

080353

Complaint Process Study

Final Report to the Legislature

**Department of Health
Department of Commerce**

January 1998

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Executive Summary

Introduction

The 1997 Patient Protection Act (Laws of Minnesota 1997, Chapter 237, Section 20) directed the Commissioners of Health and Commerce, in consultation with the Consumer Advisory Board and other affected parties, to make recommendations to the 1998 legislature *on developing a complaint resolution process for health plan companies to make available for enrollees*. (Laws of Minnesota 1997, Chapter 237, Section 20; See Appendix A.) This report fulfills that mandate.

Facilitated Work Group

The Departments of Health and Commerce organized a work group of stakeholders for the purpose of developing the complaint process study and any corresponding legislative proposal and/or recommendations. The work group was facilitated by Roger Williams, an outside, neutral party, from the Minnesota Office of Dispute Resolution. In organizing the work group, it was the goal of the Departments to bring together interested parties to work together in an effort to build consensus by identifying and addressing issues and concerns related to the development of a complaint resolution process. There were approximately 30 representatives that actively participated in the sessions, in addition to the facilitator. The participants represented many diverse interests and included appointees from consumers groups, health plans, indemnity insurers, self-insured employers, and the departments of Health, Commerce, Human Services, and Employee Relations, among others. There were two appointees from the consumer advisory board, who served as liaisons between the board and the work group. The departments also consulted with the consumer advisory board on the development of the study, independent of the facilitated process.

Recommendations

The Departments of Health and Commerce recommend the following:

- In order to avoid duplicative complaint process review, Minn. Stat. Sec. 62D.11, subd. 1, should be amended to require HMO's to inform enrollees that they have the option to use an alternative dispute resolution process following an appeal of an adverse utilization review decision under 62M.06.
- If a health care consumer advocacy and information office is created, it should be organized to fit within the administrative structure of the Department of Health, but it should remain organizationally separate from the regulatory function of the agency. Placing the new office within the administrative structure of the Health Department will serve to maximize administrative economies while also building upon existing expertise related to health care currently available within the Department.
- The regulatory functions of the Departments of Health and Commerce must be kept in place. The Departments are concerned that moving the complaint process out of the Departments would do harm to the regulatory functions of the agencies.

- **The Departments of Health and Commerce would not support funding the new office with general fund appropriations because the Governor's Supplemental Budget does not include general fund dollars for this purpose.**
- **The complaint process work group should continue to meet, with the assistance of the neutral facilitator, to develop recommendations for the development of a uniform complaint process to be presented to the legislature during the 1999 legislative session.**
- **Based on the continued work of the group, and in consultation therewith, the Departments of Health and Commerce shall submit a report with recommendations and draft legislation to the legislature on developing such a complaint resolution process by November 15, 1998.**
- **Minn. Stat. §§ 62Q.105 and 62Q.30 should be amended to delay the effective date of those sections until July 1999.**

I. Introduction

The 1997 Minnesota Legislature directed the Commissioners of Health and Commerce, in consultation with the consumer advisory board and other affected parties, to conduct a study on *developing a complaint resolution process for health plan companies to make available for enrollees*. (Laws of Minnesota 1997, Chapter 237, Section 20; See Appendix A). This report fulfills that mandate.

This report includes the following sections:

- Description of the process through which the study was conducted and the recommendations were developed.
- Description of issues identified by the work group.
- Description of points of agreement of the work group.
- Viewpoints and recommendations submitted by the Consumer Advisory Board.
- Recommendations of the Departments of Health and Commerce.

II. Facilitated Work Group

Due to inconsistencies in statute and rule, the Departments of Health and Commerce began working with health plan companies in the fall of 1996 in an effort to develop a legislative framework that would combine and make consistent the existing complaint procedures contained in the Rules and the concepts contained in Minn. Stat. Sec. 62D.11, 62Q.105; 62Q.11; and 62Q.30. The agencies also conferred with consumer advocacy groups before submitting the proposal to the legislature. Other legislative proposals were also developed and brought forward. Attempts to resolve differences between the various proposals failed during the 1997 legislative session. Ultimately, the legislature delayed the effective dates contained in 62Q.105 and 62Q.30 from July 1, 1997, to July 1, 1998. The legislature also mandated further study of the issues by the Departments of Health and Commerce, in consultation with the newly created Consumer Advisory Board and other affected parties.

The Departments of Health and Commerce organized a facilitated work group for the purpose of developing the complaint process study and any corresponding recommendations. The goal of the Departments in organizing the work group was to bring together interested parties in an effort to build consensus by identifying and addressing issues and concerns related to the development of a complaint resolution process. There were approximately 30 representatives actively participating in the work group, in addition to a neutral outside facilitator. (See Appendix.) The persons participating in the facilitated work group were representative of many diverse interests and included appointees from consumers groups, health plans, indemnity insurers, self-insured employers, and the departments of Health, Commerce, Human Services, and Employee Relations, among others. There were two appointees from the consumer advisory board, who

served as liaisons between the board and the facilitated work group. The department also consulted with the consumer advisory board on the development of the study, independent of the work group.

The Departments of Health and Commerce began exploring the possibility of using a facilitated process to develop the study in September of 1997, and the idea was proposed to a group of interested parties on October 10, 1997. After the group agreed to attempt to work together to develop the study, the Departments undertook concerted efforts to seek input from as many diverse interests as feasible and appropriate, and the group expanded to approximately thirty people. The group met during eight four-hour facilitation sessions in November and December. Two follow up meetings occurred on January 12 and January 16, 1998.

Roger Williams of the Minnesota Office of Dispute Resolution served as a neutral facilitator for the group. His role was to provide neutral facilitation of the discussions to help the parties cooperatively generate solutions that would meet their respective concerns related to the development of a complaint process.

III. Issues Identified by the Group

The challenge for the group was to work together to design a system that would be fair and reasonable from the perspective of consumers, health plan companies, and regulators. During the first few meetings, the group determined the ground rules for the process. The facilitator then guided the group through a brainstorming process to identify issues that the group should consider in its efforts to develop a complaint process for health plan enrollees. The issues identified included concerns related to consumer accessibility and responsiveness, the impartiality of the system, the relationship between internal and external appeals and the time-lines included therein, the role of regulatory agencies, and the allocation of the costs involved.

Once the issues were identified, the group determined that it needed a clearer understanding of the different perspectives involved. Several sessions thereafter were devoted to informational and educational presentations on how the current system works, including the roles played by various parties, and the perspective of consumers and advocates. Representatives of consumers, advocates, the Minnesota Council of Health Plans, the Insurance Federation of Minnesota, and the Departments of Health, Commerce, Human Services, Employee Relations made presentations to the group. There were also presentations about ERISA, as it relates to the complaint processes of self-insured health plans, and relevant pending federal regulations.

As the group became more focused on resolving the issues and concerns identified, legislative staff assisted the group by drafting a legislative proposal representative of the points of general agreement.

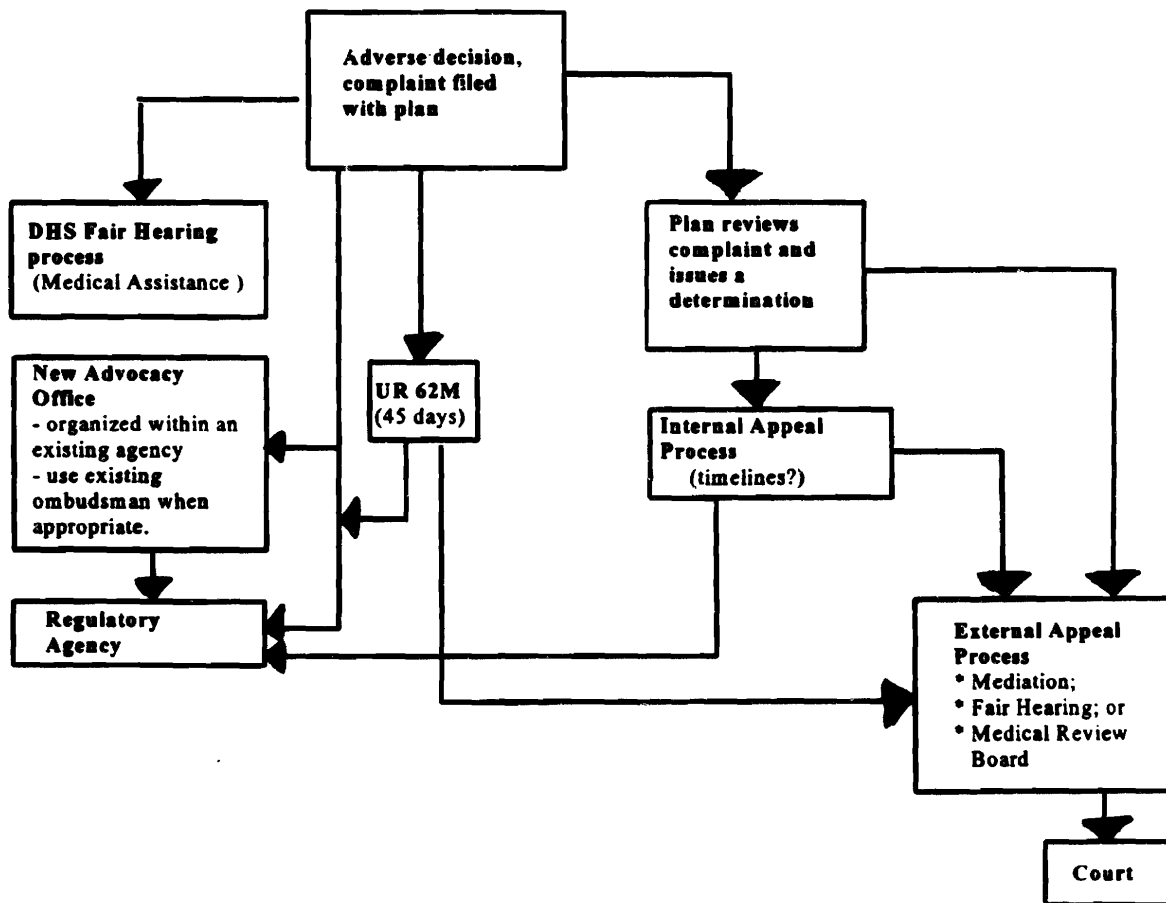
IV. Points of General Agreement

Overall Scheme of Process

There was general agreement of the group that a complaint process should include mechanisms for internal and external review, and the role of the regulatory agencies should not be diminished. The group also agreed, generally, that enrollees should be able to access the external appeal process following an adverse utilization review decision made pursuant to 62M.06.

As the discussions continued, one of the issues identified was the desirability for the creation of an office of health care consumer advocacy. Although the group did not reach agreement on all of the details of creating such an office, most specifically the source of funding, there was general consensus by most regarding the concept. Furthermore, because the discussions continued to focus on the creation of a health care consumer advocacy and information office, the group did not have enough time to resolve further details related to the complaint process.

The following diagram demonstrates the general scheme, as generally agreed upon by the group, of a fair and reasonable complaint resolution process:



Health Care Consumer Advocacy and Information Office

- **Administrative structure.** The group agreed that in order to maximize administrative economies, the new office for health care consumer advocacy should be created within an existing non-regulatory agency. Under this scenario, the new office would be created within the administrative structure of an agency such as the Office of the Ombudsman for Mental Health and Mental Retardation, an independent, non-regulatory state agency. The existing state agency would coordinate and share administrative services with the newly created office of health care consumer advocacy.
- **No regulatory authority.** The group also agreed that the new advocacy office would have no regulatory power and that the regulatory functions of the Departments of Health and Commerce must be kept in place. The health care consumer advocacy office would provide the data it collects based upon the complaints addressed by the office to the Departments of Health and Commerce, industry groups, and the information clearinghouse.
- **Funding.** Although there was general support for the concept of the health care consumer advocacy office, there was no agreement reached as to funding. The majority of the group, including representatives of both consumers and industry, supported a general fund appropriation. However, the Governor's Supplemental Budget does not include general fund dollars for this purpose.

Delayed Effective Date of Minn. Stat. §§ 62Q.105 and 62Q.30 and Continued Efforts by the Group

The parties agreed that the facilitated work group provided an effective forum through which the group could work together in an effort to generate cooperative solutions. Given the complexity of the issues, however, the parties agreed that more time was needed to build consensus on the details of a uniform, complaint process for health plan companies to make available to enrollees. As such, the parties agreed that Minn. Stat. §§ 62Q.105 and 62Q.30 should be amended to delay the effective dates of those sections until July 1, 1999, and the complaint process work group should continue to meet, and with the ongoing assistance of a facilitator, work to resolve these issues. Based on the results of the continued efforts of the work group, the Commissioners of Health and Commerce would then submit recommendations to the legislature by November 15, 1998.

Duplicative Review of Utilization Review Decisions

Under the current utilization review statutes, an enrollee has the right to appeal a decision not to certify and admission, procedure, service, or extension of stay. See Minn. Stat. Sec. 62M.06. There was general agreement by the group that in order to avoid duplicative complaint process review, Minn. Stat. Sec. 62D.11, subd. 1 should be amended to require HMO's to inform enrollees that they have the option to chose an alternative dispute resolution process following an appeal of an adverse utilization review decision.

V. Consultation with the Consumer Advisory Board

Pursuant to the directive of the legislature, the complaint process study and the development of this report were conducted by the Departments in consultation with the Consumer Advisory Board. *The Board has submitted the following viewpoints and recommendations to the Departments for inclusion in this report¹:*

- A consumer advocacy office will give consumers a place to go that is independent from health plans and regulatory agencies, thus providing them with an advocate in the strictest sense, and it will help consumers through complaint resolution processes.
- The Consumer Advisory Board recommends that the advocacy office be visible through outreach, education, and communication; that it be publicly accountable to the Consumer Advisory Board or another independent entity; and that it be accessible statewide.
- The Consumer Advisory Board recommends that health plans, regulatory agencies, the Consumer Advisory Board, the medical profession, and an advocacy office all work to educate consumers about their rights.
- The Consumer Advisory Board has concluded that consumers need a complaint and appeal process that is neutral and independent from regulatory agencies and private industry. It should also be easily accessible to consumers; publicly accountable to the Consumer Advisory Board or another independent entity; and it should work to resolve complaints in a timely manner. It should also be fully funded.
- To continue its work of providing information about the needs of health care consumers and educating consumers about the health care system, the Consumer Advisory Board must have full funding.
- Health plan consumer service representatives must be adequately trained so they can educate enrollees about their complaint and appeal options.
- All complaint processes, including internal and external processes offered by state regulators or other independent entities, must be accessible to people with disabilities, people of diverse cultures, and people who live in all regions of the state.

¹ The Consumer Advisory Board submitted their own report to the legislature. A full copy of that report may be obtained by contacting Mark Meath at the Department of Health: phone (612)282-5615; 121 East Seventh Place, P.O. Box 64975, St. Paul, Minnesota 55164-0975.

- The complaint investigation processes of state agencies should be improved.
- The Departments of Health and Commerce should conduct independent investigations whenever necessary and should report their findings to the complainant to the greatest extent allowed by law.

VI. Recommendations

Based on the points of agreement reached by the group, the Departments of Health and Commerce make the following recommendations:

- In order to avoid duplicative complaint process review, Minn. Stat. Sec. 62D.11, subd. 1 should be amended to require HMO's to inform enrollees that they have the option to use an alternative dispute resolution process following an appeal of an adverse utilization review decision under 62M.06.
- If a health care consumer advocacy and information office is created, it should be organized within the administrative structure of the Department of Health, but it should remain organizationally separate from the regulatory function of the agency. Placing the new office within the administrative structure of the Health Department will help achieve the goal of optimum administrative efficiency while also building upon existing expertise related to health care currently available within the Department.
- The regulatory functions of Health and Commerce must be kept in place. The Departments need to know immediately of any financial problems, claim problems or health care delivery problems experienced by health plan companies. The Departments are concerned that moving the complaint process out of the Departments would do harm to the regulatory functions of the agencies.
- The Departments of Health and Commerce would not support funding a new office of health care consumer advocacy and information with general fund appropriations because the Governor's Supplemental Budget does not include general fund dollars for this purpose.
- Following the 1998 legislative session, the complaint process work group should continue to meet, with the continued assistance of the neutral facilitator. A number of issues and concerns have been identified by the group and must be addressed during the process of developing a uniform complaint resolution process for health plan companies. The representatives of various interests were able to work effectively in the setting of the facilitated sessions. More time is needed, however, for the group to develop a legislative proposal that will be perceived as fair and reasonable by all members of the group.

- **Based on the continued work of the facilitated group, and in consultation therewith, the Departments of Health and Commerce should submit a report with recommendations and draft legislation to the legislature on developing a complaint resolution process by November 15, 1998.**
- **Minn. Stat. §§ 62Q.105 and 62Q.30 should be amended to delay the effective date of those sections until July 1999.**

Appendix

Participants in the Complaint Process Facilitation

**Roger Williams, Neutral Facilitator
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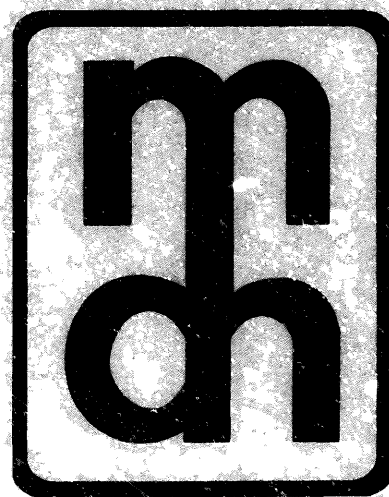
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Minnesota Department of Health**