

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE

In the Matter of Proposed Adoption  
of Amendments to Rules Relating to                   STATEMENT OF NEED AND  
the Minnesota Comprehensive Health                   REASONABLENESS  
Insurance Act of 1976, as Amended.

NEED AND AUTHORITY

The Minnesota Comprehensive Health Insurance Act of 1976 (hereinafter "Act") was originally enacted in 1976 (1976 Minnesota Laws, chapter 296, article 1) and subsequently amended by 1977 Minnesota Laws, chapter 409, sections 7 through 20; 1978 Minnesota Laws, chapter 793, section 15, subdivision 2; 1979 Minnesota Laws, chapter 174, section 3, and chapter 272; 1980 Minnesota Laws, chapter 496, section 3; 1981 Minnesota Laws, chapter 265, section 2; 1982 Minnesota Laws, chapter 424, section 130, and chapter 426; 1983 Minnesota Laws, chapter 123, section 1; and 1984 Minnesota Laws, chapter 592, sections 48 and 49.

The above-captioned proposed amendments to Rules are proposed by the Commissioner of Commerce (hereinafter "Commissioner") for adoption as permanent Rules. The authority of the Commissioner for promulgation of these Rules is set forth in Minnesota Statutes, section 62E.09(a) and (i). Pursuant to this authority, permanent Rules were promulgated by the Commissioner, were published at 3 State Register 1961 and were effective on May 7, 1979.

These proposed amendments to the Rules relate generally to one of the two primary purposes of the Act--the provision of health coverage through the Minnesota Comprehensive Health Association (hereinafter "Association") for persons otherwise unable to purchase adequate coverage through the existing voluntary health coverage market. The proposed amendments relate primarily to the definitional sections and to the portion of the Rules relating to the Association, Minnesota Rules, parts 2740.2100 through 2740.5500.

As will be more fully shown herein, these proposed amendments to the Rules are intended to more precisely delineate the duties, privileges and relationships created by the Act and, in particular, changes which are required by the above-referenced amendments to the Act as well as certain litigation relating to the Act. (St. Paul Electrical Workers Welfare Fund, et al. v. Markman, et al., 490 F. Supp. 93 (D. Minn. 1980); and Minnesota Mining and Manufacturing Company, et al. v. State of Minnesota, et al., No. 3-78-479 (D. Minn., filed December, 1978). As a result of the resolution of these lawsuits, the provisions of the Act which are preempted by the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") are no longer enforced against self-insurers.

As more fully indicated below, the proposed amendments to the Rules reasonably address the above-stated changes.

#### FACTS ESTABLISHING REASONABLENESS

The Rules, as originally promulgated in 1979, were based on the Act as originally enacted in 1976 and as amended in 1977 and 1978. The proposed amendments to the Rules reasonably address the requirements of the subsequent amendments to the Act and other changes, and are a rea-

sonable attempt to further delineate and give effect to the duties, responsibilities and rights set forth in the Act, as amended and as judicially interpreted.

Minnesota Rules, part 27400.0100, subpart 13, is proposed to be amended to make it consistent with the 1981 amendment to Minnesota Statutes, section 62E.02, subdivision 5, which deleted the phrase "or the actuarial equivalent of those benefits" from the end of the definition of "qualified medicare supplement plan," thereby limiting the use of actuarial equivalence to qualified plans. The term "state plan" is also deleted from this definition since the definition is not and never was limited to state plan policies or contracts.

Minnesota Rules, part 2740.0100, subpart 29, is proposed to be amended to take into account the repeal of Minnesota Statutes, section 60A.02, subdivision 8 by 1981 Minnesota Laws, chapter 307, section 22, which had defined the term "solicitor." Since the term is no longer used in Minnesota Statutes, chapter 60A, it is reasonable to omit it from this definition of the phrase "licensed and tested insurance agent or solicitor" which still appears in Minnesota Statutes, section 62E.02, subdivision 11. The term "Insurance Agent" is added, and that term is used in the Rules instead of "Licensed and tested insurance agent or solicitor".

Minnesota Rules, part 2740.0100, subpart 32, is proposed to be amended to change the maximum expenses and agent referral fees of the writing carrier to 15% from 12½% of premiums to make it consistent with Minnesota Statutes, section 62E.11, subdivision 3, which was similarly changed by 1982 Minnesota Laws, chapter 426.

Minnesota Rules, part 2740.0100, subpart 44a, was added to the definitions to make clear that a qualified medicare supplement plan must not only meet the requirements of Minnesota Statutes, sections 62E.02, subdivision 5 and 62E.07, but also Minnesota Statutes, section 62A.32, which was added by 1981 Minnesota Laws, chapter 318, and which is applicable to qualified medicare supplement plans under Minnesota Statutes, section 62E.07.

Minnesota Rules, part 2740.0100, subpart 53, is proposed to be amended to insert the reference to a qualified medicare supplement plan in two places in order to make clear that the refusal by any Association member to issue a qualified medicare supplement plan is a "rejection" under the Rules on the same basis as the refusal to issue a qualified plan constitutes a rejection. This section is also revised to provide that a rejection may be issued by an authorized representative of the member, including an insurance agent, acting on behalf of the Association member. The intent of the change is to facilitate enrollment in the state plan. This change appears consistent with the intent of the Act and reasonable for the efficient administration of the state plan and the business of Association members.

Minnesota Rules, part 2740.0100, subpart 56a, is a new definition which is intended to clarify that the only self-insurers which remain within the scope of the Act after the decision by the Federal District Court in the St. Paul Electricial Workers Welfare Fund litigation are those plans which are exempt from or outside of the scope of the provisions of ERISA.

Minnesota Rules, part 2740.0100, subpart 58, is proposed to be amended to eliminate language which appears unnecessary in the defini-

tion of "total cost of self-insurance."

Minnesota Rules, part 2740.1100, subpart 1, is proposed to be amended to more precisely state the employer's duty to make available a qualified plan to its employees, making clear that coverage may be provided through self insurance.

Minnesota Rules, part 2740.1100, subpart 3, is proposed to be amended to substitute non-sexist references for masculine pronouns.

Minnesota Rules, part 2740.1200, subpart 2, is proposed to be amended to insert the word "and" which was inadvertently omitted from the previously promulgated Rules.

Minnesota Rules, part 2740.1200, subpart 4, is proposed to be amended to add a reference to a policy of accident and health insurance which is "renewed," and to refer to a rider on an unqualified policy, in order to make it consistent with Minnesota Statutes, section 62E.04, subdivision 4 as amended by 1979 Minnesota Laws, chapter 272.

Minnesota Rules, part 2740.1200, subpart 7, item B, is proposed to be amended to substitute the word "a" for the word "the" for clearer meaning.

Minnesota Rules, part 2740.1600, subpart 3, is proposed to be amended to make a grammatical change.

Minnesota Rules, part 2740.1700 is proposed to be amended to give the commissioner more flexibility in determining the timing of revision of the actuarial equivalence tables, which appears reasonable and more feasible in the administration of the department.

Minnesota Rules, part 2740.2100, subpart 1, item B, subitem (9), is proposed to be amended to delete the reference to "licensed and tested insurance agent or solicitor" and substitute a reference to "insurance

agent" for the reason stated above in connection with the amendment proposed to Minnesota Rules, part 2740.0100, subpart 29.

Minnesota Rules, part 2740.2100, subpart 4, is proposed to be amended to substitute the term "self-insurer" for the phrase "employer or employee welfare benefit plan". This change is proposed to take into account the above-referenced litigation and to take into account the newly proposed definition of self-insurer at Minnesota Rules, part 2740.0100, subpart 56a.

Minnesota Rules, part 2740.2400, subpart B, is proposed to be amended to also take into account the amendment referred to in the previous paragraph. Thus the new term "contributing member" is used and references to the assessment agreement are deleted. In addition, a change is made to delete reference to the "next annual fiscal year" and substitute instead a reference to "future assessments" in connection with the offset mechanism for past assessments. This change allows the Association more flexibility in the timing of credits for excess assessments, or additional assessments for previous deficits in assessments, but does not otherwise affect the basic assessment mechanism.

Minnesota Rules, part 2740.2500, subpart 1, is proposed to be amended to clarify the provision concerning the annual assessment and make clear that annual assessments are due and payable within 30 days after receipt of a written assessment (as is already clear under the Rules for interim assessments).

Minnesota Rules, part 2740.2500, subpart 2, is proposed to be amended to use the terminology "contributing members" from the 1979 amendments.

Minnesota Rules, part 2740.2500, subpart 3, is proposed to be amended to make it consistent with the 1979 amendments, including use of the term "contributing member" and deletion of references to amounts other than accident and health insurance premiums which, after the 1979 amendments, is the only base for assessment of a contributing member.

Minnesota Rules, part 2740.2500, subpart 4 is proposed to be amended to use the term "contributing members".

Minnesota Rules, part 2740.2500, subpart 4, item B, is proposed to be amended to delete reference to certain entities administering self-insured plans which is no longer appropriate following the resolution of the St. Paul Electrical Workers Welfare Fund litigation.

Minnesota Rules, part 2740.2500, subpart 5, is proposed to be amended to refer to "contributing members" and to expand the Board's discretion to decline to levy assessments against contributing members which owe \$5.00 or less in any given year to permit the Board to decline to levy assessments against contributing members which owe \$10.00 or less, which appears more realistic.

Minnesota Rules, part 2740.2600, is proposed to be amended to delete references to the assessment agreement and to also use the term "contributing member."

Minnesota Rules, part 2740.2900, subpart 2, is proposed to be amended to take into account the assessment provision changes in Minnesota Rules, part 2740.2500, and to make the Rules internally consistent.

Minnesota Rules, part 2740.2900, subpart 3, is proposed to be amended to delete reference to the Commissioner in connection with

approval of the proxy statement since this is not required under the Act and does not otherwise appear necessary.

Minnesota Rules, part 2740.3100, subpart 2, item B, is proposed to be amended to make more clear the reference to out-of-pocket expenses.

Minnesota Rules, part 2740.3100, subpart 2, item C, is proposed to be amended to make clear that the \$250,000 maximum lifetime benefit under the qualified plan of the state plan is to be reduced only by the amount of benefits paid under another qualified plan of the state plan.

Minnesota Rule, part 2740.3100, subpart 3, is proposed to be amended to delete reference to actuarial equivalence with respect to qualified medicare supplement plans as is required by the 1981 amendment to the Act.

Minnesota Rules, part 2740.3100, subpart 3, item A, is proposed to be amended to delete reference to persons age 65 or older in connection with the qualified medicare supplement plan of the state plan since the Association issues the qualified medicare supplement plan to persons under age 65 who are covered by parts A and B of medicare.

Minnesota Rules, part 2740.3100, subpart 3, item A, subitems (1) through (5), are proposed to be added to the description of benefits of a qualified medicare supplement plan in order to make clear that the benefits of the qualified medicare supplement plan must be consistent with the requirements of Minnesota Statutes, section 62A.32. This is required by 1981 Minnesota Laws, chapter 318.

Minnesota Rules, part 2740.3100, subpart 3, item B, is also proposed to be amended to delete reference to actuarial equivalence, which is no longer permitted under the qualified medicare supplement plan of



the state plan. Further, this is proposed to be amended to reference the amendments made in the immediately preceding paragraph.

Minnesota Rules, part 2740.3100, subpart 3, item D, is proposed to be amended to change the maximum lifetime benefit provision under the Rules to make clear that the \$100,000 qualified medicare supplement plan maximum lifetime benefit is separate from the \$250,000 qualified plan 1 or 2 maximum lifetime benefit under the state plan, and that the maximum lifetime benefit for a person under the qualified medicare supplement plan of the state plan shall be reduced only by any amounts paid to or on behalf of the covered person under any other qualified medicare supplement plan of the state plan. Further, it is provided that this benefit shall not be subject to substitution of an actuarially equivalent benefit, which is required under 1981 Minnesota Laws, chapter 318.

Minnesota Rules, part 2740.3600, subpart 2, item A, subitem (1), is proposed to be amended to delete reference to sex in the application for state plan coverage, since this is inconsistent with the 1983 amendments to the Act.

Minnesota Rules, part 2740.3600, subpart 2, item A, subitem (3), is proposed to be amended to make clear that evidence of rejection for coverage under a qualified medicare supplement plan is required for persons age 65 and over for coverage under the qualified medicare supplement plan of the state plan. This provision is also proposed to be changed to incorporate the new statutory requirement of only one rejection, restrictive rider, rate up, or pre-existing conditions limitation and the authority for such action by authorized representatives of members, as described in connection with the amendments to Minnesota Rules, part 2740.0100, subpart 53, above.

Minnesota Rules, part 2740.3600, subpart 2, item B, is a new item intended to permit the Association to develop by operating rule a list of conditions which (upon provision of evidence by an applicant which meets the requirements of an operating rule adopted by the Association) is considered to be sufficient to allow a person to obtain coverage under the state plan without need to obtain a rejection, restrictive rider, rate up or pre-existing condition limitation as would otherwise be required for eligibility. The purpose for this provision is to streamline the application process for those persons who would clearly be able to secure the necessary rejection or other limitation on qualified plan or qualified medicare supplement plan coverage, and it appears reasonable for the efficient administration of the state plan. This change is consistent with the 1979 amendments to Minnesota Statutes, section 62E.14, subdivision 1(c).

Minnesota Rules, part 2740.3600, subpart 2, item C, contains a change in citation which is necessitated by the addition of the new item described in the previous paragraph.

Minnesota Rules, part 2740.3600, subpart 2, item D, is proposed to be amended to make clear that a person covered under a qualified plan of the state plan may become covered under the qualified medicare supplement plan without need to obtain the one rejection, restrictive rider, rate up or pre-existing conditions limitation from a member of the Association or a member's authorized representative not only by reaching age 65 but also upon becoming enrolled in medicare. This will permit those persons under age 65 who become enrolled in part A and part B of medicare to transfer automatically into the state plan qualified medicare supplement plan without the need to again obtain the necessary

rejection for eligibility under the state plan as is already permitted for persons who are covered by a qualified plan of the state plan upon becoming age 65. This change appears reasonable for the efficient administration of the state plan.

Minnesota Rules, part 2740.3600, subpart 2, item E, is proposed to be amended to add a sentence which makes clear that a person under age 65 who is otherwise eligible for state plan coverage and is enrolled in medicare may, at that person's option, be permitted to purchase either a qualified plan 1 or 2 or a qualified medicare supplement plan of the state plan. This appears reasonable since such persons would qualify for coverage under either the qualified plan 1 or 2 or the qualified medicare supplement plan, and there would appear to be no reason to require them to accept coverage under a particular plan.

Minnesota Rules, part 2740.3600, subpart 2, item F, is proposed to be amended to make clear that the maximum lifetime benefit under one or more qualified plans of the state plan is a total of \$250,000.00, and a person who has exhausted that amount is not an eligible person for coverage under any other qualified plan of the state plan. Similarly, the provision relating to the maximum lifetime benefit of the qualified medicare supplement plan of the state plan is proposed to be amended to make clear that there is a separate maximum lifetime benefit of \$100,000.00 for this coverage, and a person who has exhausted the \$100,000.00 maximum lifetime benefit is not an eligible person for coverage under the qualified medicare supplement plan of the state plan. This is required by 1981 Minnesota Laws, chapter 318.

Minnesota Rules, part 2740.3700, subpart 1, is amended to change a citation in the Rules as a result of other amendments.

Minnesota Rules, part 2740.3700, subpart 2, item B, is amended to change a citation as a result of other amendments to the Rules.

Minnesota Rules, part 2740.3700, subpart 3, is amended to make the establishment of a review mechanism to review requests for reconsideration of rejected certificates of eligibility discretionary in the board of the Association, rather than mandatory, as it is under the current Rules. This is intended to facilitate direct appeals to the Minnesota Commerce Department in appropriate circumstances.

Minnesota Rules, part 2740.3900, subparts 1, 2 and 3, are proposed to be amended to make more clear the role of the Association in disseminating information concerning the state plan. The subpart 2 amendments clarify that the Association shall make available application forms to its members and also deletes the term "solicitors," which is obsolete. The subpart 3 amendments clarify the Association's duty to pay referral fees to agents (including the 1984 legislative increase to \$50 for any certificate of eligibility accepted) and further makes clear the agent's limited role in referring applicants to the state plan for coverage, as well as the Association's lack of responsibility for their conduct.

Minnesota Rules, part 2740.4400, subpart 1, item B, subitem (4), is proposed to be amended to require the writing carrier to exercise reasonable efforts to advise covered persons within 60 business days of receipt of a properly completed and executed proof of loss, whether the submitted claim was accepted or rejected, unless sooner settled. This is consistent with 1984 Minnesota Laws, chapter 555, section 1.

Minnesota Rules, part 2740.4400, subpart 1, item B, subitem (5), is proposed to be amended to make discretionary the requirement that the

writing carrier establish an appeals procedure. This change is consistent with the proposed change to Minnesota Rules, part 2740.3700, subpart 3, above.

Minnesota Rules, part 2740.4400, subpart 3, is proposed to be amended to incorporate the statutory changes to the percentages of premium to be used for claim expenses and for the writing carrier's direct and indirect expenses, including agent referral fees. In addition, a citation to a provision in the Rule is modified.

Minnesota Rules, part 2740.4400, subpart 4, item A is proposed to be amended to reflect the changed percentage for payment of the writing carrier's direct and indirect expenses under the Act.

Minnesota Rules, part 2740.4400, subpart 5, is proposed to be amended to make clear that the provision relates to the writing carrier.

Minnesota Rules, part 2740.5200, subpart 2, is proposed to be amended to make a grammatical change.

Minnesota Rules, parts 2740.9905 through 2740.9986, relating to the Actuarial Equivalence of Qualified Plans and Qualified Medicare Supplement Plans, are proposed to be amended and superceded in their entirety to establish a test of Actuarial Equivalence which automatically adjusts for inflation. This will permit companies to more accurately value scheduled benefits whose value with respect to reasonable and customary charges declines each year due to inflation. Further, these proposed rules delete the reference to the Actuarial Equivalence of Qualified Medicare Supplement Plans as Minnesota Statutes no longer permit the option of an Actuarial Equivalent Plan for Medicare Supplement Policies. See Minnesota Statutes, sections 62A.31 through 62A.33.

Minnesota Rules, part 2740.2300, is proposed to be eliminated since the concept of a contract between the Association and its members, as originally contained in Minnesota Statutes, section 62E.10, subdivision 5, was eliminated by 1979 Minnesota Laws, chapter 272, section 7.

#### SMALL BUSINESS CONSIDERATION

The businesses expected to be affected by these rules are not encompassed in the definition of small businesses. Further, the intent of the rules is the protection of the consumer, and even if there were an effect on a small business, it has been determined that no changes in the rules could be made which would differentiate between large and small businesses that would not result in a reduction in the protection of the consumer. Therefore, no attempt was made or is necessary to differentiate the impact of these rules on small as opposed to large businesses.