. Tompkins, M.D., President
Minnesota Medical Association
Suite 400
2221 University Avenue S.E.
Minneapolis, Minnesota 55414

Ramsey County Medical Society
Suite 215 Lowry Medical Bldg.
350 St. Peter Street
St. Paul, Minnesota 55102

Darrell Shreve
MN Assoc. for Homes for the Aging
2221 University Avenue
Minneapolis, Minnesota 55414

Minnesota Hospital Association
2221 University Avenue S.E.
Minneapolis, Minnesota 55414

James S. Hernandez, M.D., President
Blue Earth County Medical Society
304 Belle Avenue, Box 3288
Mankota, Minnesota 56001

Roger L. Neist, M.D., President
Blue Earth Valley Medical Society
800 Clinic Circle
Fairmont, Minnesota 56031

Basil C. LeBlanc, M.D., President
Brown County Medical Society
New Ulm Medical Clinic
1117 Center
New Ulm, Minnesota 56073

Kenneth R. Carter, M.D., President
Camp Release District Med. Society
Granite Medical Center
295 10th Avenue
Granite Falls, Minnesota 56241

A. Stuart Hanson, M.D., President
Hennepin County Medical Society
Park Nicollet Medical Center
5000 West 39th Street
St. Louis Park, Minnesota 55416

Alvin L. Schultz, M.D.
Chairman of the Board
Hennepin County Medical Society
Health One Corporation
2810 North 57th Avenue
Minneapolis, Minnesota 55430-2496

Richard D. Mulder, M.D., President
Lyon-Lincoln County Medical Society
366 East George Street
Ivanhoe, Minnesota 56142

George R. Gordon, M.D., President
McLeod County Medical Society
Hutchinson Medical Center
1091 Highway 15 South
Hutchinson, Minnesota 55350

Timothy Swanson, M.D., President
Mid-Minnesota Medical Society
Willmar Medical Center
101 Willmar Avenue
Willmar, Minnesota 56201

Timothy C. Bonner, M.D., President
Range Medical Society
Box 367
Grand Rapids, Minnesota 55744

Elmer L. Kruger, M.D., President
Red River Valley Medical Society
Greenbush Clinic
Greenbush, Minnesota 56726

ADDITIONAL MAILING LIST

RULE 45 MEDICAL CARE SURCHARGE AND SPECIAL PAYMENTS

Mark S. Mellstrom, M.D., Secretary
Rice County Medical Society
Family Phys. of Northfield
506 St. Olaf Avenue
Northfield, Minnesota 55057

John B. Sanford, M.D., President
St. Louis County Medical Society
Duluth Clinic
400 East 3rd Street
Duluth, Minnesota 55805

Randy J. Cousins, M.D., President
Upper Mississippi Medical Society
Crosby Clinic
301 1st Street S.E.
Crosby, Minnesota 56441

Gary R. Feigal, M.D., President
Wabasha County Medical Society
Lake City Clinic
303 South Washington Street
Lake City, Minnesota 55401

Stephen M. Scallon, M.D., President
Wakota County Medical Society
St. Croix Valley Clinic, P.A.
921 South Greeley Street
Stillwater, Minnesota 55082

David A. Pope, M.D., President
Waseca County Medical Society
Janesville Clinic, Ltd.
312 North Main Street
Janesville, Minnesota 56048

John F. Stock, M.D., President
West Central Minnesota Med. Society
Morris Medical Center
Montana at South Street
Morris, Minnesota 56267

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, Parts 9510.2000 to 9510.2070

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

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All persons have 25 days or until 4:30 p.m. on November 15, 1991, after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Julie Elhard, Department of Human Services, Health Care Support Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3850 or calling (612) 296-7699.

A copy of the proposed emergency rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816 or calling (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jim Schmidt, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

The Provider Surcharge and Special Payments rule is a state administered rule. Adoption of these rules will not result in additional spending by local public bodies in the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date:

NATALIE HAAS STEFFEN
Commissioner

Department of Human Services

Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

Rules as Proposed (all new material)

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under Minnesota Statutes, section 256.9657, and to implement the special payment provisions under Minnesota Statutes, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under Minnesota Statutes, chapter 14, regarding the amount of the medical care

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surcharge.

Subp. 4. Children's health plan. "Children's health plan" means the program authorized under Minnesota Statutes, section 256.936.

Subp. 5. Closed or closing. "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. Cost of living increase. "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under Minnesota Statutes, section 256B.35.

Subp. 8. Department. "Department" means the Minnesota Department of Human Services.

Subp. 9. Federal financial participation. "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. Federal Indian Health Service facility. "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. General assistance medical care or GAMC. "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. Hospital. "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal

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Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under Minnesota Statutes, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under Minnesota Statutes, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under Minnesota Statutes, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult;

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prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in Minnesota Statutes, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

Approved
by Revisor _____

A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in

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the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

Approved by Revisor _____

A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. Resolution. If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. Surcharge payment during appeal. The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. Resolution of appeal. If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at

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the time of appeal resolution.

Subp. 6. Monthly appeals. An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under Minnesota Statutes, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with Minnesota Statutes, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. Indigent care payment. Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per

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diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in Minnesota Statutes, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in Minnesota Statutes, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in Minnesota Statutes, section 256B.74, subdivision 6.

Approved by Revisor _____

9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the State Register identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9510

The attached rules are approved for publication in the State Register

Ron Ray

Ron Ray
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Emergency Rules of the Department of Human Services Relating to Medical Care Surcharge and Special Payments, Minnesota Rules, Parts 9510.2000 to 9510.2070

FISCAL NOTE

I. **ESTIMATED COSTS**

	State	County
FY 1991	$ 260,000	$ 0
FY 1992	950,000	0
FY 1993	490,000	0
TOTAL	$1,700,000	$ 0

State costs represents program costs authorized under Laws of Minnesota 1991, chapter 292, article 1, section 2, subdivision 9 and article 4, section 67, subdivision 7.

II. **BACKGROUND INFORMATION ON THE RULE**

Under Laws of Minnesota 1991, chapter 292, article 4, the legislature directed the Commissioner to implement a provider surcharge program. Laws of Minnesota 1991, chapter 292, article 4, section 20 created a provider surcharge fund; section 21 established a surcharge on nursing facilities, hospitals, and health plans; section 67 established special payments to nursing facilities, hospitals, health plans, and other providers; and section 77 established contingent budget reductions in the event federal financial participation is not available for the special payments under section 67. In the aggregate, the payments by DHS to the providers who are subject to the surcharge will be 100 percent of the surcharge plus an increase over their current reimbursement.

The provider surcharge began on July 1, 1991. The legislature directed the Commissioner to implement the law without complying with the Administrative Procedures Act but to begin emergency rule making within 30 days. Chapter 292, article 4, section 67, subdivision 10, states:

> "The Commissioner shall implement sections 256.9657 and 256B.82 [to be codified as 256B.74] on July 1, 1991, without complying with the rulemaking requirements of the Administrative Procedures Act. The Commissioner shall begin to adopt emergency rules to implement this article within 30 days, and may adopt permanent rules to implement this article. Emergency and permanent rules adopted to implement this article supersede any provisions adopted under the exemption from rulemaking requirements in this section."

On July 22, 1991, the Department published in the State Register a Notice of Solicitation of Outside Information or Opinions (16 S.R. 141).

1. PURPOSE OF THE RULE

The purpose of the emergency rule is to implement Laws of Minnesota 1991, chapter 292, article 4, sections 21 and 67. Pursuant to section 67, subdivision 10, the provider surcharge began on July 1, 1991, without complying with the rulemaking requirements of the Administrative Procedures Act under Minnesota Statutes, chapter 14. The proposed emergency rule implements the provider surcharge program which began on July 1, 1991, and was previously exempt from rulemaking requirements.

2. STATUTORY AUTHORITY

The statutory authority for the emergency rule is Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 10.

III. **METHODOLOGY FOR ESTIMATING COSTS**

The cost estimate for implementing the provider surcharge program is based on legislative authorizations. Laws of Minnesota 1991, chapter 292, article 4, section 67, subdivision 7 authorizes the Commissioner to expend up to $1,700,000 for the administrative costs associated with sections 256.9657 and 256B.82 [to be codified as 256B.74]. Chapter 292, article 1, section 2, subdivision 9 authorized up to $260,000 of the appropriation for administration of the medical assistance provider surcharge program to be used in fiscal year 1991 to implement computer system changes necessary to begin operation on July 1, 1991.

The provider surcharge legislation is essentially self-implementing. The legislation identifies providers who are to be assessed a surcharge, sets forth the amount of the surcharge, the amount of special payments, and requirements governing notice, appeals, and enforcement. The costs associated with implementing the provider surcharge rule are essentially the cost of implementing the statute.

The Department does not anticipate state costs beyond those identified in the legislative authorization.

DATED: 10-4-91

George Steiner

NATALIE HAAS STEFFEN
for **Commissioner**

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*: and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Human Services

Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Laws of Minnesota 1991*, chapter 292, article 4, section 67, subdivision 10. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 15, 1991, after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Julie Elhard
Department of Human Services
Health Care Support Division
444 Lafayette Road
St. Paul, Minnesota 55155-3850

or calling (612) 296-7699.

A copy of the proposed emergency rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816 or calling (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jim Schmidt, Department of Human Services, Rules and Bulletins Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

The Provider Surcharge and Special Payments rule is a state administered rule. Adoption of these rules will not result in additional spending by local public bodies in the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

Natalie Haas Steffen
Commissioner

Rules as Proposed (all new material)

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under *Minnesota Statutes*, section 256.9657, and to implement the special payment provisions under *Minnesota Statutes*, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under *Minnesota Statutes*, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under *Minnesota Statutes*, chapter 14, regarding the amount of the medical care surcharge.

Subp. 4. **Children's health plan.** "Children's health plan" means the program authorized under *Minnesota Statutes*, section 256.936.

Subp. 5. **Closed or closing.** "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Cost of living increase.** "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under *Minnesota Statutes*, section 256B.35.

Subp. 8. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 9. **Federal financial participation.** "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. **Federal Indian Health Service facility.** "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. **Hospital.** "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under *Minnesota Statutes*, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under *Minnesota Statutes*, chapter 144A or a boarding care facility licensed under *Minnesota Statutes*, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in *Minnesota Statutes*, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under *Minnesota Statutes*, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under *Minnesota Statutes*, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult; prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in *Minnesota Statutes*, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under *Minnesota Statutes*, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. **Resolution.** If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in *Minnesota Statutes*, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. **Surcharge payment during appeal.** The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. **Resolution of appeal.** If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at the time of appeal resolution.

Subp. 6. **Monthly appeals.** An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under *Minnesota Statutes*, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with *Minnesota Statutes*, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. **Indigent care payment.** Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of

the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in *Minnesota Statutes*, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in *Minnesota Statutes*, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under *Minnesota Statutes*, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in *Minnesota Statutes*, section 256B.74, subdivision 6.

9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the *State Register* identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture

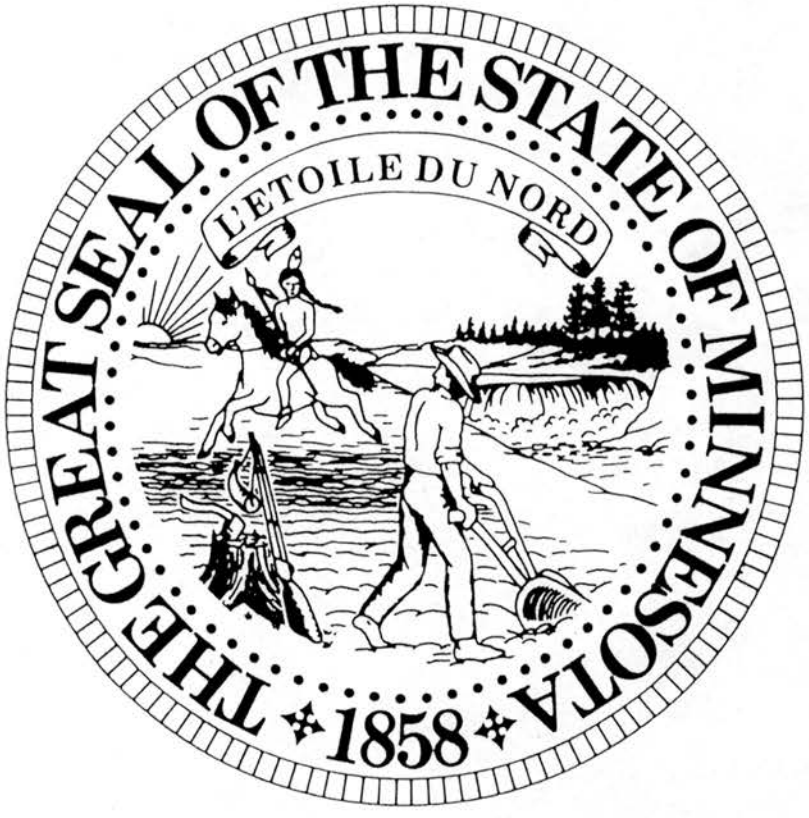
Rural Finance Authority Division

Notice of Public Hearing on the Issuance of an Agricultural Development Revenue Bond Under *Minnesota Statutes,* Chapter 41C

NOTICE IS HEREBY GIVEN that a public hearing will be held on November 4, 1991 at 9 a.m. in Room 145 Department of

The Minnesota
State Register

Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 21 October 1991

Volume 16, Number 17

Pages 1021-1056

Department of Human Services

Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

Rules as Proposed (all new material)

SURCHARGES AND SPECIAL PAYMENTS

9510.2000 [Emergency] PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 9510.2000 to 9510.2070 [Emergency] is to govern the administration of the medical care surcharge under Minnesota Statutes, section 256.9657, and to implement the special payment provisions under Minnesota Statutes, section 256B.74.

Subp. 2. **Scope.** Parts 9510.2000 to 9510.2070 [Emergency] apply to the following facilities, hospitals, and plans operating on or after July 1, 1991: nursing facilities, Minnesota and local trade area hospitals, and prepaid health plans.

Part 9510.2060 [Emergency] also applies to physicians and dentists and to cost of living increases for personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

9510.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9510.2000 to 9510.2070 [Emergency], the following terms have the meanings given them in this part.

Subp. 2. **Allowable cost.** For a hospital, "allowable cost" has the meaning given it in part 9500.1100, subpart 44. For a nursing facility, "allowable cost" means actual allowable historical operating cost as defined in part 9549.0020, subpart 2.

Subp. 3. **Appeal.** "Appeal" means a written request made to the commissioner by a nursing facility, hospital, or prepaid health plan for a contested case hearing under Minnesota Statutes, chapter 14, regarding the amount of the medical care

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surcharge.

Subp. 4. **Children's health plan.** "Children's health plan" means the program authorized under Minnesota Statutes, section 256.936.

Subp. 5. **Closed or closing.** "Closed" or "closing" means the facility has suspended the practice of providing any inpatient hospital services, has suspended the practice of providing outpatient services, has suspended operation as a nursing facility, or is in the process of suspending services pursuant to a department-approved plan of closure.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Cost of living increase.** "Cost of living increase" means the increase in clothing and personal needs allowance for individuals receiving medical assistance while residing in a skilled nursing home, medical institution, or intermediate care facility as set forth under Minnesota Statutes, section 256B.35.

Subp. 8. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 9. **Federal financial participation.** "Federal financial participation" means the federal government's share of a state's expenditure under title XIX of the Social Security Act.

Subp. 10. **Federal Indian Health Service facility.** "Federal Indian Health Service facility" means a facility of the Indian Health Service, including a hospital, nursing facility, or other type of facility that provides services or a type of service otherwise covered under the state's medical assistance program, whether operated by the federal Indian Health Service or by an Indian tribe or tribal organization.

Subp. 11. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" has the meaning given it in part 9505.5005, subpart 7.

Subp. 12. **Hospital.** "Hospital" has the meaning given it in part 9505.0175, subpart 16, but does not include federal

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by Revisor _____

Indian Health Service facilities and regional treatment centers.

Subp. 13. **Indigent care payment.** "Indigent care payment" means a payment made by the commissioner to a hospital for inpatient hospital services.

Subp. 14. **Inpatient hospital services.** "Inpatient hospital services" has the meaning given it in part 9500.1100, subpart 27, but does not include general assistance medical care.

Subp. 15. **Local trade area.** "Local trade area" has the meaning given it in part 9505.0175, subpart 22.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" has the meaning given it in part 9505.0175, subpart 24.

Subp. 17. **Medical care surcharge.** "Medical care surcharge" means the amount assessed to a nursing facility, hospital, and prepaid health plan under Minnesota Statutes, section 256.9657, subdivisions 1 to 3.

Subp. 18. **Medicare crossover claims.** "Medicare crossover claims" has the meaning given it in part 9500.1100, subpart 32.

Subp. 19. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.56 that is subject to the reimbursement principles in parts 9549.0010 to 9549.0080.

Subp. 20. **Outpatient hospital services.** "Outpatient hospital services" has the meaning given it in part 9505.0330, subpart 1.

Subp. 21. **Personal needs allowance.** "Personal needs allowance" has the meaning given it in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 22. **Prepaid health plan.** "Prepaid health plan" means a health insurer regulated under Minnesota Statutes, chapters 60A, 62A, and 62C or a health maintenance organization licensed and operating under Minnesota Statutes, chapter 62D that receives medical assistance payment under part 9505.0285.

Subp. 23. **Preventative services.** "Preventative services" means the following dental procedures: initial oral examination; periodic oral examination; prophylaxis, adult;

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by Revisor _____

prophylaxis, child; topical application of fluoride, including prophylaxis, adult; topical application of fluoride, including prophylaxis, child; topical application of fluoride, excluding prophylaxis, adult; topical application of fluoride, excluding prophylaxis, child; dietary planning for the control of dental caries; oral hygiene instruction; sealant, per tooth; and gross oral cleaning.

Subp. 24. **Rate cell.** "Rate cell" has the meaning given it in part 9500.1451, subpart 16.

Subp. 25. **Recipient.** "Recipient" has the meaning given it in part 9505.0175, subpart 41. For outpatient hospital services and prepaid health plans, recipient includes a person eligible under general assistance medical care and the children's health plan.

Subp. 26. **Regional treatment center.** "Regional treatment center" means a state facility as defined in Minnesota Statutes, section 246.50, subdivision 3.

Subp. 27. **Settle up.** "Settle up" means to make the payment after resolution of an appeal under part 9510.2040 [Emergency] between a nursing facility, hospital, or prepaid health plan and the department to settle the difference between the medical care surcharge paid and the medical care surcharge owed.

Subp. 28. **Spend-down.** "Spend-down" has the meaning given it in part 9505.0015, subpart 44.

9510.2020 [Emergency] MEDICAL CARE SURCHARGE.

Subpart 1. **Nursing facilities.** Effective July 1, 1991, a nursing facility must pay an annual medical care surcharge of $500 for each bed licensed by the Minnesota Department of Health on the previous April 1. Payments are due in monthly installments on the 15th day of each month beginning August 15, 1991. The monthly payment must be equal to the annual medical care surcharge divided by 12.

Subp. 2. **Hospitals.** Effective July 1, 1991, a hospital must pay a medical care surcharge as provided in items A and B.

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by Revisor _____

A. For inpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to ten percent of the net MA payments for inpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend-down amounts. Medicare crossover claims, direct MA payments, gross adjustments, payments made to a hospital for MA and GAMC services by a prepaid health plan, and indigent care payments are excluded from the gross MA payments.

B. For outpatient hospital services, a medical care surcharge is due on the 15th day of each month equal to five percent of the net MA payments for outpatient hospital services issued to the hospital in the month beginning six months before the month in which the payment is due. For the purpose of this item, net MA payments are the gross MA inpatient payments, minus other third-party payments and recipient spend down amounts. Medicare crossover claims, direct MA payments, gross adjustments, and payments made to a hospital for MA and GAMC services by a prepaid health plan are excluded from the gross MA payments.

Subp. 3. **Prepaid health plans.** A prepaid health plan must pay a medical care surcharge equal to the equivalent value of the surcharge for a hospital for each rate cell payment. The medical care surcharge for each month of a fiscal year must be calculated based on the medical care surcharge due on September 15 for fiscal year 1992 and July 15 for subsequent fiscal years for hospitals. Payments are due on the 15th day of each month.

Subp. 4. **Closed or closing nursing facilities and hospitals.** Nursing facilities that are closed or in the process of closing on July 1, 1991, are subject to the surcharge for each month after July 1, 1991, in which the facility is subject to reimbursement under parts 9549.0010 to 9549.0080.

The medical care surcharge does not apply to hospitals closed before July 1, 1991. For hospitals that close or are in

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by Revisor _____

the process of closing after July 1, 1991, the medical care surcharge applies until the first month after the hospital is completely closed.

Subp. 5. **Termination of prepaid health plan.** Prepaid health plans are under contract for a full year. Only unilateral termination, breach of contact, or bankruptcy of the prepaid health plan ends the contract before the contract year ends.

Subp. 6. **Nursing facilities and hospitals that change ownership or enter into receivership.** The medical care surcharge continues without interruption for nursing facilities and hospitals that change ownership or enter into receivership.

Subp. 7. **New nursing facilities and hospitals.** New nursing facilities and hospitals shall receive the payment under part 9510.2060 [Emergency] when they start operations. For new nursing facilities that begin operation after July 1, 1991, medical care surcharge calculations will begin on the following April 1. Medical care surcharge calculations for new hospitals begin after six months of operation.

Subp. 8. **Not allowable cost.** A medical care surcharge payment is not an allowable cost for purposes of the medical assistance program and the general assistance medical care program.

9510.2030 [Emergency] NOTIFICATION OF SURCHARGE AMOUNT.

The commissioner must give written notice to a nursing facility, hospital, or prepaid health plan of the medical care surcharge amount owed at least 30 days before the date each payment is due.

9510.2040 [Emergency] SURCHARGE APPEALS.

Subpart 1. **When allowed.** A nursing facility, hospital, or prepaid health plan may appeal the amount of each medical care surcharge payment assessed under Minnesota Statutes, section 256.9657.

Subp. 2. **Criteria.** To be effective, an appeal must meet the criteria in items A and B.

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A. The nursing facility, hospital, or prepaid health plan must appeal to the commissioner in writing. The appeal must be received by the commissioner no later than 30 days after the nursing facility, hospital, or prepaid health plan receives notice of the medical care surcharge amount. For purposes of determining the date of receipt, the commissioner shall presume that the nursing facility, hospital, or prepaid health plan received the medical care surcharge amount notice three days after the notice was mailed by the commissioner, excluding Sundays and holidays, unless the nursing facility, hospital, or prepaid health plan can establish a different date of receipt.

B. The appeal must specify:

(1) the basis for the dispute;

(2) the computation and the amount the appealing party believes to be correct;

(3) the authority upon which the appealing party is relying in the dispute;

(4) the name and address of the individual with whom contacts may be made regarding the appeal; and

(5) the date the payment notice was received by the appealing party.

Subp. 3. **Resolution.** If the dispute is not resolved informally between the commissioner and the appealing party filing the appeal under subpart 2, item A, the appeal must be heard according to the contested case provisions in Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief administrative law judge.

Subp. 4. **Surcharge payment during appeal.** The monthly medical care surcharge amounts established by the commissioner must be paid by the due dates even though an appeal is pending.

Subp. 5. **Resolution of appeal.** If the appeal results in a determination that payment is due the appealing party, the commissioner shall retroactively settle up with the appellant at

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the time of appeal resolution.

Subp. 6. **Monthly appeals.** An appeal must be filed for each disputed medical care surcharge amount due. The appeals may be consolidated in a contested case hearing under Minnesota Statutes, chapter 14. The medical care surcharge amount must not be adjusted for any month for which no appeal was filed.

9510.2050 [Emergency] ENFORCEMENT.

In accordance with Minnesota Statutes, section 256.9657, subdivision 7, the commissioner shall bring an action in district court to collect medical care surcharge payments that are more than 30 days overdue.

9510.2060 [Emergency] SPECIAL PAYMENTS.

Subpart 1. **Indigent care payment.** Effective for admissions after June 30, 1991, in addition to other payments for inpatient hospital services, the commissioner shall make an indigent care payment to hospitals. The value of the indigent care payment is ten percent of the net MA payments made to a hospital for inpatient services, divided by the number of related patient admissions or patient days and multiplied by 111 percent. This value is added to each patient admission or patient day that occurs in the month beginning six months after the month on which the indigent care payment is based.

Items A to E apply in determining the indigent care payment under this subpart.

A. Net MA payments are the gross MA payments minus Medicare crossover claims, third-party liability payments, recipient spend-down amounts, direct MA payments, gross adjustment, and indigent care payments.

B. An indigent care per diem payment must be made for neonates that transfer to hospitals that have neonatal intensive care units, inpatient hospital services paid on an interim basis as a percentage of charges, and ventilator-dependent inpatient hospital services paid at a per diem rate.

C. An indigent care per admission payment must be made for claims that are not eligible for the indigent care per

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diem payment.

D. Replacement claims and interim claims paid in the same period as the original claim are treated as the original claim.

E. Replacement claims and interim claims paid in a different period from the original claim have the net amount included in the net MA payment. The admission or patient days are not included in the indigent care denominator.

Subp. 2. **Hospital outpatient services.** Effective for hospital outpatient services provided after June 30, 1991, the commissioner shall reimburse hospitals for outpatient facility fees at 80 percent of charges submitted in calendar year 1990, not to exceed the Medicare upper payment limit. Fees for services excepted from this payment method are emergency room facility fees, clinic facility fees, and those fees for services for which there is a federal maximum allowable payment.

Subp. 3. **Physicians.** Effective for physician services provided after June 30, 1992, the commissioner shall make payments for physician services as provided in Minnesota Statutes, section 256B.74, subdivision 2.

Subp. 4. **Nursing facilities.** For rate years beginning after June 30, 1991, the commissioner shall reimburse nursing facilities as provided in Minnesota Statutes, section 256B.74, subdivision 3.

Subp. 5. **Personal needs allowance.** The commissioner shall provide cost of living increases in the personal needs allowance under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 6. **Dentists.** The commissioner shall increase reimbursements to dentists for services provided after June 30, 1992, by 20 percent for preventative services and five percent for other services.

Subp. 7. **Prepaid health plans.** Effective for services provided after June 30, 1991, the commissioner shall adjust the monthly medical assistance capitation rate cell established in contract as provided in Minnesota Statutes, section 256B.74, subdivision 6.

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9510.2070 [Emergency] EFFECTIVE PERIOD OF THE RULE.

If federal financial participation for payments made under parts 9510.2000 to 9510.2060 [Emergency] becomes unavailable or is denied, these parts are no longer effective. An exception to the application of this part is that parts 9510.2000 to 9510.2060 [Emergency] continue to apply to surcharge collections, payments, and appeals that arose before the date parts 9510.2000 to 9510.2060 [Emergency] become ineffective. The commissioner shall publish a notice in the State Register identifying the date after which parts 9510.2000 to 9510.2060 [Emergency] are to be considered ineffective.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Medical Care Surcharge and Special Payments

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9510

The attached rules are approved for publication in the State Register

Ron Ray

Ron Ray
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Medical Care Surcharge and Special Payments Minnesota Rules, Parts 9510.2000 to 9510.2070 [Emergency]

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

(1) Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on October 21, 1991, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on October 16, 1991.

(2) All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. (4) No submission or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

There were no modifications in the proposed rule.

(5) NOW, THEREFORE, IT IS ORDERED that the rule identified as Medical Care Surcharge and Special Payments is adopted this 25th day of November, 1991, pursuant to authority vested in me by Laws of Minnesota 1991, Chapter 292, Article 4, Section 67, Subdivision 10.

George J. Steffen

for NATALIE HAAS STEFFEN
Commissioner

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Relating to
Medical Care Surcharge and Special
Payments; Minnesota Rules, Parts
9510.2000 to 9510.2070 [Emergency]

DECLARATION OF
COUNSEL

I, Kim Buechel Mesun, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0866 .

Kim Buechel Mesun

Special Assistant
Attorney General

Dated: 11/18/91