

## CHAPTER 562 — S.F.No. 1838

*An act relating to administrative procedures; providing for notice of temporary rulemaking; amending Minnesota Statutes 1981 Supplement, Section 15.0412, Subdivision 5; and 256B.02, Subdivision 8, as amended.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1981 Supplement, Section 15.0412, Subdivision 5, is amended to read:

Subd. 5. **TEMPORARY RULES; ADOPTION PROCEDURE.** When an agency is directed by statute, federal law or court order to adopt, amend, suspend or repeal a rule in a manner that does not allow for compliance with subdivisions 4 to 4h, or if an agency is expressly required or authorized by statute to adopt temporary rules, the agency shall adopt temporary rules in accordance with this subdivision. The proposed temporary rule shall be published with a notice of intent to adopt temporary rules in the state register, and the same notice shall be mailed to all persons registered with the agency to receive notice of any rulemaking proceedings. For at least 20 days after publication the agency shall afford all interested persons an opportunity to submit data and views on the proposed temporary rule in writing. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency. The agency shall submit to the attorney general the proposed temporary rule as published, with any modifications. The attorney general shall review the proposed temporary rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed temporary rule and any modifications within five working days. The temporary rule shall take effect upon approval of the attorney general. The attorney general shall file two copies of the approved rule with the secretary of state. Failure of the attorney general to approve or disapprove a rule within five working days is approval. As soon as practicable, notice of the attorney general's decision shall be published in the state register and the adopted rule shall be published in the manner as provided for adopted rules in subdivision 4f. Temporary rules adopted under this subdivision shall be effective for the period stated in the notice of intent to adopt temporary rules which may not be longer than 180 days. The temporary rules may be continued in effect for an additional period of up to 180 days if the agency gives notice of continuation by publishing notice in the state register and mailing the same notice to all persons registered with the agency to receive notice of any rulemaking proceedings. The continuation shall not be effective until these notices have been mailed. No temporary rule shall remain in effect on a date 361 days after its original effective date. The temporary rules may not be ~~adopted~~ again continued in effect after 360 days without following the procedure of either subdivisions 4 to 4g or 4h. The secretary of state shall forward one copy of each approved and filed temporary rule to the revisor of statutes.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

No approved temporary rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has certified that the rule's form is approved.

Sec. 2. Minnesota Statutes 1981 Supplement, Section 256B.02, Subdivision 8, as amended by Laws 1981, Third Special Session Chapter 2, Article 1, Section 31, is amended to read:

Subd. 8. "Medical assistance" or "medical care" means payment of part or all of the cost of the following care and services for eligible individuals whose income and resources are insufficient to meet all of such cost:

- (1) Inpatient hospital services.
- (2) Skilled nursing home services and services of intermediate care facilities.
- (3) Physicians' services.
- (4) Outpatient hospital or clinic services.
- (5) Home health care services.
- (6) Private duty nursing services.
- (7) Physical therapy and related services.
- (8) Dental services, excluding cast metal restorations.
- (9) Laboratory and x-ray services.

(10) The following if prescribed by a licensed practitioner: drugs, eyeglasses, dentures, and prosthetic devices. The commissioner shall designate a formulary committee which shall advise the commissioner on the names of drugs for which payment shall be made, recommend a system for reimbursing providers on a set fee or charge basis rather than the present system, and develop methods encouraging use of generic drugs when they are less expensive and equally effective as trademark drugs. The commissioner shall appoint the formulary committee members no later than 30 days following July 1, 1981. The formulary committee shall consist of nine members, four of whom shall be physicians who are not employed by the department of public welfare, and a majority of whose practice is for persons paying privately or through health insurance, three of whom shall be pharmacists who are not employed by the department of public welfare, and a majority of whose practice is for persons paying privately or through health insurance, a consumer representative, and a nursing home representative. Committee members shall serve two year terms and shall serve without compensation. The commissioner may establish a drug formulary. Its establishment and publication shall not be subject to the requirements of the administrative procedure act, but the formulary committee shall review and comment on the formulary contents. The formulary shall not include: drugs for

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

which there is no federal funding; over the counter drugs, except for antacids, acetaminophen, family planning products, aspirin, insulin, prenatal vitamins, and vitamins for children under the age of seven; nutritional products; anorectics; and drugs for which medical value has not been established. Payment to drug vendors shall not be modified before the formulary is established. The commissioner may promulgate conditions for prohibiting payment for specific drugs after considering the formulary committee's recommendations.

The basis for determining the amount of payment shall be the actual acquisition costs of the drugs plus a fixed dispensing fee established by the commissioner. Actual acquisition cost includes quantity and other special discounts except time and cash discounts. Establishment of this fee shall not be subject to the requirements of the administrative procedure act. Whenever a generically equivalent product is available, payment shall be on the basis of the actual acquisition cost of the generic drug, unless the prescriber specifically indicates "dispense as written" on the prescription as required by section 151.21, subdivision 2.

Notwithstanding the above provisions, implementation of any change in the fixed dispensing fee which has not been subject to the administrative procedure act shall be limited to not more than 180 days, unless, during that time, the commissioner shall have initiated rulemaking through the administrative procedure act.

(11) Diagnostic, screening, and preventive services.

(12) Health care pre-payment plan premiums and insurance premiums if paid directly to a vendor and supplementary medical insurance benefits under Title XVIII of the Social Security Act.

(13) Abortion services, but only if one of the following conditions is met:

(a) The abortion is a medical necessity. "Medical necessity" means (1) the signed written statement of two physicians indicating the abortion is medically necessary to prevent the death of the mother, and (2) the patient has given her consent to the abortion in writing unless the patient is physically or legally incapable of providing informed consent to the procedure, in which case consent will be given as otherwise provided by law;

(b) The pregnancy is the result of criminal sexual conduct as defined in section 609.342, clauses (c), (d), (e)(i), and (f), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation, unless the victim is physically unable to report the criminal sexual conduct, in which case the report shall be made within 48 hours after the victim becomes physically able to report the criminal sexual conduct; or

(c) The pregnancy is the result of incest, but only if the incident and relative are reported to a valid law enforcement agency for investigation prior to the abortion.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(14) Transportation costs incurred solely for obtaining emergency medical care or transportation costs incurred by non-ambulatory persons in obtaining emergency or non-emergency medical care when paid directly to an ambulance company, common carrier, or other recognized providers of transportation services. For the purpose of this clause, a person who is incapable of transport by taxicab or bus shall be considered to be non-ambulatory.

(15) To the extent authorized by rule of the state agency, costs of bus or taxicab transportation incurred by any ambulatory eligible person for obtaining non-emergency medical care.

(16) Any other medical or remedial care licensed and recognized under state law unless otherwise prohibited by law.

### Sec. 3. [15.185] MAILING LISTS.

A department, agency, or official of the state issuing for public distribution any book, document, journal, map, pamphlet, or report on a regular basis to a list of persons who have asked to receive regular publications shall insert into at least one publication per person per year a returnable card which must be returned by that person in order to receive future similar publications from that department, agency, or official.

### Sec. 4. EFFECTIVE DATE.

This act is effective the day following final enactment.

Approved March 22, 1982

---

## CHAPTER 563 — S.F.No. 1894

*An act relating to energy; changing the duties of the commissioner of the department of energy, planning and development; expanding the scope of certain energy education programs; changing certain residential energy sales programs; providing for wind energy conversion systems in county and municipal zoning law; creating wind easements; amending Minnesota Statutes 1980, Sections 16.86, Subdivision 4; 116H.02, by adding a subdivision; 116H.15, Subdivisions 1 and 3; 500.30; Minnesota Statutes 1981 Supplement, Sections 116H.07; 116H.088, Subdivision 1; 116H.095, Subdivisions 4 and 5; 116H.10, Subdivision 4; 116H.11, Subdivision 1; 116H.12, Subdivision 4; 116H.128; 116H.15, Subdivision 2; 116H.18; proposing new law coded in Minnesota Statutes, Chapter 325E; repealing Minnesota Statutes 1980, Sections 116H.088, Subdivision 2; 116H.12, Subdivision 8; and Minnesota Statutes 1981 Supplement, Section 120.78, Subdivision 1.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1980, Section 16.86, Subdivision 4, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.