

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Adoption of Amendments
to the Department of Labor and Industry
Rules on:

FINDINGS AND ORDER ADOPTING EXEMPT RULE AMENDMENTS UNDER MINNESOTA STATUTES SECTIONS 176.136 AND 14.388

- 1) Independent Medical Examination Fees in Minnesota Rules, chapter 5219; and
- 2) Workers' Compensation Medical Services and Fees in Minnesota Rules, chapter 5221.

Background:

1. Minnesota Statutes section 176.136, subd. 1a (2016), requires the Commissioner of the Department of Labor and Industry (Commissioner) to establish a "relative value fee schedule" to set maximum fees for treatment of workers' compensation injuries. The relative value fee schedule is in Minnesota Rules parts 5221.4005 to 5221.4061. The workers' compensation law requires the commissioner to update the relative value fee schedule with new RVUs at least every three years.¹ New RVU tables and conversion factors were updated under the exempt rule amendment process in Minnesota Statutes, section 14.386 on October 1, 2016.²
2. Minnesota Statutes, section 176.136, subd. 1b (b) (2016) allows the Commissioner to adopt rules to "establish the reasonable value of a service, article, or supply in lieu of the 85 percent limitation." Minnesota Rules, part 5221.4070 establishes a separate fee schedule for pharmacy services, articles, or supplies in lieu of the limitation in Minnesota Statutes section 176.136.
3. Additionally, Minnesota Statutes section 176.136, subd. 1c (2016), requires the Commissioner to adopt rules that reasonably limit amounts which may be charged for, or in connection with, independent medical examinations in workers' compensation matters. The rules for independent medical examination fees are found in Minnesota Rules, chapter 5219.

Statutory authority:

4. Minnesota Statutes, section 14.388 allows an agency to amend rules if the agency has "good cause" to find that the rulemaking provisions of chapter 14 are "unnecessary, impracticable, or contrary to the public interest..." The Department of Labor and Industry (Department) proposes to amend Minnesota Rules, chapter 5219 and 5221 to reflect statutory changes related to electronic medical billing and payment under Minnesota Statutes, chapter 62J; billing and payment of workers' compensation hospital bills; and formatting and renumbering changes recommended by the Revisor of Statutes.

1. Minnesota Statutes § 176.136, subd. 1a (d) (2) (2016).

2. The new RVU tables and conversion factors became effective October 1, 2016, and are available in the September 26, 2016 edition of the *State Register* at 41 SR 385.

http://www.comm.media.state.mn.us/bookstore/stateregister/41_13.pdf.

5. A "Statement of Support for Adoption of Exempt Permanent Rules Amending Minnesota Rules, parts 5219.0200 to 5219.0500 and 5221.0100 to 5221.4070" can be found below. This statement of support explains why the rule amendments shown in the Adopted Exempt Permanent Rules, Revisor's file #4448 dated 01/06/16, are necessary and why the amendments meet the standard for adopting rules under Minnesota Statutes, section 14.388.

Other statutory requirements:

6. Minnesota Statutes, section 14.127 (2016) requires an agency to determine if the cost of complying with a proposed rule in the first year after the rule takes affect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative. This rule does not apply because Minnesota Statutes, section 14.127, subd. 4 (c) provides an exception to this section for rules adopted under Minnesota Statutes, section 14.388. Moreover, small businesses and small cities are not direct payers of workers' compensation claims because they are insured for workers' compensation. Additionally, the fee schedules mandated by law merely limit a payer's liability for payment of treatment under the workers' compensation law, and therefore do not impose a cost of compliance.
7. Minnesota Statutes, section 14.128 (2016) requires an agency to determine if a town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. It is determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with these rules because local governments are already subject to the workers' compensation law under Minnesota Statutes, section 176.021, subds. 1 and 6 (2016), and Minnesota Statutes, section 176.011, subd. 10 (2016).
8. The amendments to Minnesota Rules, parts 5219.0200 to 5219.0300 and Minnesota Rules, parts 5221.0100 to 5221.4070, are needed and reasonable and are adopted in accordance with the requirements of Minnesota Statutes, sections 176.136, subd. 1a and 14.388, subdivision 1.

NOW, THEREFORE, IT IS ORDERED that the amendments shown in the Adopted Exempt Permanent Rules, Revisor's file #4448, dated, 2/15/17, are hereby adopted.

Dated: 2/16, 2017


Ken B. Peterson, Commissioner

Statement of Support for Amendment of Minnesota Rules Parts 5219.0200 to 5219.0500 and 5221.0100 to 5221.4070

Background

Rules covering three separate fee schedules are being amended: 1) the independent medical examination (IME) fee schedule in Minnesota Rules, chapter 5219; 2) the relative value fee schedule in Minnesota Rules, parts 5221.0100 to 5221.4061; and 3) the pharmacy fee schedule in Minnesota Rules, part 5221.4070.

Independent medical examinations

Chapter 5219 includes annual adjustments for independent medical examination fees. An adjustment is made on October 1 of each year by the percentage determined under Minnesota Statutes, section 176.645.³ The IME fees were most recently updated on October 1, 2016.⁴ Amendments are proposed to the rules in this chapter in order to incorporate specific changes set forth in applicable statutes that do not require an interpretation of law.

Relative Value

There are three components to the relative value fee schedule in Minnesota Rules, part 5221.0100 to 5221.4061: 1) the Medicare relative value and geographic practice cost index tables; 2) the dollar conversion factors; and 3) rules to implement the tables and conversion factors.

The RVU and GPCI tables: The first component of the fee schedule consists of two tables used to establish maximum fees for medical services under the Medicare program by the federal Centers for Medicare & Medicaid Services (“CMS”): relative value unit (RVU) tables and geographic practice cost indices (GPCI).⁵ New RVU tables were incorporated and became effective October 1, 2016.⁶

The Dollar Conversion Factors: The second component of both the workers’ compensation and the Medicare fee schedules, the “conversion factor,” assigns a dollar multiplier for the relative value units contained in the CMS RVU table. For the workers’ compensation fee schedule, there are four separate conversion factors: for medical/surgical services; pathology and laboratory services; physical medicine and rehabilitation services; and chiropractic services.⁷ The conversion factors were most recently adjusted on October 1, 2016.⁸

3. Minnesota Rules, part 5219.0500, subp. 4, provides that: “On October 1, 1994, and on October 1 of each succeeding year, the fees in this part must be adjusted by the percentage determined under Minnesota Statutes, section 176.645, in the same manner as the conversion factor of the relative value fee schedule is adjusted under Minnesota Statutes, section 176.136....”

4. No additional annual adjustment was made to the IME fees in 2016 because the percent change in the Producer Price Index for Offices of Physicians (PPI-P) for 2015 was a negative percentage. *See* http://www.comm.media.state.mn.us/bookstore/stateregister/41_13.pdf.

5. The tables are at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files-Items/RVU16B.html?DLPage=1&DLEntries=10&DLSort=0&DLSortDir=descending>

6. http://www.comm.media.state.mn.us/bookstore/stateregister/41_6.pdf.

7. *See*, Minnesota Statutes, section 176.136, subd. 1a (b), and Minnesota Rules, part 5221.4020, subpart 1b.

8. http://www.comm.media.state.mn.us/bookstore/stateregister/41_13.pdf.

Workers' compensation rules to implement the RVU tables and conversion factors: The third component of the fee schedule consists of the rules necessary to implement the Medicare relative value tables for purposes of workers' compensation. For example, some services that are not compensable under the Medicare program are compensable under the Minnesota workers' compensation law, and some of the columns, codes and indicators in the Medicare relative value tables are not used in workers' compensation. Additionally, because Medicare is the payer under that system, the Medicare instructions for implementing the relative value tables are written as policies contained in Medicare manuals, not as rules.⁹ Therefore, these policies must be rewritten and adopted as workers' compensation rules. Rules to implement the RVU tables and conversion factors were adopted effective October 1, 2016.¹⁰ These proposed rules make additional changes to chapter 5221 in order to reflect:

- statutes in Minnesota Statutes, sections 176.135 and 62J, requiring all Minnesota providers and payers to utilize electronic medical billing and payment;
- statutory changes related to billing and payment of workers' compensation medical and hospital bills; and
- wording, formatting and renumbering changes recommended by the Revisor.

Pharmacy

Rules for pharmacy services, articles, or supplies are also provided in the fees for medical services in chapter 5221 under Minnesota Rules, part 5221.4070, which is separate from the relative value fee schedule. The rule amendments to this part incorporate specific changes set forth in applicable statutes that do not require an interpretation of law.

All of these amendments are adopted under the good cause exemption in Minnesota Statutes, section 14.388, subd. 1, paragraphs (3) and (4).¹¹ The changes are described in the Rule by Rule Discussion section below.

Rule by Rule Discussion Minnesota Rules 5219.0200 to 5219.0500 Minnesota Rules 5221.0100 to 5221.4070

9. The Medicare Claims Processing Manual, which explains how CMS implements the RVU fee schedule, is available online at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>.

10. http://www.comm.media.state.mn.us/bookstore/stateregister/41_13.pdf.

11. Minnesota Statutes, section 14.388 provides: "If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to: (1) address a serious and immediate threat to the public health, safety, or welfare; (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with sections 14.14 to 14.28; (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or (4) make changes that do not alter the sense, meaning, or effect of a rule, the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4)."

Part 5219.0200; Scope;

Part 5219.0500; Independent Medical Examination Fees.

These two parts are amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate a specific change set forth in an applicable statute that does not require an interpretation of law.

Minnesota Statutes, section 176.011, subdivision 24, was renumbered to subdivision 12a in 2006. The amendments to these rules are shown on lines 1.15 and 1.20 of the proposed rules.

Part 5221.0100; Definitions.

Subpart 1b. Appropriate record;

Subpart 3. Charge.

Subparts 1b and 3 are both amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The Revisor of Statutes suggested changing the word “which” to “that” on lines 2.4 and 2.9 of the proposed rules.

Subpart 4. Code.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1, clauses (3) and (4) with changes that reflect a statutory change that does not require an interpretation of law, or changes that do not alter the sense, meaning, or effect of the rule.

“[As] follows:” on line 2.11 is replaced with the phrase “[as] described in items A to G” on line 2.12 at the suggestion of the Revisor.

- Items B and C contain re-lettering changes on lines 2.15, 2.16, 2.21, and 2.23 that reflect the re-lettering of the corresponding documents incorporated by reference in part 5221.0405.
- Item E is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate a specific change set forth in the applicable statute that does not require an interpretation of law.

Providers are required to bill for medical services electronically under Minnesota Statutes, section 176.135, subdivisions 7 and 7a. The changes in this item cross-reference applicable law governing electronic billing requirements in Minn. Stat. chapter 62J.

- Item F is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The reference to the Codes on Dental Procedures and Nomenclature (CDT Codes) reflects the dental codes established by the U.S. Department of Health and Human

Services as a standard code set, which is also incorporated into the electronic billing companion guide adopted by the Minnesota Department of Health under Minn. Stat. chapter 62J.¹²

- Item G is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule. Revenue codes are now in the UB-04 Data Specifications manual incorporated by reference in part 5221.0405, item E, not the UB-92 manual. There is also a change because item G has been re-lettered to item E in part 5221.0405.

Subpart 6a. Conversion Factor.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate a specific change set forth in the applicable statute that does not require an interpretation of law.

The reference to Minnesota Rules, part 5221.4020, subpart 2a is changed to 5221.4020, subpart 1b on line 3.19 because subpart 1b is the correct reference for where the conversion factors are specified.

Subpart 10. Medical Fee Schedule.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate a specific change set forth in the applicable statute that does not require an interpretation of law.

Minnesota Statutes, section 176.136 has been amended several times, and subdivision 5 has been repealed. References to the fee schedules are included in subdivisions 1a, 1b, and 1c, so a generic reference to section 176.136 includes all of these subdivisions.

Subpart 12. Provider

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The change refers to a “health care provider” instead of just a “provider” to reflect the terminology defined in Minnesota Statutes, section 176.011. Additionally, Minnesota Statutes, section 176.011, subdivision 12a, replaces the previously referenced subdivision 24 because of the renumbering of that statute.

Part 5221.0200; Authority.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

Minnesota Statutes, section 176.101, subdivision 3e, is deleted because that subdivision has been

12. See [45 C.F.R. 162.1002 \(a\) \(4\) and \(c\) \(1\)](#). See also <http://www.health.state.mn.us/auc/guides/cg837d.pdf>, page 17.

repealed.

Part 5221.0405; Incorporations by reference.

The amendments made to this part under Minnesota Statutes, section 14.388, subd. 1(3) and (4) incorporate specific changes set forth in applicable statutes where no interpretation of law is required and changes that do not alter the sense, meaning, or effect of the rule.

Minnesota Statutes, section 176.135, subds. 7 and 7a requires health care providers to submit bills in a standard electronic format as provided by Minnesota Statutes, chapter 62J. These amendments are necessary to reflect the statutory standards in Minnesota requiring electronic transactions for health care claims and electronic billing under Minnesota Statutes, sections 62J.50 to 62J.61.

- Items B and C are deleted under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

Both items are deleted because they no longer need to be incorporated by reference; they are now referenced in Minnesota Statutes, section 62J.51, subd. 18. Minnesota Statutes, section 62J.52, subds. 1 and 2 describes when and how these forms should be used if a provider cannot comply with electronic billing standards.

- Items D and E are re-lettered as items B and C under Minnesota Statutes, section 14.388, subd. 1(4) with changes that do not alter the sense, meaning or effect of the rule. The items are re-lettered because previous items B and C are deleted.

The amendments to these items include new addresses for purchasing the CPT and HCPCS manuals, and updated references to the latest edition of each manual. These changes help clarify current coding and billing standards for the fee schedules.

- Item F is re-lettered as item D under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required. It is re-lettered as D because of the deletion of previous items B and C.

Additionally, the previous language in this item is deleted because the standards for use of the CMS-1500 form are now included in Minnesota Statutes, section 62J.52 and the corresponding companion guides for Minnesota Statutes, sections 62J.50 to 62J.61. Instead, language is added to incorporate by reference the Code of Dental Procedures and Nomenclature (CDT Code) to be used for dental services. Dental codes are a separate category of national codes, and the U.S. Department of Health and Human Services has established the CDT codes as the standard code set for dental services, and CDT is also referenced in the Minnesota Department of Health

companion guides adopted under Minn. Stat. chapter 62J.¹³ The CDT code manual is incorporated here so that it is in the same area as the other codes.

- Item G is re-lettered as item E under Minnesota Statutes, section 14.388, subd. 1(4) because previous items B and C are deleted.

The UB-04 Data Specifications Manual now includes the revenue codes, as defined in Minnesota Rules, part 5221.0100, subp. 4, item G, which are necessary when billing for medical services for workers' compensation claims. The amendments provide an internet address for purchasing the manual and reference the latest edition of the manual. These changes help clarify current coding and billing standards for the fee schedules.

- Item H is re-lettered as item F under Minnesota Statutes, section 14.388, subd. 1(4) to correspond to the previous re-lettering.

Part 5221.0410; Required reporting and filing of medical information.

Subpart 3. Maximum medical improvement.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes without requiring an interpretation of law.

The two references to Minnesota Statutes, section 176.011, subdivision 25 on lines 7.3 and 7.17, are changed to subdivision 13a. Section 176.011 has been renumbered, and subdivision 13a is the current subdivision that defines "Maximum medical improvement."

An additional amendment in item C, subitem (1) (lines 7.12-7.13) reflects that Minnesota Statutes, section 176.275, subd. 1 allows employers and insurers to substitute the workers' compensation identification number (WID) for a Social Security number on cover letters for maximum medical improvement reports. The rule contained the requirement to include a Social Security number on such letters, and this gives parties the option to substitute the WID as described in the statute. The amendment does not alter the sense, meaning or effect of the rule or require additional interpretation of law.

Part 5221.0500; Excessive charges; Limitation of payer liability.

Subpart 2. Limitation of payer liability.

- Item B is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The reference to part 5221.4000 is changed to 5221.4005 because part 5221.4000 has

13. See [45 C.F.R. 162.1002 \(a\) \(4\) and \(c\) \(1\)](#). See also <http://www.health.state.mn.us/auc/guides/cg837d.pdf>, page 17.

been repealed, and the instructions for applying the relative value fee schedule are now in part Minnesota Rules, part 5221.4005.

Item B, subitem (2) is also amended (on lines 8.10-8.11) because of changes to the applicable statute referenced, Minnesota Statutes, section 176.136, subdivision 1b (b). The new wording incorporates the statutory language that was amended in 2013.¹⁴

- Items C and D are amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The changes reflect the most recent statutory amendments to Minnesota Statutes, sections 176.136, subdivision 1b¹⁵ and 176.1362¹⁶, that apply to payment for outpatient (item C) and inpatient (item D) hospital care for a Minnesota workers' compensation claim. Outpatient fees are governed by the fee schedule rules in parts 5221.4005 to 5221.4070, unless Minn. Stat. § 176.136, subd. 1b provides otherwise (for hospitals with 100 or fewer licensed beds). Inpatient fees are governed by Minn. Stat. § 176.1362, except again for hospitals with 100 or fewer beds under Minn. Stat. § 176.136, subd. 1b.

Part 5221.0700; Provider responsibilities

Subpart 1. Usual charges.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The Revisor of Statutes suggested changing the word “which” to “that” on lines 9.12 and 9.13 of the proposed rule.

Subp. 2. Submission of information.

This subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

Minnesota Statutes, section 176.135, subs. 7 and 7a requires providers to submit electronic bills according to the electronic billing standards set forth in Minnesota Statutes, sections 62J.50 to 62J.61, and the corresponding companion guides implemented under these statutes. The electronic billing standards utilize what is better described as a “format” rather than a billing “form” as previously used. The amendments to this subpart help avoid possible confusion about the electronic billing requirements in Minn. Stat. ch. 62J.

A reference to subpart 2d, which governs electronic billing for dental services, 2d, is also added

14. 2013 Minnesota Laws ch. 70, section 9. <https://www.revisor.mn.gov/laws/?id=70&year=2013&type=0>.

15. 2016 Minnesota Laws ch. 110, article 2, section 2.
<https://www.revisor.mn.gov/laws/?id=110&year=2016&type=0>.

16. 2015 Minnesota Laws ch. 43, section 3. <https://www.revisor.mn.gov/laws/?id=43&year=2015&type=0>.

on line 9.22.

- Item A is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

Specific references for large and small hospitals are removed from subitem 3 because changes in other parts of chapter 5221 and amendments to Minnesota Statutes, sections 176.136, subd. 1b and 176.1362, require the use of broader terminology. The meaning is not changed because the requirement in the rule applies whether the hospital is large or small.

- Item B is also amended to reference the newly added subpart 2d for dental services.

Subp. 2a. Centers for Medicare and Medicaid Services CMS 1500 Form ASC X12 Health Care Claim: Professional (837) format.

The heading and corresponding subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The subpart is now titled “ASC X12 Health Care Claim: Professional (837) format.” The amendments in this subpart reflect the statutory shift from paper billing to electronic billing for workers’ compensation under Minnesota Statutes, section 176.135, subds. 7 and 7a that require health care providers to make electronic submissions “according to the corresponding implementation guide.” The Minnesota Department of Health issues uniform companion guides under Minnesota Statutes, sections 62J.536 and 62J.61¹⁷ to help explain the correct use of electronic transaction formats. The listed electronic format is the one adopted by the Minnesota Department of Health under Minn. Stat. chapter 62J and the corresponding companion guide for billing professional services by practitioners such as physicians.

Subp. 2b. Uniform billing claim form UB-92 (CMS 1450) ASC X12 Health Care Claim: Institutional (837) format.

The heading and corresponding subpart is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

This subpart is now titled “ASC X12 Health Care Claim: Institutional (837) format.” This is the electronic billing format to be used by hospitals. The language in this section is separated into two items to help make the rules easier to follow.

- Item A reflects the electronic transaction format billing and companion guides for hospitals required by Minnesota Statutes, sections 62J.536 and 62J.61 and the

17. The most recent Minnesota Uniform Companion Guide (Uniform Companion Guide) for implementing the X12 professional format is available at <http://www.health.state.mn.us/auc/guides/cg837p.pdf>.

corresponding companion guide adopted by the Minnesota Department of Health.¹⁸

- Item B reflects that Minnesota Statutes, section 176.1362, subdivision 4, does not allow for itemization of charges if certain requirements are met.¹⁹

Because this subpart has added items A and B, the subitems under item B are changed to numbers to avoid confusion.

Subp. 2c. Submission of drug charges.

Item A is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The amendments in item A reflect the statutory shift from paper billing to electronic billing for workers' compensation under Minnesota Statutes, section 176.135, subsd. 7 and 7a, which requires health care providers to bill electronically according to the corresponding implementation guide. The Minnesota Department of Health adopts the uniform companion guides under Minnesota Statutes, sections 62J.536 and 62J.61.²⁰ The pharmacy billing format required by the applicable companion guide is as listed on line 12.4.

There is also a change to the definition of community/retail pharmacy under Minnesota Statutes, section 14.388, subd. 1(4) that does not alter the sense, meaning, or effect of the rule. The cross-referenced Minnesota Rules, part 6800.0100, subpart 2, now uses the phrase "community/outpatient pharmacy," as opposed to the previous "community/retail."

- Items B and C are amended under Minnesota Statutes, section 14.388 subd. 1(4) with changes that do not alter the sense, meaning, or effect of the rule.

Neither item needs to include the cross reference to Minnesota Statutes, section 62J.535 because the amendments to this subpart now contain the required electronic format from that section. The references to item A are also deleted, since the item is included by use of the phrase "this subpart."

18. The most recent Uniform Companion Guide for implementing the X12 institutional format is available at <http://www.health.state.mn.us/auc/guides/cg837i.pdf>.

19. Minn. Stat., § 176.1362, subd. 4 states: except when a post-payment audit is allowed under subdivision 6, an insurer must not require an itemization of charges or additional documentation to support a bill from a non-Critical Access Hospital when all of the following requirements are met:

- (1) the hospital must submit its charges to the insurer on the 837 institutional standard electronic transaction required by section [62J.536](#);
- (2) an MS-DRG must apply to the hospitalization; and
- (3) the hospital's total charges must be less than the threshold amount in subdivision 2, as annually adjusted.

20. The most recent Uniform Companion Guide for submission of drug charges using the NCPDP format is available at <http://www.health.state.mn.us/auc/guides/cgclaimncpdp.pdf>.

- Item D is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The item is deleted because the requirements previously listed in item D are now included in the NCPDP electronic format described in item A, and the corresponding uniform companion guide from the Minnesota Department of Health. Deleting this item helps avoid confusion that could be caused by repeating the requirements or using slightly different wording.

- Item E is amended under Minnesota Statutes, section 14.388, subd. 1(4) and re-lettered as Item D because of the deletion of item D. Additionally, the term “community/retail” is changed because Minnesota Rules, part 6800.0100, subpart 2, now uses the phrase “community/outpatient pharmacy.” These changes do not alter the sense, meaning, or effect of the rule.

Subpart 2d. X12 837 Health Care Claim: Dental Format

This subpart is added under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The amendments reflects the electronic format required for billing for dental services under Minnesota Statutes, sections 62J.50 to 62J.61, and the applicable uniform companion guide.²¹

Subpart 3. Billing Code.

- Item A is amended under Minnesota Statutes, section 14.388, subds. 1(3) and 1(4) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required and for changes that do not alter the sense, meaning, or effect of the rule.

The amendment on line 13.24 under subdivision 1(4) change the reference from the UB-92 manual to the UB-04 Data Specifications manual because the UB-04 Data Specifications manual currently contains revenue codes. This change also corresponds to the proposed amendment to Minnesota Rules, part 5221.0100, subpart 4, item E on line 6.5 of the proposed rule.

Clarification of the code to be used for dental procedures is added to correspond to the proposed amendment to Minnesota Rules, part 5221.0100, subpart 4, item D on line 6.1 of the proposed rule. There is also a grammatical change suggested by the Revisor to replace the word “which” with “that” on line 14.3 of the proposed rule.

21. The most recent Uniform Companion Guide for dental claims is available at <http://www.health.state.mn.us/auc/guides/cg837d.pdf>.

Finally, a cross-reference in lines 14.10-14.12 is added under Minnesota Statutes, section 14.388, subd. 1(3) to reflect amendments to Minnesota Statutes, section 176.1362.²²

- Item B is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate a specific change set forth in the applicable statute that does not require an interpretation of law.

The reference to Minnesota Rules, part 5221.4000 is changed to part 5221.4005 because part 5221.4000 has been repealed and instructions for applying the fee schedule are now in Minnesota Rules, part 5221.4005.

- Item C is amended under Minnesota Statutes, section 14.388, subs. 1(3) and 1(4) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required and for changes that do not alter the sense, meaning, or effect of the rule.

The Revisor suggested grammatical changes here under Minnesota Statutes, section 14.388, subd. 1(4) to change the word “which” to “that” on lines 14.21 and 14.22, as well as the word “that” to “the” on lines 14.21 and 14.23.

The reference to outpatient charges for hospitals with more than 100 licensed beds is deleted on lines 15.4 and 15.5. This language is deleted because it is unnecessary. Line 15.3 already cross-references part 5221.0500, subpart 2, items C, which governs outpatient hospital charges according to the most recent amendments to Minn. Stat. §§ 176.136, subd. 1b²³, so it is duplicative and possibly confusing to restate what is already in the referenced rule.

Part 5221.4005; Instructions for application of fee schedule

Subpart 1. Workers' compensation medical fee schedule; incorporation of Medicare National Physician Relative Value Files.

Subpart 2. Effective date.

Subparts 1 and 2 are amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The reference to Minn. Stat. § 176.136, subdivision 1a, paragraph (h), is removed from item A in both subparts, on lines 15.15 and 15.20 of the proposed rule, because the paragraphs were renumbered in 2014, and there is no longer a paragraph (h).²⁴ Paragraph (h) is now paragraph (d), but because there may be other changes to the statute in the future, a general reference to Minn. Stat. § 176.136, subd. 1a is enough.

22. See 2016 Minnesota Laws ch. 110, article 2, section 2.

<https://www.revisor.mn.gov/laws/?id=110&year=2016&type=0>.

23. 2016 Minnesota Laws ch. 110, article 2, section 2.

<https://www.revisor.mn.gov/laws/?id=110&year=2016&type=0>.

24. 2014 Minnesota Laws ch. 182, section 5. <https://www.revisor.mn.gov/laws/?id=182&year=2014&type=0>.

Part 5221.4035; Fee Adjustments for Medical/Surgical Services.

Subpart 3. Services not included in global surgical package.

This subpart is amended under Minnesota Statutes, section 14.388, subds. 1(3) and 1(4) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required and for changes that do not alter the sense, meaning, or effect of the rule.

Item O is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a grammatical suggestion from the Revisor to substitute the colon on line 16.10 of the proposed rule with a reference to the subitems.

Subitem (4) is amended under Minnesota Statutes, section 14.388, subd. 1(3) to delete the reference to subpart 2b since there never was a part 5221.4035, subpart 2b.²⁵

Part 5221.4050; Fees for medical services; (Subp. 3); and Part 5221.4060; Chiropractic procedure codes (Subp. 3)

Both parts 5221.4050 and 5221.4060 are amended under Minnesota Statutes, section 14.388, subd. 1(4) with changes that do not alter the sense, meaning, or effect of the rule.

The amendments on lines 18.25 and 20.39 correct the reference to the rule in the description of work hardening/conditioning because work conditioning and hardening is actually described in Minnesota Rules, part 5221.6600, not 5221.6500.

5221.4070; Pharmacy.

Subpart 1a. Definitions.

- Item A is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The amendment reflects the change in the terminology in Minnesota Rules, part 6800.0100, subpart 2. “Community/retail pharmacy” is now referred to as a “community/outpatient” pharmacy.

- Item E is deleted under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

The deletion reflects the most recent changes to Minnesota Statutes, section 176.136, subd. 1b, paragraph (a). A definition is no longer needed for “large hospital.” Minnesota Statutes, sections 176.136, subd. 1b no longer distinguishes

25. The referenced subpart deleted in this amendment may have been referring to a list of medical/surgical procedure codes in Minn. R. part 5221.4030, subp. 2b that was repealed in 2010. [35 SR 246](#).

between large and small hospitals.²⁶

- Item F is amended, and re-lettered as item E, under Minnesota Statutes, section 14.388, subd. 1(4). This change does not alter the sense, meaning, or effect of the rule.

Additionally, subitem (1) is amended to include the new term community/outpatient pharmacy to reflect the change in the terminology in Minnesota Rules, part 6800.0100, subpart 2.

- Items G, H, and I are amended, and re-lettered as items F, G, and H, respectively, under Minnesota Statutes, section 14.388, subd. 1(4). These changes do not alter the sense, meaning, or effect of the rule.

Subpart 2. Procedure code; usual and customary charge.

- Item A is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The reference to the United States Code provision is removed because the National Drug Code Directory is already incorporated by reference in part 5221.0405 of this rule.²⁷ Language is added to clarify that the U.S. Food and Drug Administration is the specific part of the federal department of Health and Human Services that distributes the directory.

Subpart 3. Maximum fee.

- Items A and B are amended under Minnesota Statutes, section 14.388, subs. 1(3) and 1(4) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required and for changes that do not alter the sense, meaning, or effect of the rule.

The amendments on lines 22.19 and 22.24 of the proposed rule are under subdivision 1(4) and reflect the change in the terminology in Minnesota Rules, part 6800.0100, subpart 2.

The word “large” is deleted under subdivision 1(3) before the description of hospital on both line 22.18 and 22.23 of the proposed rule, and a reference to Minnesota Statutes, section 176.136, subd. 1b is added. The amendments reflect the most recent changes to Minnesota Statutes, section 176.136, subd. 1b, paragraph (a), which no longer refers to “large” and “small” hospitals.

- Item C is amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no

26. See also proposed amendments to 5221.4070, subpart 3, items A and B on lines 22.16—23.9.

27. The reference to the National Drug Code Directory is on lines 6.15 to 6.20 of the proposed rule.

interpretation of law is required.

The amendments reflect the most recent statutory changes to Minnesota Statutes, sections 176.136, subd. 1b and 176.1362, for inpatient treatment under Minnesota's workers' compensation statutes.

- Item D is deleted under Minnesota Statutes, section 14.388, subd. 1 (4) with a change that does not alter the sense, meaning, or effect of the rule.

The amendments to items A, B, and C include a reference to Minnesota Statutes, section 176.136, subdivision 1b, which describes the liability for workers' compensation treatment at different types of hospitals. That section no longer refers to "a "small" hospital.

Subpart 4. Maximum fee for electronic transactions.

- Item A is amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The amendment on lines 23.14 of the proposed rule reflects the change in the terminology in Minnesota Rules, part 6800.0100, subpart 2. Additionally, subitem (1) is amended to add the abbreviation "AWP" for average wholesale price so that the term mirrors the way it is used in Minnesota Rules, part 5221.4070, subpart 3.

- Items B and D are amended under Minnesota Statutes, section 14.388, subd. 1(3) to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.

Subitem (1) and subitem (2) of item B, and subitem (1) of item D, are amended to reflect the electronic format required for billing for dental services under Minnesota Statutes, sections 62J.50 to 62J.61, and the applicable uniform companion guide.²⁸

Item B is also amended under Minnesota Statutes, section 14.388, subd. 1(4) with a change that does not alter the sense, meaning, or effect of the rule.

The description of the pharmacies on line 23.22 of the proposed rule is changed from retail to outpatient to reflect the new terminology in Minnesota Rules, part 6800.0100, subp. 2.

Effective Date. The rule amendments in chapters 5219 and 5221 are effective upon publication in the *State Register*, as provided under section 14.388.

28. The most recent Uniform Companion Guide for pharmacy is available at <http://www.health.state.mn.us/auc/guides/cgclaimncpdp.pdf>.