STATE OF MINNESOTA

DEPARTMENT OF HEALTH

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

IN THE MATTER OF THE

PROPOSED RULES GOVERNING

ESSENTIAL COMMUNITY PROVIDERS,

MINNESOTA RULES CHAPTER 4688

STATEMENT OF NEED

AND REASONABLENESS

The Minnesota Commissioner of Health (commissioner), pursuant to Minn. Stat., section 14.05 through 14.20 presents facts establishing the need for and reasonableness of the proposed new rules governing essential community providers (ECPs).

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General Statement

Essential Community Providers (ECPs) were first authorized under Minn. Stat., section 62Q.19, which was adopted in 1994 and amended in 1995 (1995 Laws of Minnesota, Ch. 234, Art. 2, Sec. 26). The purpose of this statute is to provide continuing access to certain health care providers for high risk and special needs populations who might otherwise not have access to these providers. Under the statute, a health plan company must offer a provider contract to any designated ECP that is located within the area served by that health plan company. The statute requires that an ECP be either a local government/community health board/Indian tribal government or a non-profit, tax exempt entity. Every ECP must demonstrate its commitment to serve high risk and special needs populations, as defined in 62Q.07, as well as the ability to integrate supportive and stabilizing services with medical services for these populations.

Solicitation of Public Comment and Input

On August 29 , 1994 the Department of Health published a Notice of Intent to Solicit Outside Opinion in the State Register. This notice invited interested or affected persons or groups to submit information or opinions regarding the designation of ECPs. No comments were received in response to this notice.

On June 26, 1995 the Department of Health mailed copies of draft ECP rules to individuals and entities representing health plan companies and potential ECPs. The department invited these individuals and entities to attend informational meetings on July 5 and 6 at which the draft rules would be discussed. In addition, the department encouraged these individuals and entities to submit written comments and suggestions. A total of 19 people attended both meetings. In addition, the department received 7 written comments.

On August 21, 1995, the Department of Health published a second Notice of Intent to Solicit Outside Opinion in the State Register. This second notice was published in order to comply with the new requirements of Minn. Stat. 14.101. Copies of the notice were also mailed to persons and entities identified as potentially being significantly affected by these rules.

On August 28, 1995 the Department of Health mailed copies of revised draft ECP rules to everyone who was invited to the July 5 and 6 meetings, as well as to additional individuals who had asked to be added to an ECP mailing list. In addition, the department mailed copies of the revised draft ECP rules to everyone on the commissioner's mailing lists of people interested in receiving copies of proposed rules. The department asked that written comments be submitted no later than September 25, 1995.

Based on the number of inquiries received, the department decided to hold an informal public meeting at which the second draft rules would be discussed. Accordingly, on August 30 the department mailed meeting notices to approximately 150 people. In addition, the department

published notice of the informal meeting in the September 11, 1995 edition of the State Register. The informal public meeting was held on September 20, 1995. Approximately twenty people attended this meeting.

Statutory Authority

The commissioner's legal authority for adopting these rules is found in Minn. Stat., section 62Q.19, Subd. 7 which provides as follows:

> By January 1, 1996, the commissioner shall adopt rules for establishing essential community providers and for governing their relationship with health plan companies. The commissioner shall also identify and address any conflict of interest issues regarding essential community provider designation for local governments. The rules shall require health plan companies to comply with all provisions of section 62Q.14 with respect to enrollee use of essential community providers.

Departmental Charges Imposed By The Rules

In accordance with Minn. Stat., section 16A.1285, pertaining to departmental earnings from charges for goods and services, licenses, or regulation, the rules were submitted to the Commissioner of Finance for the Commissioner's review and comment on the charges

established in these rules. The Commissioner of Finance's comments are attached to this Statement.

In accordance with Minn. Stat., section 16A.1285, Subd. 4, paragraph (c), the department has reported any departmental earnings changes or adjustments to the Chairs of the Senate Committee on Finance and the House Ways and Means Committee. This was done by sending a copy of the Notice of Intent To Adopt and the Rules to the Committee Chairs prior to submitting the Notice to the State Register.

Witnesses

If these rules go to a public hearing, the witnesses listed below may testify on behalf of the department in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and the content of the rules.

Irene Goldman

Dave Giese

Any other employee of the Minnesota Department of Health

Part by Part Analysis

4688.0005. Incorporation by reference. The rules incorporate by reference CPT 95 procedure codes. Part 4688.0020, subpart C sets out the source documents for these codes and states where these source documents are available, as required by Minnesota Statutes, section 14.07, subdivision 4.

4688.0010, Subp. 2. Definition of child care. Minn. Stat. 62Q.19 requires an ECP to integrate applicable child care, as appropriate, but does not define this term. It would be helpful to interested parties, and the general public, if this term was defined. The proposed rules define child care to mean services or facilities needed to take care of children. This definition is intentionally broad because ECPs must be allowed to integrate child care in flexible ways, consistent with the needs of their clients and with available resources. The definition does not require that child care be provided by licensed providers since this would unnecessarily restrict an ECP's options.

4688.0010, Subp. 3. Definition of culturally sensitive and competent services. This definition recognizes that cultural competency is a process that requires individuals and systems to develop and expand their ability to know about, be sensitive to and have respect for cultural diversity. This definition is based on standards used by the federal office of minority health as well as those used in other states.

4688.0010, Subp. 4. Definition of essential community provider (hereinafter "ECP").

Minn. Stat., 62Q.19 establishes criteria for ECP designation but does not define this term. The department has received comments and questions from interested parties asking about the meaning of the term ECP. A definition would be helpful to interested parties and the general public.

The proposed rule defines the term ECP in accordance with the most basic requirements of the enabling statute, that the ECP is an entity that integrates supportive and stabilizing services along with medical services for certain populations. This is a reasonable definition because it clearly and concisely defines the core function of an ECP.

4688.0010, Subp. 5. Definition of high risk and special needs populations. The proposed rule cross references Minn. Stat., section 62Q.07, subdivision 2, paragraph (e) in which this term is defined. The term "high risk and special needs populations" is used extensively throughout these proposed rules and it is important that the public and interested parties understanding the precise meaning of this phrase. By referencing the appropriate statute in these rules, the public and any interested party is informed where to find the correct meaning of this term.

4688.0010, Subp. 6. Definition of linguistic services. Minn. Stat. 62Q.19 requires an ECP to integrate applicable linguistic services, as appropriate, but does not define this term. It would be helpful to interested parties and the general public if this term was defined. The proposed rule takes a broad approach by defining linguistic services as those services needed

to facilitate communication between the ECP and its clients. The department believes that this definition consistent with the actual and potential needs of an ECP's clients which includes individuals with limited or no English language proficiency and persons with chronic conditions or disabilities that may affect their ability to communicate or the manner in which they communicate. It is reasonable to define linguistic services to include both translation of written materials and oral interpretation necessary to facilitate face to face communication.

4688.0010, Subp. 7. Definition of local government unit. The proposed rule cross references Minn. Stat., section 62D.02, subdivision 11, in which this term is defined. In order that interested parties and the public can understanding the meaning of this term, it is necessary to reference it in the rules.

4688.0010, Subp. 8. Definition of sliding fee schedule. Minn. Stat. 62Q.19 requires that non-governmental ECPs utilize sliding fee schedules but does not define this term. A number of interested parties asked that this term be defined in the rules. In developing this definition, the department consulted with entities that utilize sliding fee schedules. The department determined that the fundamental concept of a sliding fee schedule is that the fee vary based on family size and family income. Therefore the proposed definition incorporates these key concepts. It is the department's belief that this proposed definition is consistent with the commonly accepted understanding of the term sliding fee schedule in Minnesota.

4688.0010, Subp. 9. Definition of transportation services. Minn. Stat. 62Q.19 requires

an ECP to integrate applicable transportation services, as appropriate, but does not define this term. It would be helpful to interested parties, and the general public, if this term was defined. The proposed rules define transportation services to mean those services needed to enable clients to access health care services from an ECP. The department believes that this is a reasonable definition when you take into consideration the actual and potential needs of its clients which include individuals and families with low income and persons with chronic conditions or disabilities, the elderly and recipients of MA, GAMC and MinnesotaCare. These are populations that, to a large extent, may not own cars and must rely on other methods of accessing health care services. The proposed rule recognizes that various types of services may be appropriate in order to enable these clients to access ECP services.

4688.0020. Application. Minn. Stat., section 62Q.19, Subd. 2, specifies that the commissioner shall develop an application form to be used by a provider in applying for ECP designation. The proposed rule reasonably specifies the items of information that must be submitted by an applicant in order for the commissioner to make this determination. For the most part, the items listed merely ask for information needed to verify that the applicant complies with the standards contained in 62Q.19, Subd. 1. Most of these items did not generate public discussion and comment. However, some specific items generated public comments and questions and are therefore discussed here.

A and B. These items are necessary to allow the commissioner to ascertain what entity is

applying for designation as an ECP and whether that entity complies with the statutory requirements.

C. List of medical services provided by CPT 95 codes or categories of CPT 95 codes. Since 62Q.19, Subd. 1 specifies that the commissioner may designate an eligible provider as an ECP for some or all of the services offered by that provider, there must be some uniform method for all applicants to report which medical services are offered. CPT codes are codified in code books which are available at no cost in public libraries throughout Minnesota. These code books are also available at no cost through interlibrary loans. In addition, CPT code books are available by using the Minitex system which is available statewide.

CPT codes are widely used by providers when submitting claims to insurers for services provided. The department believes that all covered services provided by an ECP can be coded properly through the use of CPT codes. Since there are hundreds of CPT codes, the proposed rule would allow an applicant to report ranges of CPT codes where appropriate, rather than listing every single code within a range.

The American Medical Association revises its CPT codes periodically. The most current edition is the CPT 95 which was published in 1994. The proposed rules require applicants to use the most current edition to provide consistency in applications and in order to take advantage of the most current coding system.

Some interested parties questioned whether certain specialized services, such as outreach services provided to public assistance clients, or services specifically required under federal regulations governing FQHCs, could be coded using CPT codes. According to the Department of Human Services, which administers the public assistance programs, CPT codes are currently used to submit claims to DHS. It is therefore reasonable to require ECP applicants to report the services they offer through the listing of CPT codes.

D. Capacity to provide medical services. The proposed rule authorizes the commissioner to require the applicant to provide evidence of its capacity to provide medical services in a timely manner. ECP designation will enable an entity to contract as a provider with health plan companies. Health plan companies need some assurance that an ECP has the capacity to provide needed medical services in a timely manner. The proposed rule therefore seeks to elicit evidence of this capacity from the applicant.

Capacity to provide medical care will be measured against community norms. ECPs may be located throughout the state and community norms may vary. It is therefore appropriate to require an applicant to demonstrate its ability to provide care in terms of what is prevailing practice in the community in which it is located. Establishing a statewide standard for capacity would be unnecessarily restrictive.

E. List of which high risk and special needs populations are served. Minn. Stat. 62Q.19, Subd. 1, requires an ECP to demonstrate an ability to serve high risk and special

needs populations and underserved and other special needs populations. The proposed rule authorizes the commissioner to require an applicant to demonstrate that it does, in fact, serve these clients. 62Q.19 does not require that an ECP serve every possible high risk or special needs population nor that it serve only high risk and special needs populations. It is conceivable that an applicant may serve clients who do not fall within the definition of high risk and special needs populations as well as those who do. Therefore the proposed rule requires an applicant to report the total number of high risk and special needs clients served annually.

The rule would also require an applicant to report what percent of its total patient population falls within high risk and special needs categories. The proposed rule authorizes the commissioner to require this information as necessary to identify applicants who, based on their experience serving these clients, can demonstrate their ability and commitment to serve these populations. If a small percent of an applicant's total patient population falls within high risk and special needs populations, the commissioner might need to request additional information from the applicant to verify its ability and commitment to serve these populations. If a large percent falls within these populations, additional information may not be required to verify the applicant's ability and commitment to serve these populations.

F. Supportive and stabilizing services. Minn. Stat. 62Q.19, subd. 1 requires an ECP to integrate applicable supportive and stabilizing services, and specifies that supportive and

stabilizing services include at a minimum, transportation, child care, cultural and linguistic services where appropriate. The proposed rules require the applicant to list the supportive and stabilizing services available and also provide an explanation of how these services are made available, how the need for services is assessed and how clients access these services. Since 62Q.19, Subd. 1 specifies that these include, at a minimum, transportation, child care, cultural and linguistic services, the applicant must list and explain its integration of these services, as well as any additional supportive and stabilizing services it may provide. Rather than specify precisely how these various services should be integrated, the proposed rules allow each applicant to explain its chosen method of integrating these services. This approach recognizes that ECPs must assess the unique needs of their clients, the availability of these services in its community and allows reasonable response to the law. It would be unreasonable to require every ECP to provide all services in the same manner. The department's approach allows each applicant to tailor its delivery of supportive and stabilizing services to the special needs of its clients and the availability of services in its community.

In addition, the proposed rules recognize that, based on the specific high risk and special needs populations served and the services provided, it may not be necessary or appropriate for an ECP to integrate all types of supportive and stabilizing services. For example, if an ECP serves only elderly clients, there may be no need to have child care services available. An applicant would be required to explain which services are not available and why they are not necessary.

The department received many public comments and questions about the integration of supportive and stabilizing services by an ECP. In earlier drafts of the rules, the ECP would have been required to directly provide appropriate supportive and necessary services. The department was repeatedly told that this would make it virtually impossible for most providers to be designated ECPs since supportive and stabilizing services would be expensive, hard to provide and not paid for by health plan companies. Licensed child care and transportation services were especially problematic since they could require costly resources that would otherwise be dedicated to the provision of needed health services. In some rural areas of Minnesota, transportation services are nonexistent so it would be impossible for an entity to integrate such services.

In addition, a legislator contacted department staff to advise them that she wanted the required integration of supportive and stabilizing services to mean ECPs should coordinate available services, not necessarily to provide these services themselves. This legislator did not want the ECP rules to require an ECP to provide additional services beyond those it normally provides. Since these entities do not normally provide child care or transportation services, she indicated that they should not be required to do so to become designated an ECP.

The department's proposed rule addresses the integration of supportive and stabilizing services in light of the comments from the legislator and the great concerns expressed by the public. It is the department's belief that the proposed rule is consistent with the statutory

language.

G. Other necessary information. The proposed rule authorizes the commissioner to require an applicant to submit additional information when deemed necessary in order to process the application. For example, parts of the application may be unclear or raise additional concerns, leading to a request for clarification or additional information. Another possibility is that, upon publication of the name of the applicant in the State Register, we may receive public comments that raise concerns that need to be addressed before the application process is completed. Since it would be impossible to anticipate the specific information that may be needed in these types of situations, this rule provision reasonably authorizes the commissioner to require submission of additional information when necessary to determine if an applicant satisfies the requirements of the ECP statute and rules.

4688.0030. Application fee. Minn. Stat. 62Q.19, Subd. 2, paragraph (b) requires an applicant to submit an application fee. The fee must be determined by the commissioner and cannot exceed the administrative costs of processing the application.

The rules propose an application fee of $46.00 which does not exceed the administrative costs of processing the ECP application. The fee has been calculated as follows:

1. Calculate weighted average hourly rate plus fringe benefits at 20% for administrative staff involved in processing the application.

HSA at $17.39/hour + $3.47/fringe = $20.86 x 2 hours = $41.72

Supervisor at $22.05/hour + $4.40/fringe = $26.45 x .25 hours =$6.61

CT2 at $11.14/hour + $2.23/fringe = $13.37 x 1 hour = $13.37

Total staff costs = $61.70 divided by 3.25 hours = $18.98 weighted average hourly rate

2. Multiply weighted average hourly rate plus fringe x number of hours needed to process each application.

$18.98 x 2 hours = $37.96

3. Add costs for supplies and equipment for the section as well as statewide and departmental overhead.

Supplies and equipment costs for the section includes the cost of printing the name and location of all ECP applicants in the State Register, as required by 62Q.19, Subd. 1.

The cost of printing in the SR is $80 per page. The cost of printing the name and

location of each individual ECP applicant should be no more than $2.00

Department and Statewide overhead charge includes printing and mailing of applications and all other normal business charges, calculated at 16% of salaries = $37.96 x 16% = $6.07

4. Total is the administrative cost of processing the application.

Staff costs	$37.96
Supplies and expenses	$ 2.00
Overhead	$ 6.07
Total	$46.03

The ECP statute does not provide for periodic renewal of the ECP designation. Therefore, an applicant will pay this fee once even though ECP designation may continue for several years.

The approval of this fee by the Department of Finance is attached to this SONAR as an exhibit.

4688.0040. Criteria for ECP designation. The proposed rule authorizes the commissioner to establish the standards by which each application will be measured, in order to determine

if the applicant has satisfied the statutory criteria and should be designated an ECP by the commissioner. It is important to have public standards so that applicants and the general public can understand the basis for approval or denial of an application. Standards are also needed to ensure that each application is evaluated according to the same objective criteria.

4688.0040, Subp.2. Medical care. The proposed rule authorizes the commissioner to identify those providers who serve the populations identified in Minn. Stat. 62Q.19. In addition, the proposed rule authorizes the commissioner to determine if the applicant has sufficient capacity to provide services in a manner consistent with accepted community norms. The commissioner will evaluate capacity in terms of personnel and facilities, appointment scheduling guidelines, waiting times for services and monitoring and corrective actions taken by the applicant to enforce its own guidelines. It is necessary for the commissioner to establish these criteria in order to evaluate the ability of each ECP applicant to serve high risk and special need populations. Based on experience with capacity issues for HMOs and CISNs, the department believes that these criteria are necessary in order to determine whether an applicant has the capacity to serve high risk and special needs populations.

This rule specifies that capacity of an ECP applicant will be judged according to community norms. This is reasonable because what is the norm in the Twin Cities metro area may not be the norm in more rural areas, and vice verse. The rule reasonably allows for differences based on what is accepted and prevalent in the applicant's community while ensuring that the

ECP will at least meet the community norms.

4688.0040, Subp. 3. Supportive and stabilizing services. The proposed rule authorizes the commissioner to establish criteria for determining if an applicant has satisfied the requirement to integrate supportive and stabilizing services. It is necessary to establish criteria to ensure that all applications are evaluated in a fair and consistent manner, and so applicants will know what is required of them.

The proposed rule lists several methods in which an ECP might integrate various supportive and stabilizing services. Coordination with available community resources is acceptable under the proposed rules. In addition, the proposed rule would allow an applicant to find its own unique way to integrate these services. Under the proposed rule an applicant would be authorized to explain why integration of certain supportive and stabilizing services is not appropriate. It is the department's belief that these rules reflect the flexibility authorized in statute that the supportive and stabilizing services are integrated "where appropriate" and not imposing unnecessary barriers to ECP designation for qualified applicants while ensuring that appropriate services are available.

A. Transportation options. The proposed rule authorizes the commissioner to establish criteria for the integration of necessary transportation services to its high risk clients. The rule requires that an applicant demonstrate that the options used meet the needs of the special needs clients it serves. It is the department's belief that different applicants will use different

methods of providing transportation services, based on the specific needs of their clients, their location in the community, their budget and other factors. While the rule identifies some common methods of providing transportation services, it allows an applicant to report any other methods used to provide these services. This rule is reasonable in the methods that can be utilized to integrate appropriate transportation services for high risk and special needs enrollees for whom transportation is necessary.

B. Child care services. The proposed rule authorizes the commissioner to establish criteria for the integration of child care services, as necessary and appropriate. It is the intent of this rule to allow flexibility so that an applicant can integrate with any reasonable form of child care that is appropriate to the needs of the clients served. The department recognizes that, depending on factors such as size and location of the facility, age of clients, size of budget, location, as well as other factors, an applicant may use more than one way to satisfy this requirement. It has been suggested that an ECP be required to have licensed child care on the premises since this would provide assurance of high quality child care. While licensed child care would be desirable, the department has not made licensing of child care a requirement for ECP designation. It is the department's belief that such a requirement would not be feasible for most applicants because of budget and space limitation. Moreover, an applicant may choose other methods such as providing child care off the premises that are equally effective and safe for children. The department does not want to impose costly requirements on qualified applicants that would make it difficult or impossible for them to become ECPs.

C. Linguistic service options. The proposed rule authorizes the commissioner to establish criteria for the integration of necessary and appropriate linguistic services for its high risk and special needs clients. These clients may include people who speak little or no English, people who are blind, people who are deaf or hard of hearing, or people with severe or chronic disabilities which affect their ability to communicate or the manner in which they communicate. Because the linguistic needs of their clients may vary considerably, this rule allows a variety of reasonable methods to be used to meet these needs. It is reasonable to allow each applicant to tailor the provision of linguistic services to the specific needs of its high risk clients.

D. Cultural service options. The proposed rule authorizes the commissioner to establish criteria for the integration of culturally sensitive and competent services for its high risk and special needs clients. The rule identifies two methods that may be used to demonstrate cultural competency. Perhaps the best way to ensure cultural competency is to utilize professional staff from the culture of the clients served by that provider. However, since that may not be possible, the department believes that an acceptable alternative would be to ensure that all staff receive cultural sensitivity training on a continuing basis. This training will result in an increased awareness, acceptance, valuing and openness to learn from general and health-related beliefs, practices, traditions, languages and current needs of individuals and the cultural groups to which they belong. Continuing training will facilitate appropriate and effective communication with members of diverse cultures and enhance the delivery of health services in the context of individual's cultural health beliefs and practices.

4688.0040, Subp. 4. Integration of supportive and stabilizing services. This rule provision authorizes the commissioner to establish criteria for the integration of supportive and stabilizing services. Applicants will be required to demonstrate that they have developed a plan to identify the need for such services. They will also be required to demonstrate that their clients can access available services in a timely manner.

In keeping with the need to allow flexibility in the integration of services, the proposed rule does not set one standard but allows each applicant to tailor its plan for integration of supportive and stabilizing services to the needs of its clients and the availability of services in its community. The department believes that this is a realistic approach that will not impose unnecessary barriers to ECP designation. If the rules established the methods in which integration of services must be done, it would impose additional costs on providers while preventing creative solutions. It would also prevent providers from matching integration of services to the unique needs of their clients and community. The department believes that individual providers should be allowed to creatively integrate these services.

4688.0040, Subp. 5. Fees. The proposed rule authorizes the commissioner to establish criteria for the use of a sliding fee schedule where appropriate. The governing statute requires that the sliding fee schedule be based on current poverty income guidelines. The proposed rule implements this requirement by using language consistent with that used in federal regulations that govern the Medical Assistance program. These regulations require

that a sliding fee schedule be based on income and family size.

The department considered whether the fee schedule should be required to slide from 0 to 100% of full fees. Initially the department considered requiring that the fee schedule slide from 0 to 100% . However, the department was informed that some federal programs require that even very low income clients pay some minimal fee. An ECP that serves federally funded clients would be in a difficult position if the ECP rules are inconsistent with federal regulations. To accommodate the needs of low income clients, the proposed rules require that free care be available as needed. This will enable a low income client who does not quality for public assistance to receive free medical care from an ECP, and is consistent with the requirements of the governing statute that an ECP not restrict access or services because of a client's financial limitation.

4688.0040, Subp. 6. Services provided. The proposed rule authorizes the commissioner to require ECP applicants to list the medical services they provide by CPT 95 code or groups of CPT 95 codes. M.S. 62Q.19 requires an ECP to provide medical services for its high risk and special needs clients. This rule establishes a uniform method of reporting the services provided.

Use of one standard system for reporting medical procedures will eliminate confusion on the part of providers as well as department staff who evaluate the applications. The CPT coding system is in wide use in Minnesota and is the most obvious choice for a standard coding

system. Moreover, many applicants will be familiar with the CPT coding system because they use CPT codes when billing for MA, GAMC and MinnesotaCare clients.

CPT codes are produced by the American Medical Association which revises them periodically. In order to provide for uniform reporting, the proposed rule requires every applicant to use CPT 95 codes. These are the most current procedure codes. Use of one designated coding system will avoid confusion on the part of providers, health plan companies and the department.

4688.0040, Subp. 7. Basis for ECP designation. The statute requires an ECP to be either a non profit, tax exempt entity or local government. The proposed rule implements this statutory requirement by requiring each applicant to provide evidence that it is either an government entity or a non profit, tax exempt entity. This criteria must be satisfied in order for any applicants to be designated an ECP by the commissioner. Under the rule provision, any reasonable evidence would be accepted.

4688.0040, Subp. 8. Federal qualification. Under the proposed rules, an applicant that has been designated a Federally Qualified Health Center or a Rural Health Clinic under federal regulations has the option of attaching a copy of the information it provided to the federal agency that addresses any of the information required in the ECP application. This rule provision authorizes the commissioner to streamline the application process as much as

possible. If the necessary information is available in a usable format, there is no reason to require the applicant to provide it to the department in a different format. The rule is reasonable in that it enables the department to obtain the necessary information without imposing unnecessary and duplicate burdens on applicants.

4688.0050. Requirements for contracts with health plan companies. Minn. Stat. 62Q.19, Subd. 3, requires a health plan company to offer a provider contract to every ECP located within the area served by the health plan company. This rule requires that the provider contract offered to an ECP must be comparable to a provider contract offered to similar providers of similar services that are not ECPs. This is consistent with the intent of Minn. Stat. 62Q.19 which is to enable essential providers to become contracted providers with health plan companies. However, the rule does allow both parties to mutually agree to a different contract. The commissioner is concerned that, without this rule provision, a health plan company could impose burdens and requirements on an ECP through its provider contract that it does not impose on similar providers of similar services. These additional requirements could make it impossible for the ECP to sign that contract, thus subverting the intent of 62Q.19 which is to ensure continuing access to ECPs for high risk and special needs enrollees of health plan companies.

The proposed rule requires that the contract between the ECP and the health plan company include all services designated by the commissioner. The issue of which ECP services should be included in the contract has generated considerable discussion and comments from

interested parties. The department has carefully considered all of the comments and concerns expressed by all concerned parties. The following discussion summarizes the comments received and explains the policy expressed in the proposed rule.

Some health plan companies have expressed concern about being essentially forced to contract with ECP providers for all of the services they offer. These concerns are based on issues of quality of services, qualification of the providers who provide the services and duplication of services available from other plan providers. Health plans would prefer that the rules authorize them to choose which specific services provided by an ECP they will include in their contracts. They have informed the department that it is not uncommon for a health plan to contract for some but not all services provided by plan providers. They would like to be able to contract with ECPs in the same manner, choosing which services to cover in the contract.

Providers who are interested in being designated ECPs have commented that the rules must require the health plans to contract for all services designated by the commissioner. Providers are extremely concerned that, without this rule provision, health plan companies might contract for a very small number of services provided by an ECP. By contracting for a limited number of services, the health plan company would be in technical compliance with the ECP statute while frustrating the underlying purpose of this statute. Moreover, this could force high risk and special needs clients to receive some services at an ECP and other services, although available at the ECP, from other providers. Providers are very concerned

that some of their high risk and special needs clients will forego receiving necessary care if they cannot receive it at their ECP. Providers are also concerned that they will lose income as their clients are directed to other plan providers for services that the ECP could provide.

The department has carefully considered all arguments and concerns raised by providers and health plan companies. The department is mindful that a contract is essentially a private business matter between two parties in which government does not ordinarily intervene. However, in this instance the ECP statute authorizes the department to adopt rules governing the relationship between ECPs and health plan companies. See, Minn. Stat. 62Q.19, Subd. 7. The department has determined that the issue of which services are included in the contract is at the core of this relationship and must be addressed in the rules.

The concerns about quality of services and qualification of ECP providers expressed by health plan companies are valid concerns. However, the ECP statute authorizes health plan companies to require an ECP to meet all quality assurance and utilization review requirements on the same basis as other health plan providers. Quality of services could be included in a plan's quality assurance program and qualification of providers could be included in credentialing, which is part of utilization review. Therefore, a health plan company can address its concerns about quality of services and qualification of providers by contracting only for those ECP services that meet the plan's standards for quality and provider qualification standards.

The department is also concerned that continuity of care be maintained to the greatest extent possible for high risk and special needs populations. By requiring health plan companies to contract for all designated ECP services, continuity of care will be enhanced. Clients will not be required to seek services from multiple providers, at least to the extent an ECP can provide needed services. Therefore the proposed rule requires that the health plan contract with an ECP for all services designated by the commissioner.

The proposed rule requires the contract to include all designated ECP services to the extent the ECP services are covered under any health plan company certificate of coverage. A health plan company may offer several different certificates of coverage or health benefit contracts. The benefits provided may differ from one certificate of coverage to another, even from the same health plan company. If an ECP designated service is covered under any of a health plan company's various products, then the service must be included in the contract between the ECP and the health plan company. However, if the service is not covered under any certificate of coverage or health benefit contract, there is no requirement to include this service in the contract between the ECP and the health plan company. This provision is reasonable since there would be no rationale for mandating inclusion of a service that would not be covered for any health plan enrollee.

The proposed rules require that the provisions of 62D.123 be included in all contracts between an ECP and an HMO, CISN or ISN. This statute protects enrollees against unauthorized billing by health plan providers and requires these providers to cooperate with

the plan's complaint, utilization review and quality assurance programs. This statute prevents a plan provider from billing an enrollee, even if the plan is late in paying the claim. This statute ensures that plan providers will participate in the plans's complaint resolution program which benefits enrollees who may have complaints. Since a contracted ECP will become a network provider for HMOs, CISNs and ISNs, it is reasonable and necessary that the provider contract between an ECP and an HMO, CISN and ISN contain the provisions of 62D.123.

4688.0060. Refusal to contract. Minn. Stat. 62Q.19, Subd. 3, permits a health plan company to require that an ECP meet all data requirements, utilization review, and quality assurance requirements on the same basis as other health plan providers. This rule provision would authorize the commissioner to require a health plan company to provide written notice to a designated ECP of the basis for the health plan company's refusal to contract. Written notice is necessary to prevent arbitrary denials and to afford the ECP the opportunity to possibly remedy the problem and enable it to reapply for a provider contract.

The rule further specifies that an ECP that has been refused a provider contract may use the dispute resolution methods available under Minn. Stat. 62Q.11, Subd. 2. This statute provides methods of dispute resolution other than litigation and is available to applicants for network provider status. This rule provision will clearly inform interested parties who may not be familiar with 62Q.11, Subd. 2, that alternative methods of dispute resolution are available.

4688.0070 Payment. Minn. Stat. 62Q.19, Subd. 5, specifies that the negotiated rate of payment must be the same rate per unit of service as is paid to other health plan providers for the same or similar services. The question has come up concerning the permissibility of using capitated fees for services provided by an ECP. Can capitated fees be considered to be the same rate per unit of service as is paid by the plan for the same or similar services? The purpose of this rule provision is to clarify that capitated fees are permissible under the ECP statute. Since an ECP may be designated a primary care provider by some health plans, it is reasonable to allow an ECP to be capitated for a full range of services. However, capitated fees are permitted only to the same extent, and on the same basis, as the health plan capitates other providers of similar services. The basis and extent of capitation must take into consideration the number of encounters anticipated as well as the costs and risk of providing these services. Capitation should not put an ECP at more risk than other similar providers of similar services to similar populations with similar or comparable risk. For an ECP that provides only certain specific services, or that anticipates serving a small number of plan enrollees, capitation would not make sense and would be extremely difficult to justify. The rules would allow the ECP and the health plan to tailor the reimbursement mechanism to the specific needs and conditions of each contract.

The rules specify that an ECP which believes that its contracted reimbursement rate violates 62Q.19, Subd. 5, can file a complaint with the commissioner. Because the commissioner has the authority and duty to enforce this statute under 62Q.19, Subd. 5b, it is reasonable and

necessary as part of the enforcement process that the commissioner investigate complaints about possible violations of the statute. Other disputes that do not involve alleged statutory violations can be resolved through the dispute resolution methods provided by 62Q.11, Subd. 2. In addition, these dispute resolutions methods are available in situations in which a designated ECP and a health plan company cannot contract due to inability to agree on the payment rate.

4688.0080. Information to enrollees. The purpose of this rule provision is to require each health plan company to provide clear information to its enrollees about contracted ECP providers. Without this information, high risk and special needs enrollees might have no way of knowing that they have an option to receive certain covered services at an ECP. The rules allow each health plan company to determine for itself how to provide this information. However, since many enrollees inquire about services and providers through means of member services lines, the rule require that information about ECPs be available through these lines. The rules will help to ensure that high risk enrollees will receive information about ECP providers and services so that they will be in a position to access these providers.

4688.0090. Prior Authorization. The proposed rules allow a health plan company to require prior authorization of services to the same extent that it requires prior authorization of the same services from non-ECP providers. The rules would prevent a health plan company from imposing different prior authorization standards, dependent on the enrollee's

choice of provider, for these services. Different standards could potentially result in additional burdens for high risk enrollees who choose to receive services from an ECP rather than from another health plan provider. This result would create barriers to health services for the precise population this statute was enacted to protect. It is the department's belief that this rule provision is necessary and reasonable in order to ensure that both ECP and non-ECP health plan providers are treated equally by each health plan company.

4688.0100. Other providers. Minn. Stat. 62Q.19 does not require that all high risk and special needs enrollees be served only by ECPs. The purpose of this statue is to provide high risk and special needs enrolles with an additional choice of providers, not to limit their choice to ECPs only. Therefore, the purpose of this rule provision is to clarify that a health plan company can make non-ECP providers available to serve any or all of its high risk and special needs enrollees. However, choice of providers may be limited or restricted by other health plan company policies including referral requirements and designation of primary care clinic or primary care physician. The department is concerned that health plan company enrollees abide by their plan's requirements regarding choice of providers. Therefore, the rule also specifies that choice of providers is authorized only to the extent and manner provided by the enrollee's certificate of coverage.

4688.0110. Coverage. Based on comments and questions expressed by the public, both in written comments and at public meetings, the department believes that there is some confusion about the extent to which a health plan company must cover services provided by

an ECP. Designation as an ECP will enable the provider to contract to provide services to health plan company enrollees. Designation as an ECP will not expand the list of covered health services that individuals have under their specific health insurance plan. Different plans provide different types and levels of benefits. Benefits can differ even between health plans sold by one health plan company. These differences in type and level of benefits will not change just because the enrollee accesses services at an ECP. It is important to clearly state that accessing services at a designated ECP will not change the individual's benefit package. The proposed rule would clarify this.

4688.0120. Conflict of interest.

The commissioner has identified the potential for a conflict of interest when a local government is both a provider of service and a contractor for health services. This may occur when a local government, such as a county board, operates both a health plan and an entity that is designated an ECP. There is the potential for a conflict of interest between the dual roles of ECP and that of the health plan. This potential is greatest when a health plan company enrollee has a complaint against the ECP. Ordinarily, this complaint would be filed with the health plan, which would investigate and take any appropriate action. However, when both the health plan and the ECP are owned by local government, this results in the local government investigating a complaint against itself.

The purpose of the proposed rule is to identify the potential conflict of interest and mandate

steps to be taken by the local government that will avoid any possible conflict of interest. Under the proposed rule, an enrollee with a complaint against the ECP which is owned and operated by local government, will be given the option of filing the complaint with a state agency rather than with the local government. This will enable the enrollee to avoid the situation in which the local government is, in effect, investigating a complaint against itself. Under the rule, the decision to remove the complaint from the local government is made by the complaining enrollee. This rule provision is reasonable since it identifies the potential conflict of interest, provides information to affected enrollee, and establishes a method by which the conflict can be avoided.

4688.0130. Primary care clinic. The department has received questions and comments concerning the ability of an ECP to be designated a primary care provider by a health plan company. The department expects that some applicants will report that they provide a full range of services that constitute what is considered to be primary care services. For these entities, designation as a primary care provider by a health plan company may be desirable. Such designation would enhance care coordination and continuity for its clients who would be able to receive a range of services at one location. This rule provision clarifies that an ECP may be, but is not required to be, designated a primary care clinic by a health plan company.

4688.0140. Restrictions on services. The ECP statute mandates that the rules require health plan companies to comply with all provisions of Minn. Stat. 62Q.14 with respect to enrollee

use of essential community providers. See, Minn. Stat. 62Q.19, Subd. 7. The proposed rule specifies the manner in which health plan companies shall comply with this law.

Minn. Stat. 62Q.14 prohibits health plan companies from restricting enrollee's choice as it relates to certain services. The department's experience with 62Q.14 indicates that compliance issues arise regarding the applicability of copayments for these services. The department's position is that copayments may be imposed if the 62Q.14 provider is not a participating provider with the health plan company in question. In these circumstances, copayments can be imposed only to the same extent that they are imposed for these services from other non-participating providers.

The proposed rule clarifies when copayments can be charged. If the ECP is located within the health plan company's service are, the ECP would receive a contract and all services would be considered services received within the network. As such, copayments could only be imposed to the extent that these same services have copayments when received within network. It is the department's belief that these rules carry out the intent of 62Q.19, Subd. 7.

4688.0150. Penalties. Minn. Stat. 62Q.19 requires that an ECP meet the stated criteria for designation. The statute authorizes the commissioner to enforce the provisions of state law and rule applicable to an ECP. While it is implicit that an ECP must continue to meet the statutory criteria so long as it continues to be designated, this requirement is not explicitly stated in the law. The proposed rule states this affirmative duty. This is especially

important since ECP designation is granted only once and is not subject to periodic renewal.

4688.0160. Annual reports. This rule provision authorizes the commissioner to require each designated ECP to file an annual report with the commissioner and to set out the information that must be contained in these reports. The filing of annual reports is a reasonable means for the commissioner to obtain information needed to carry out the enforcement duties prescribed by 62Q.19 and these rules, namely that the ECP continues to comply with legal requirements and continues to provide the services it has been designated to provide. While the need to file annually may be a burden on ECPs, it is the most feasible and cost-effective method available to the commissioner to collect the needed information concerning the status of these entities.

The information required in the annual reports is needed to verify that the designated ECP continues to qualify under 62Q.19 and continues to integrate supportive and stabilizing services in the manner approved in the initial designation. All of this information is needed for the reasons explained earlier in the SONAR.

Conclusion

Based on the foregoing, the department's proposed rules are both necessary and reasonable.

Dated: November 8, 1995

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

Barbara C Deum for

ANNE M. BARRY

COMMISSIONER