

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 2866

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DATE
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OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to health care; increasing the surcharge for hospitals and health maintenance
1.3 organizations; increasing the premium tax for for-profit health maintenance
1.4 organizations; amending Minnesota Statutes 2018, sections 256.9657, subdivisions
1.5 2, 3; 256B.69, subdivision 5i; 297I.05, subdivisions 1, 2, 5.

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

1.7 Section 1. Minnesota Statutes 2018, section 256.9657, subdivision 2, is amended to read:

1.8 Subd. 2. **Hospital surcharge.** (a) Effective October 1, 1992, each Minnesota hospital
1.9 except facilities of the federal Indian Health Service and regional treatment centers shall
1.10 pay to the medical assistance account a surcharge equal to 1.4 percent of net patient revenues
1.11 excluding net Medicare revenues reported by that provider to the health care cost information
1.12 system according to the schedule in subdivision 4.

1.13 (b) Effective July 1, 1994, the surcharge under paragraph (a) is increased to 1.56 percent.

1.14 (c) Effective July 1, 2019, the surcharge under paragraph (a) is increased to ... percent.

1.15 (d) Notwithstanding the Medicare cost finding and allowable cost principles, the hospital
1.16 surcharge is not an allowable cost for purposes of rate setting under sections 256.9685 to
1.17 256.9695.

1.18 Sec. 2. Minnesota Statutes 2018, section 256.9657, subdivision 3, is amended to read:

1.19 Subd. 3. **Surcharge on HMOs and community integrated service networks.** (a)
1.20 Effective October 1, 1992, each health maintenance organization with a certificate of
1.21 authority issued by the commissioner of health under chapter 62D and each community
1.22 integrated service network licensed by the commissioner under chapter 62N shall pay to

2.1 the commissioner of human services a surcharge equal to six-tenths of one percent of the
2.2 total premium revenues of the health maintenance organization or community integrated
2.3 service network as reported to the commissioner of health according to the schedule in
2.4 subdivision 4.

2.5 (b) Effective July 1, 2019, the surcharge under paragraph (a) is increased to ... percent.

2.6 (c) For purposes of this subdivision, total premium revenue means:

2.7 (1) premium revenue recognized on a prepaid basis from individuals and groups for
2.8 provision of a specified range of health services over a defined period of time which is
2.9 normally one month, excluding premiums paid to a health maintenance organization or
2.10 community integrated service network from the Federal Employees Health Benefit Program;

2.11 (2) premiums from Medicare wraparound subscribers for health benefits which
2.12 supplement Medicare coverage;

2.13 (3) Medicare revenue, as a result of an arrangement between a health maintenance
2.14 organization or a community integrated service network and the Centers for Medicare and
2.15 Medicaid Services of the federal Department of Health and Human Services, for services
2.16 to a Medicare beneficiary, excluding Medicare revenue that states are prohibited from taxing
2.17 under sections 1854, 1860D-12, and 1876 of title XVIII of the federal Social Security Act,
2.18 codified as United States Code, title 42, sections 1395mm, 1395w-112, and 1395w-24,
2.19 respectively, as they may be amended from time to time; and

2.20 (4) medical assistance revenue, as a result of an arrangement between a health
2.21 maintenance organization or community integrated service network and a Medicaid state
2.22 agency, for services to a medical assistance beneficiary.

2.23 If advance payments are made under clause (1) or (2) to the health maintenance
2.24 organization or community integrated service network for more than one reporting period,
2.25 the portion of the payment that has not yet been earned must be treated as a liability.

2.26 ~~(e)~~ (d) When a health maintenance organization or community integrated service network
2.27 merges or consolidates with or is acquired by another health maintenance organization or
2.28 community integrated service network, the surviving corporation or the new corporation
2.29 shall be responsible for the annual surcharge originally imposed on each of the entities or
2.30 corporations subject to the merger, consolidation, or acquisition, regardless of whether one
2.31 of the entities or corporations does not retain a certificate of authority under chapter 62D
2.32 or a license under chapter 62N.

3.1 ~~(d)~~ (e) Effective June 15 of each year, the surviving corporation's or the new corporation's
 3.2 surcharge shall be based on the revenues earned in the previous calendar year by all of the
 3.3 entities or corporations subject to the merger, consolidation, or acquisition regardless of
 3.4 whether one of the entities or corporations does not retain a certificate of authority under
 3.5 chapter 62D or a license under chapter 62N until the total premium revenues of the surviving
 3.6 corporation include the total premium revenues of all the merged entities as reported to the
 3.7 commissioner of health.

3.8 ~~(e)~~ (f) When a health maintenance organization or community integrated service network,
 3.9 which is subject to liability for the surcharge under this chapter, transfers, assigns, sells,
 3.10 leases, or disposes of all or substantially all of its property or assets, liability for the surcharge
 3.11 imposed by this chapter is imposed on the transferee, assignee, or buyer of the health
 3.12 maintenance organization or community integrated service network.

3.13 ~~(f)~~ (g) In the event a health maintenance organization or community integrated service
 3.14 network converts its licensure to a different type of entity subject to liability for the surcharge
 3.15 under this chapter, but survives in the same or substantially similar form, the surviving
 3.16 entity remains liable for the surcharge regardless of whether one of the entities or corporations
 3.17 does not retain a certificate of authority under chapter 62D or a license under chapter 62N.

3.18 ~~(g)~~ (h) The surcharge assessed to a health maintenance organization or community
 3.19 integrated service network ends when the entity ceases providing services for premiums
 3.20 and the cessation is not connected with a merger, consolidation, acquisition, or conversion.

3.21 Sec. 3. Minnesota Statutes 2018, section 256B.69, subdivision 5i, is amended to read:

3.22 Subd. 5i. **Administrative expenses.** (a) Administrative costs paid to managed care plans
 3.23 and county-based purchasing plans under this section, section 256B.692, and section 256L.12
 3.24 must not exceed 6.6 percent of total payments made to all managed care plans and
 3.25 county-based purchasing plans in aggregate across all state public health care programs,
 3.26 based on payments expected to be made at the beginning of each calendar year. The
 3.27 commissioner may reduce or eliminate administrative requirements to meet the administrative
 3.28 cost limit. For purposes of this paragraph, administrative costs do not include premium
 3.29 taxes paid under section 297I.05, ~~subdivision 5,~~ provider surcharges paid under section
 3.30 256.9657, subdivision 3, and health insurance fees under section 9010 of the Affordable
 3.31 Care Act.

3.32 (b) The following expenses are not allowable administrative expenses for rate-setting
 3.33 purposes under this section:

4.1 (1) charitable contributions made by the managed care plan or the county-based
4.2 purchasing plan;

4.3 (2) compensation of individuals within the organization in excess of \$200,000 such that
4.4 the allocation of compensation for an individual across all state public health care programs
4.5 in total cannot exceed \$200,000;

4.6 (3) any penalties or fines assessed against the managed care plan or county-based
4.7 purchasing plan;

4.8 (4) any indirect marketing or advertising expenses of the managed care plan or
4.9 county-based purchasing plan, including but not limited to costs to promote the managed
4.10 care or county-based purchasing plan, costs of facilities used for special events, and costs
4.11 of displays, demonstrations, donations, and promotional items such as memorabilia, models,
4.12 gifts, and souvenirs. The commissioner may classify an item listed in this clause as an
4.13 allowable administrative expense for rate-setting purposes, if the commissioner determines
4.14 that the expense is incidental to an activity related to state public health care programs that
4.15 is an allowable cost for purposes of rate setting;

4.16 (5) any lobbying and political activities, events, or contributions;

4.17 (6) administrative expenses related to the provision of services not covered under the
4.18 state plan or waiver;

4.19 (7) alcoholic beverages and related costs;

4.20 (8) membership in any social, dining, or country club or organization; and

4.21 (9) entertainment, including amusement, diversion, and social activities, and any costs
4.22 directly associated with these costs, including but not limited to tickets to shows or sporting
4.23 events, meals, lodging, rentals, transportation, and gratuities.

4.24 For the purposes of this subdivision, compensation includes salaries, bonuses and incentives,
4.25 other reportable compensation on an IRS 990 form, retirement and other deferred
4.26 compensation, and nontaxable benefits. Charitable contributions under clause (1) include
4.27 payments for or to any organization or entity selected by the managed care plan or
4.28 county-based purchasing plan that is operated for charitable, educational, political, religious,
4.29 or scientific purposes, that are not related to medical and administrative services covered
4.30 under state public health care programs.

4.31 (c) Payments to a quality improvement organization are an allowable administrative
4.32 expense for rate-setting purposes under this section, to the extent they are allocated to a
4.33 state public health care program and approved by the commissioner.

5.1 (d) Where reasonably possible, expenses for an administrative item shall be directly
 5.2 allocated so as to assign costs for an item to an individual state public health care program
 5.3 when the cost can be specifically identified with and benefits the individual state public
 5.4 health care program. For administrative services expensed to the state's public health care
 5.5 programs, managed care plans and county-based purchasing plans must clearly identify and
 5.6 separately record expense items listed under paragraph (b) in their accounting systems in a
 5.7 manner that allows for independent verification of unallowable expenses for purposes of
 5.8 determining payment rates for state public health care programs.

5.9 (e) Notwithstanding paragraph (a), the commissioner shall reduce administrative expenses
 5.10 paid to managed care plans and county-based purchasing plans by .50 of a percentage point
 5.11 for contracts beginning January 1, 2016, and ending December 31, 2017. To meet the
 5.12 administrative reductions under this paragraph, the commissioner may reduce or eliminate
 5.13 administrative requirements, exclude additional unallowable administrative expenses
 5.14 identified under this section and resulting from the financial audits conducted under
 5.15 subdivision 9d, and utilize competitive bidding to gain efficiencies through economies of
 5.16 scale from increased enrollment. If the total reduction cannot be achieved through
 5.17 administrative reduction, the commissioner may limit total rate increases on payments to
 5.18 managed care plans and county-based purchasing plans.

5.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.20 Sec. 4. Minnesota Statutes 2018, section 297I.05, subdivision 1, is amended to read:

5.21 Subdivision 1. **Domestic and foreign companies and for-profit health maintenance**
 5.22 **organizations.** Except as otherwise provided in this section, a tax is imposed on every
 5.23 domestic and foreign insurance company and for-profit health maintenance organization.
 5.24 The rate of tax is equal to two percent of all gross premiums less return premiums on all
 5.25 direct business received by the insurer or agents of the insurer in Minnesota, in cash or
 5.26 otherwise, during the year.

5.27 **EFFECTIVE DATE; APPLICATION.** This section is effective the day following
 5.28 final enactment and applies to premium tax returns originally due on or after December 31,
 5.29 2019.

5.30 Sec. 5. Minnesota Statutes 2018, section 297I.05, subdivision 2, is amended to read:

5.31 Subd. 2. **Township mutual insurance.** A tax is imposed on township mutual insurance
 5.32 companies. The rate of tax is equal to one percent of gross premiums less return premiums

6.1 on all direct business received by the insurer or agents of the insurer in Minnesota, in cash
6.2 or otherwise, ~~during~~ in the calendar year.

6.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.4 Sec. 6. Minnesota Statutes 2018, section 297I.05, subdivision 5, is amended to read:

6.5 Subd. 5. **Nonprofit health maintenance organizations, nonprofit health service plan**
6.6 **corporations, and community integrated service networks; deposit of revenues.** (a) A
6.7 tax is imposed on nonprofit health maintenance organizations, community integrated service
6.8 networks, and nonprofit health care service plan corporations. The rate of tax is equal to
6.9 one percent of gross premiums less return premiums on all direct business received by the
6.10 organization, network, or corporation or its agents in Minnesota, in cash or otherwise, in
6.11 the calendar year.

6.12 (b) The commissioner shall deposit all revenues, including penalties and interest, collected
6.13 under this chapter from nonprofit health maintenance organizations, community integrated
6.14 service networks, and nonprofit health service plan corporations in the health care access
6.15 fund. Refunds of overpayments of tax imposed by this subdivision must be paid from the
6.16 health care access fund. There is annually appropriated from the health care access fund to
6.17 the commissioner the amount necessary to make any refunds of the tax imposed under this
6.18 subdivision.

6.19 **EFFECTIVE DATE; APPLICATION.** This section is effective the day following
6.20 final enactment and applies to premium tax returns originally due on or after December 31,
6.21 2019.