

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Relating to Health Maintenance
Organizations

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes § 62D.19, provides that the commissioner of commerce shall promulgate rules to assure that no health maintenance organization shall incur or pay for any expense of any nature which is unreasonably high in relation to the value of the service that is provided. Rules have previously been adopted in regard to this section. The 1984 session of the Minnesota Legislature amended Minnesota Statutes § 62D.19 (Chapter 464, Section 41, Laws of Minnesota 1984), by adding the following language:

In an effort to achieve the stated purposes of 62D.01 to 62D.29; in order to safeguard the underlying nonprofit status of health maintenance organizations; and to ensure that the payment of health maintenance organization moneys to major participating entities results in a corresponding benefit to the health maintenance organization and its enrollees, when determining whether an organization has incurred an unreasonable expense in relation to a major participating entity, due consideration shall be given to, in addition to any other appropriate factors, whether the officers and trustees of the health maintenance organization have acted with good

faith and in the best interests of the health maintenance organization in entering into, and performing under, a contract under which the health maintenance organization has incurred an expense.

In addition, Section 44 of the aforementioned Chapter 464 also provided for an interagency agreement between the commissioners of health and commerce to carry out coordination of the laws pertaining to health maintenance organizations.

FACTS ESTABLISHING NEED AND REASONABLENESS

As a result of the statutory changes cited in the Statement of Authority, amendments to the existing rules were necessary to bring the rules into compliance with the statutory changes. Without the changes the coordination of activity between the department of health and department of commerce are not provided for nor are the additional criteria which the Legislature indicated needed to be considered under Minnesota Statutes § 62D.19.

Part 2730.0200 Authority and Purpose.

This section is amended to reflect the addition of a new rule allowing for the interagency agreement called for in Section 44 of Chapter 464, Laws of Minnesota 1984 and also reflected the reorganization of the department of commerce which created a single commissioner of commerce instead of the previous commissioners of

commerce, banking, and securities and real estate. Commissioner of commerce is substituted for commissioner of insurance as it existed in the prior rule.

Part 2730.0300 Examination of Agents, Solicitors, and Brokers.

As a result of the reorganization of the department of commerce, the former insurance division no longer exists. Accordingly, the rule was changed to reflect that the department of commerce is its successor.

Part 2730.0400 Special Examinations.

As stated in regard to the foregoing two parts, the commissioner of insurance has been replaced by a commissioner of commerce and this part was amended to reflect that change.

Part 2730.0500 Determination of Unreasonable Expenses.

Section 44 of Chapter 464, Laws of Minnesota 1984, provided for the coordination of enforcement in regard to health maintenance organization between the commissioners of health and commerce. The rules which previously existed provided that the commissioner of insurance (now the commissioner of commerce) was to make a determination as to reasonableness of a health maintenance organization's expenses. The rule has been changed to provide that this may be accomplished by either the commissioner of commerce or the commis-

sioner of health. Grammatical changes also were necessary in the first paragraph to reflect that either of the commissioners may so act.

Subpart D of Part 2730.0500, recognizes that the commissioner of health has replaced the board in regard to the cited statutory sections.

Subparts F and G of Part 2730.0500, specify which of the two commissioners are charged with obtaining the information and data specified. The words "of commerce," were added to part F to clarify which commissioner was referred to. It does not constitute a change from the present rule which charged the commissioner of commerce with that responsibility.

Subpart G recognizes that the commissioner of health as part of his ongoing authority maintains the information in regard to the costs of services and goods in the health care field not the commissioner of commerce.

Subpart H was added to reflect the statutory change of Minnesota Statutes § 62D.19 (Section 41, Chapter 464, Laws of Minnesota 1984) which required that consideration be given to whether or not the officers and trustees of the health maintenance organization are properly carrying out their duties and acting in the best interest of the organizations when incurring expenses.

This was amended to recognize that both the commissioner of health or the commissioner of commerce may make a finding that an expense has been incurred or paid which is unreasonably high. The rule has also been changed to reflect the fact that the commissioner of health has by statute the authority to take enforcement action for such violations, not the commissioner of commerce. The previous rule had assumed that right for the commissioner of commerce whose authority to act in that manner was not clearly statutorily mandated. The change reflects the statutory scheme for enforcement set forth in Chapter 62D. As a result of those changes, Section A of the previous rule was deleted as it described powers of the commissioner of commerce not the commissioner of health. Reference to Minnesota Statutes § 62D.18 was changed to Minnesota Statutes § 62D.17 to reference the authority of the commissioner of health to take enforcement action. The previous reference to Minnesota Statute § 62D.18 pertained to the commissioner of commerce's authority in regard to rehabilitation, liquidation or conservation of a health maintenance organization.

Section C was deleted because the board referred to in that section no longer carries out the functions indicated. The commissioner of health has taken over that authority.

A new Section D was added acknowledging the criteria presently available to the commissioner of health to act in regard to other payments and activities of the health maintenance organization which give rights to the authority of the commissioner of commerce to take action against the health maintenance organization.

Previous D was renumbered to Section C to reflect the foregoing changes.

Part 2730.0700

This was added to carry out the legislative intent as previously cited for the departments of commerce and health to act in concert in regard to the regulation of health maintenance organizations.

SMALL BUSINESS CONSIDERATIONS

While it was determined that it was highly unlikely that any health maintenance organization that would be subject to these rules would be a small business, the possibility of modifying the rules for any health maintenance organization that would be determined to be a small business organization was considered. However, no valid criteria in regard to the scope and effect of these rules could be determined which would allow for their enforcement in a manner different for a small business than from other health maintenance organizations.

The purpose of the rules is to protect the financial integrity of the health maintenance organization and to protect the members of the health maintenance organization by prohibiting the payment of unreasonable expenses. Due to the nature of the intent of the statute and the parties whom it was intended to protect all health maintenance organizations would have to be treated equally so as not to defeat the purpose of the statute and the rules.