STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

OFFICE OF THE COMMISSIONER

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

March 30, 19990

Michele Swanson
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Re: Proposed Rules - Appeal of Denial of Health Claims

Dear Ms. Swanson:

Enclosed is a copy of the Statement of Need and Reasonableness for the above referenced rule, as you requested.

Very truly yours,

THOMAS H. BORMAN
Commissioner of Commerce

By: Donna M. Watz 19.T.

Donna M. Watz
Staff Attorney

DMW:jmt

Encl.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

IN THE MATTER OF THE)
PROPOSED RULES RELATING)
TO APPEAL OF DENIAL)
OF HEALTH CLAIMS)

STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes Section 72A.327, enacted in 1989, gives an insured the right to make an appeal to the Commissioner of Commerce (hereinafter the Commissioner) when his or her claim for medical benefits under Minnesota Statutes Chapter 65B is denied. To make an appeal under Minnesota Statutes §72A.327, the claim must be denied because the treatment is deemed to be experimental, investigative, not medically necessary, or otherwise not generally accepted by licensed health care providers.

Subdivision (f) of Minnesota Statutes §72A.327 gives the Commissioner the authority to adopt procedural rules for conducting appeals. Additional rulemaking authority provided in Minnesota Statutes §45.023 authorizes the Commissioner to "adopt, amend, suspend or repeal rules...whenever necessary or proper in discharging the Commissioner's official responsibilities".

The Commissioner finds the proposed rules to be necessary and appropriate in the public interest and consistent with the purposes fairly intended by the policies and provisions of Minnesota Statutes chapters 45, 65B and 72A.

FACTS ESTABLISHING NEED AND REASONABLENESS

By enacting Minnesota Statutes §72A.327, the Minnesota legislature mandated the right of an insured to appeal a denial of certain health claims made pursuant to Minnesota Statutes Chapter 65B. The claim must be denied because the insurer deems the treatment to be "experimental, investigative, not medically necessary, or otherwise not generally accepted by licensed health care providers". The statute also requires that the insured have

some financial responsibility for the claim denied in excess of applicable co-payments and deductibles before the right to appeal applies.

Prior to the enactment of Minnesota Statutes §72A.327, an insured could agree to submit a claim dispute to arbitration pursuant to Minnesota Statutes §65B.525 if the dispute involved no-fault benefits or comprehensive or collision damage coverage. However, unless the amount of the claim was $5,000 or less, an insurer was not required to participate in the arbitration process. Civil suit was the only alternative if the insurer refused arbitration. With the enactment of Minnesota Statutes §72A.327, an insured who wishes to appeal a claim that was denied because it was experimental, not medically necessary or otherwise not generally accepted by licensed health care providers may do so without regard to the amount of the claim involved.

Under Minnesota Statutes §65B.525, the legislature required the Minnesota Supreme Court to promulgate rules to govern the conduct of mandatory and permissive arbitration of claim disputes involving no-fault benefits or comprehensive or collision damage coverage. Extensive public participation and effort went into these rules which became effective April 1, 1988, and are referred to as the Minnesota No Fault Comprehensive or Collision Damage Automobile Arbitration Rules (hereinafter referred to as the "Supreme Court No-Fault Rules").

The Supreme Court No-Fault Rules have been used extensively by the American Arbitration Association to administer the arbitration of disputes under Minnesota Statutes §65B.525. The system established by the Supreme Court appears to work well to carry out the intent of Minnesota Statutes §65B.525.

The purpose of Minnesota Statutes §72A.327 is very similar to that of Minnesota Statutes §65B.525. In fact, Minnesota Statutes §72A.327 refers to and coordinates with Minnesota Statutes §65B.525 by indicating that the right to appeal is not available for claims which have been arbitrated under §65B.525. Since Minnesota Statutes §65B.525 has already established an arbitration process to resolve no-fault claim disputes, it is reasonable to conclude that the legislature did not intend to preclude the use of the same arbitration procedures under Minnesota Statutes §72A.327.

Accordingly, the Department determined that it would be reasonable and more efficient to use, to the greatest extent possible, an existing arbitration

structure for appeals under Minnesota Statutes §72A.327. The alternative would be to create two different structures and procedural requirements for disputes that could arise out of the very same accident or involve similar issues or fact situations.

Except where Minnesota Statutes §72A.327 requires otherwise, the proposed rules follow the Supreme Court No-Fault Rules. Any variations from the Supreme Court rules are described in the following paragraphs.

The language under Subdivision (c) of Minnesota Statutes §72A.327 is similar to the language of Rule 4 of the Supreme Court No-Fault Rules. The only significant difference is that the arbitration of disputes under Minnesota Statutes 72A.327 will involve a three-member panel of arbitrators, as opposed to one arbitrator as required under Minnesota Statutes §65B.525. The language of proposed Rule 2770.9020, Subpart 1 follows the requirements set forth in Subdivision (c) of Minnesota Statutes §72A.327. Two of the §72A.327 panel members are required to have the medical expertise necessary to make a determination on the reasonableness of denying a claim on the basis that the treatment is experimental, not medically necessary, investigative or otherwise not generally accepted by licensed health care providers. The third panel member will be chosen from a list of public members, whose names have been solicited by publication in the State Register. The proposed rule 2770.9020, subp. 1 thus differs from Rule 4 of the Supreme Court No-Fault Rules due to this statutory mandate.

Since the statute does not make participation in the arbitration of the appeal voluntary, regardless of the amount of the claim at issue, the proposed rules do not distinguish between mandatory and permissive arbitration as does Rule 6 of the Supreme Court No-Fault Rules. The proposed rule 2770 thus differs from the supreme court No-Fault Rules due to statutory mandate.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes Section §14.115 requires that the impact on small businesses be considered in the development of proposed rules. Specifically, the statute, at subdivision 2, requires the agency to consider less stringent compliance standards and reporting requirements for small businesses. The

statute also requires that the rule incorporate methods designed to reduce the impact on small businesses if those methods are feasible and consistent with the statutory objectives associated with the rules.

As is the case with most rules governing the conduct of insurance companies, the intent of proposed rule 2770 is to benefit the policyholder. Every insurer, no matter if it qualifies as a small business or not, must be subject to the same standards of review. If this were not the case, policyholders would find that they have fewer rights if they deal with an insurer that qualifies as a small business than if they deal with a larger company. Procedures that would lessen the burden on insurers that qualify as small businesses would defeat the purpose of the statute -- that is, to protect policyholders. It might also have a negative effect upon insurance companies that qualify as small businesses in that their policyholders would perceive that they have less protection than if they purchase their insurance from a non-small business insurance company. The result of reducing the regulatory requirements for small business insurers could be loss of business.

In promulgating proposed rule 2770, all of the considerations required by Minnesota Statute section 14.115 were addressed.

In regard to the considerations required by subpart 2, item A, the establishment of less stringent compliance on reporting requirements for small businesses would not be appropriate for the reasons cited above, since it would reduce the protection afforded a policyholder to have claim denials reviewed promptly and fairly.

As to item B of subpart 2, since there are no schedules or deadlines for compliance or reporting, this particular provision would not be applicable to this set of rules.

As to item C, consolidation or simplification of compliance requirements would not be feasible given the nature of the particular rule and the change in statutory requirements. As there are no reporting requirements that provisions would not be applicable.

Item D would not be applicable given the nature of this particular rule.

Item E would not be appropriate for the reasons cited above in that it would take away the protection to policyholders that the statute intended to give them. In addition the department does not believe it has the authority to make such an exemption. The small businesses that are probably most affect-

ed by these rules are not insurers but rather the small businesses that will gain some protection and rights that they did not have before. To give any insurance company an exemption from the rules would be to reduce the rights of the small businesses that are policyholders. The department concluded that the intent of the statute was the protection of policyholders and therefore, all insurers, be they small or large must meet the same standards to insure equal protection to all of their policyholders.

Comments regarding the proposed rules were solicited from small businesses. After due review, the Commissioner concludes that compliance would not unduly burden small business.