

**STATE OF MINNESOTA
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF THE PROPOSED
ADOPTION OF THE RULE RELATING
TO LONG-TERM CARE INSURANCE**

**STATEMENT OF NEED
AND REASONABLENESS**

STATEMENT OF AUTHORITY

Minnesota Statutes, Section 62A.45 Subdivision 2 provides:

The Commissioner shall adopt rules under Chapter 14 establishing general standards to ensure that assessments used in the prescribing of long-term care are reliable, valid and clinically appropriate.

Additional rulemaking authority provided in Minnesota Statutes Section 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 rules to be reasonable and necessary and consistent with the purposes fairly intended by the provisions of Chapter 45 and sections 62A.46 to 62A.56 of Chapter 62A.

FACTS ESTABLISHING NEED AND REASONABLENESS

BACKGROUND

In 1986, the Minnesota legislature passed Chapter 397 adding Sections 62A.46 to 62A.56 to the law. These sections defined long-term care insurance and established two classes of policies, A and

AA, along with coverage minimums and loss-ratio requirements.

Coverage under long-term care insurance is for prescribed long-term care. Until 1990, prescribed long-term care meant a service, type of care, or procedure specified in a plan of care prepared by a physician and a registered nurse that could not be omitted without adversely affecting the patient's illness or condition.

In 1990, the Minnesota legislature passed Chapter 557 which added a second basis for prescribed long-term care in Minnesota, Statutes 62A.46 Subd.5. The second basis is a service, type of care, or procedure that could not be omitted without adversely affecting the patient's illness or condition and is specified in a plan of care prepared by a registered nurse or licensed social worker and uses an assessment of the patient's ability to perform the activities of daily living (ADLs) and to perform basic cognitive functions. Since such assessments are performed in a variety of locations throughout the state and by differing persons, these rules appropriately define the terms and establish the use of clinical assessments in relation to long-term care insurance benefits.

To assure reliable, valid and clinically appropriate assessment standards, the Commissioner assembled a knowledgeable, twenty-member Long-term Care Rule Ad Hoc Committee representing consumer advocates, the insurance industry, nursing home providers, home care providers, regulatory agencies, and academia (members shown on Exhibit A). The committee reviewed assessment standards

used in Minnesota and other states and from the academic literature. The committee met twice in formal session and a subcommittee drafted proposed rule language. The committee unanimously agreed upon the final proposed rule language as representing appropriate standards.

The importance of this consensus on standards cannot be overstated. Patients and their families must be assured that assessments are clear, fair, and will not leave out the person who is truly unable to perform activities of daily living or is cognitively impaired. Clinicians must be assured that the assessments use accepted terms, are valid, and are clinically appropriate. Insurers must be assured that assessment standards are clear and do not unfairly qualify claimants who are not impaired or who are able to perform activities of daily living. The agreement upon these standards by these parties assures the fairness and clinical appropriateness required by statute.

The proposed rule will authorize use of the subject assessments by insurance companies issuing long-term care insurance policies in Minnesota.

Rule Part 2745.0010

This part sets forth the purpose of the rule which is to establish general standards to ensure that assessments used in prescribing long-term care are reliable, valid, and clinically appropriate. This part cites Minnesota Statutes 62A.56, Subd. 2 as

the statutory authority for the promulgation of these rules.

Minnesota Statutes 62A.46 through 62A.56 gives the Commissioner sole and exclusive authority to regulate the issuance and sale of long-term care insurance policies. It also provides specific rulemaking authority.

Rule Part 2745.0020

This part provides the most restrictive allowed definitions for the five most common and debilitating activities of daily living (ADLs) with specific meanings given for bathing, dressing, toileting, transferring, and eating. These ADLs are the principal activities in the current assessments used by long-term care experts, clinicians, and the Department of Human Services in Minnesota. They are consistent with definitions from national actuarial societies and closely parallel definitions used in major care states such as New York and California. The rule does not include the earlier onset, less incapacitating activities such as shopping, cleaning, laundry or cooking because they are not accepted in the long-term care community as reliable, valid and clinically appropriate. This part also provides for additional ADLs to be specified. The definitions within this part can be expected to appear in insurance policies which pay long-term care benefits based on the inability to perform ADLs. These widely recognized standardized definitions will result in less confusion among consumers, clinicians, and insurance carrier representatives.

Rule Part 2745.0030

This part defines the most restrictive allowed meaning for cognitive impairment to be used in assessments for long-term care insurance contracts. This definition is based on current clinical standards used by long-term care experts, clinicians, and the Department of Human Services in Minnesota. As the 1990 statutory revisions adding cognitive impairment (M.S. 62A.46, Subd. 5 & 8) do not specify the origin of the cognitive impairment, this part is not restricted to cognitive impairment from organic dementia or Alzheimer's. As with ADLs, the standard definition of cognitive impairment will benefit consumers, clinicians, and insurance carrier representatives who must understand these policies.

Rule Part 2745.0040

This part specifies when and how the assessments in parts 2745.0020 and 2745.0030 are to be used. This includes the prescribing long-term care under M.S. 62A.46 Subd. 5 and the plan of care referenced in M.S. 62A.46, Subd. 8. When long-term care insurance contracts refer to a prescribed long-term care or plan of care based on assessments of the insured's ability to perform the activities of daily living or to perform basic cognitive functions appropriately, this part requires that the determination of impairment shall not be more restrictive than requiring either a deficiency in three ADLs or the presence of cognitive impairment as

defined in these rules. Needing assistance on three activities is a high standard for home care and a moderate standard for nursing care. Insurers are free to apply less restrictive criteria if they wish to qualify policyholders at an earlier stage of inability.

This section also identifies one official assessment standard for generally accepted tests which uses objective measures and produces verifiable results. This is the most recent edition of the Minnesota Department of Human Services Preadmission Screening (PAS) Assessment Form. Use of this form allows providers and insurers to readily compare their standard to the widely accepted Human Services PAS Form. This form is updated and revised from time to time, so this part recognizes the most recent edition to keep assessments current.

Rule Part 2745.0050

This part provides for alternate assessment standards to be used when the insurer can demonstrate that the assessment meets all standards of part 2745.0020 through 2745.0040 and is not less beneficial to the policyholder. Beyond bearing the burden of proof, the insurance company must have an officer certify the assessments methodology to the Department of Commerce.

Though alternate standards are considered unlikely, such alternate assessment standards allow insurance carriers to obtain approval of other assessments only when they can demonstrate that the alternate standards are equal to or better than our recognized Minnesota standards. This process permits innovation.

SMALL BUSINESS CONSIDERATIONS

The small businesses affected by this rule are homecare agencies and nursing homes.

The rule does not impose any additional burdens on these businesses. Rather, the rule allows Minnesota licensed carriers to sell a product which they previously could not sell and creates a new source of revenue for these businesses. Rule Part 2745.0010 includes new business potential by new assessment authorization. Rule Part 2745.0020 gives nurses and social workers working for small businesses clear definitions and further opportunity to perform assessments. Rule Part 2745.0030 gives nurses and social workers working for small business added opportunities to perform assessments of cognitive impairment. Rule Part 2745.0040 permits more assessments of cognitive impairment by nurses and social workers working in small business. Many of the assessments will occur in homes and clinics located in smaller communities. This will benefit these small health businesses. Rule Part 2745.0050 provides for development of alternate standards. Such standards would likely be the product of small, independent consultants. Thus, since the impact on such small businesses will be a positive one, there is no need to consider the methods listed in Minn. Stat. 14.15, Subd. 2 a-e.