

Minnesota Attorney General: Administrative Rules Proceedings

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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

43

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Health
(Agency or Board)

Regulation No. MHD 291 thru 298 (new)

Subject: Health maintenance Organizations

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Publication, Central Services Division
Documents Section
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Commissioner of Administration

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BY Eda Staudenmaier
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Chapter Twenty Eight: Regulations for the Certification and Regulation of Health Maintenance Organizations.

MHD 291 Authority, Scope and Purpose. These rules are promulgated pursuant to Minn. Stat. §§62D.03, Subd. 4(m); 62D.04, Subd. 1(c); 62D.04, Subd. 1(d); 62D.04, Subd. 1(g); 62D.06, Subd. 2; 62D.08, Subd. 1; 62D.08, Subd. 3; 62D.08, Subd. 3(e); 62D.12, Subd. 2(g); and 62D.20 relating to health maintenance organizations in particular, and Minn. Stat. §§15.0411 - 15.0413 relating generally to the promulgation of administrative rules and regulations. These rules and all future changes herein apply to all health maintenance organizations operating in the State of Minnesota at the time of their adoption and to all health maintenance organizations hereafter certified, and are promulgated to carry out the Health Maintenance Act of 1973 and to facilitate the full and uniform implementation and enforcement of that law.

MHD 292 Definitions.

(a) All terms used herein which are defined in Minn. Stat., Chapter 62D, shall have the meanings attributed to them therein. For the purposes of these regulations the terms defined herein shall have the meanings given to them.

(b) "Accepted Actuarial Principles" means those prevailing statistical rules relating to the calculation of risks and premiums or prepayment charges of health maintenance organizations, prepaid

group practice plans or commercial health insurance carriers.

(c) "Act" means the Health Maintenance Act of 1973, Minnesota Laws 1973, Chapter 670, Minnesota Statutes, Chapter 62D.

(d) "Complaint" means any written enrollee grievance against a health maintenance organization or provider arising out of the provision of health care services, and which has been filed by an enrollee or his representative in accordance with MHD 299 and is not or is not yet the cause or subject of an enrollee election to litigate.

(e) "Comprehensive Health Maintenance Service" means a group of services which includes at least all of the types of services defined below:

(1) "Emergency care" means professional health services immediately necessary to preserve life or stabilize health.

(2) "In-patient hospital care" means necessary hospital services affording residential treatment to patients. Such services shall include room and board, drugs and medicine, dressings, nursing care, x-rays, and laboratory examination, and other usual and customary hospital services.

(3) "In-patient physician care" means those health services performed, prescribed or supervised by physicians within a hospital, for registered bed patients therein; which services shall include diagnostic and therapeutic care.

(4) "Outpatient medical services" means ambulatory care including health supervision, preventive, diagnostic and therapeutic services, including diagnostic radiologic and other

supportive treatment.

(5) "Preventive Medical services" means health education, health supervision including evaluation and follow-up, immunization and early disease detection.

(f) "Governing body" means the board of directors, or if otherwise designated in the basic organizational document and/or bylaws, those persons vested with the ultimate responsibility for the management of the corporate entity that has been issued a certificate of authority as a health maintenance organization.

(g) "In area services" are those services provided within the geographical areas served by the health maintenance organization as described in its application for a certificate of authority and any subsequent changes therein filed with the Board.

(h) "Out of area health care services" are those services provided outside of the health maintenance organization's geographic service area, as such area is described in the health maintenance organization's application for a certificate of authority, and any subsequent changes therein filed with the Board.

(i) "Provide" as that word is used in Minn. Stat. §62D.09 means to send by United States postal service, by alternative carrier, or by other method to the place of residence or employment of each enrollee or, if such enrollee is a member of a specified group covered by a health maintenance contract, to the office of the authorized representative of any such group.

(j) "Formal procedural requirements" means those rules governing the conduct of administrative hearings applicable to and

affecting the rights, duties and privileges of each party to a "contested case," as such term is defined and as such rules are set forth in Minnesota Statutes, Chapter 15.

(k) "Enrollee co-payment provisions" means those contract clauses requiring charges to enrollees, in addition to fixed prepaid sums, to supplement the cost of providing covered comprehensive health maintenance services.

(l) "Summary of current evidence of coverage" means written notice to be provided to enrollees by every health maintenance organization as prescribed in the Act. Such notice shall describe changes in health maintenance contract coverage but need not necessarily be specific as to changes respecting the coverage of any individual enrollee.

M.H.D. 293 Contents of Application. Applications for certificates of authority shall be submitted on forms provided by the Board which shall include, but not be limited to the matters covered in this rule.

(a) Disclosure in Applications. Each application for a certificate of authority shall include disclosure of the following:

(1) Any contractual or financial arrangements between members of the board of directors/principal officers and the health maintenance organization including:

(aa) A description of any obligations, specified by contract or otherwise, to be met by each party in accordance with any such arrangements; and

(bb) A listing of the dollar amounts of any consideration to be paid each party in accordance with any such arrangements.

(2) Any financial arrangements between members of the board of directors/principal officers and any provider or other person, which provider or other person also has a financial relationship with the health maintenance organization. This information shall be required only if any financial arrangements between members of the board of directors/principal officers and any provider/other person relate to the provider or other person's relationship with the health maintenance organization. The disclosure shall include:

(aa) A description of the obligations to be met by each party in accordance with any such arrangements; and

(bb) A listing of the dollar amounts of the consideration to be paid each party in accordance with any such arrangements.

(b) Insurance. Each application for a certificate of authority shall attach pertinent documents, including copies of insurance contracts, in verification of compliance with Sections 62D.04, Subd. 1(f), 62D.05, Subd. 3, 62D.12, Subd. 4 and 62D.13 of the Act with respect to assumption of risks and insurance against risks.

(c) Financial Responsibility. Each application shall state which option for demonstrating financial responsibility has been elected pursuant to Section 62D.04, Subdivision 1(e) of the Act and any pertinent documents which demonstrate financial responsibility shall be attached to the application.

(d) Statistics. The application shall detail procedures established to develop, compile, evaluate, and report statistics which shall include the collection and maintenance of at least

the following data:

(1) Operational statistics sufficient to meet the requirements of Section 62D.08, Subdivision 3(a) of the Act relating to annual financial reports;

(2) Gross utilization aggregates, including hospital bed days, outpatient visits, laboratory tests, and x-rays;

(3) Demographic characteristics, including the age and sex of enrollees;

(4) Disease-specific and age-specific mortality rates;

(5) Enrollment statistics compiled in accordance with Section 62D.08, Subdivision 3(b) of the Act.

(e) Other Requirements. Each application must also include documentation and/or evidence of compliance with all of the requirements of the Act and these regulations, and the Board may require such other information in applications for certificates of authority as it feels is necessary to make a determination on the application.

MHD 294 Operating Requirements and Requirements for Issuance of a Certificate of Authority. Each health maintenance organization must submit the information required in Minn. Stat., Chapter 62D and MHD 293 and the Board must find that each health maintenance organization meets the statutory requirements and the standards of these rules before it may issue a certificate of authority. The failure of an operating health maintenance organization to comply with the requirements is proper basis for disciplinary action under Minn. Stat. §§62D.15 - 62D.17.

(a) Insurance. A health maintenance organization may provide for the payment for the cost of emergency services, out-of area services or other services which go beyond the minimum services required herein through a policy of insurance.

(b) Financial Responsibility. In making its determination of financial responsibility, the Board will apply the following guidelines as appropriate:

(1) A reasonable period of time for the continued availability of health care services is sixty (60) days.

(2) Financial soundness can be demonstrated by showing the capacity of the applicant to produce a cash flow sufficient to cover normal operating expenses for sixty (60) days, plus all initial organizational and promotional expenses.

(3) Adequate working capital can be shown by the availability of an amount of money sufficient to cover normal operating expenses for sixty (60) days, plus any and all initial organizational and promotional expenses.

(4) The comparability to the charges for similar services used by other health maintenance organizations and other health delivery systems will be used in considering the proposed schedule of changes.

(c) Comprehensive Health Maintenance Services. All health maintenance organizations shall provide comprehensive health maintenance services to enrollees.

(1) Minimum Services. Such comprehensive health maintenance services shall include but need not be limited to:

(aa) Provisions for emergency in area health care services which shall (1) be available twenty-four (24) hours a day, seven (7) days a week; (2) be provided either directly through health maintenance organization facilities or through arrangements with other providers; (3) be provided by a physician and other licensed and ancillary health personnel, as appropriate, readily available at all times; and (4) be covered for enrollees requiring such services but who, for reasons of medical necessity and not convenience, are unable to obtain them directly from the health maintenance organization in which they are enrolled or from providers or other persons with whom the health maintenance organization in which they are enrolled has arrangements for the provision of services.

(bb) Provisions covering out-of-area services which must include out-of-area emergency care;

(cc) All in-patient hospital care except as exclusions or limitations are hereafter permitted;

(dd) All in-patient physician care except as exclusions or limitations are hereafter permitted;

(ee) All out-patient medical services except as exclusions or limitations are hereafter permitted; and

(ff) Procedures for providing preventive medical services.

(2) Permissible Limitations and/or Exclusions. Permissible limitations upon and/or exclusions from those comprehensive health maintenance services required in MHD 294(d)(1) may include:

(aa) Limitations upon and/or exclusions of the

provision of corrective appliances and artificial aids;

(bb) Limitations upon and/or exclusions of cosmetic surgery;

(cc) Limitations upon and/or exclusion of dental services;

(dd) Limitations upon and/or exclusion of the provision of drugs and medicines, except during hospitalizations;

(ee) Limitations upon and/or exclusions of ambulance transportation;

(ff) Limitations upon and/or exclusions of hemodialysis or other procedures for treatment of chronic renal failure;

(gg) Limitations upon and/or exclusions of custodial and/or domesciliary care; and/or

(hh) Limitations upon and/or exclusions of care for injuries incurred while on military duty.

(ii) Limitations upon and/or exclusions of organ transplants.

(jj) Limitations upon treatment of mental and emotional conditions, except for diagnosis and referral;

(kk) Limitations upon convalescent care;

(3) Copayments, Limitations, Exclusions and Restrictions on Service. In addition to the limitations and exclusions allowed in MHD 294(d)(2), a health maintenance organization may impose copayments for services or goods provided and may impose

certain restrictions on services, such as on frequency or length of time a health maintenance service is provided. Provided, however, that all copayments, limitations, exclusions and restrictions must be reasonable. The express policy of the Board is to favor limitations rather than exclusions, and the Board may limit the extent of limitations and/or exclusions which may be included in any health care plan to ensure that comprehensive health care services are reasonably available to enrollees. The standard of reasonableness shall be applied in full consideration of the general concept that a health maintenance organization must provide comprehensive health maintenance services in exchange for a single, prepaid sum. Any such provisions must clearly be stated in the evidence of coverage in compliance with Minn. Stat. §62D.07, Subd. 3(b).

(4) Subrogation and Coordination of Benefits.

The health maintenance organization may require an enrollee to reimburse it for the reasonable value of health maintenance services provided to an enrollee who is injured through the act or omission of a third person or in the course of employment to the extent the enrollee collects damages or workman's compensation benefits for the diagnosis, care and treatment of his injury. The health maintenance organization may be subrogated to the enrollee's rights against the third person or the enrollee's employer to the extent of the reasonable value of the health maintenance services provided including the right to bring suit in the enrollee's name. The health maintenance organization may also provide in its evidences of coverage for

coordination of benefits, whereby the health maintenance organization is entitled to determine whether and to what extent an enrollee has indemnity or other coverage for the services or goods provided to the enrollee by the health maintenance organization, to establish standards for priority of payment among those obligated to provide services or indemnification, and to enforce the health maintenance organization's right to recover under those standards. Provided, however, no health maintenance organization may recover the value of services rendered from an enrollee beyond the fixed prepayment amount, any reasonable copayment and any amount actually received by the enrollee in indemnification for the value of services rendered by the health maintenance organization.

(d) Availability and Accessibility. Applicants shall be in compliance with Section 62D.04, Subdivision 1(a) of the Act when, upon review of an application for a certificate of authority, the Board is satisfied that:

(1) Comprehensive health care services will be provided directly by the applicant through arrangements with other providers or in compliance with MHD 294(a).

(2) Provider staff patterns and ratios of physicians, paramedical and ancillary health personnel to potential enrollees will be in accordance with acceptable professional practices and will reasonably meet anticipated enrollee needs;

(3) The applicant will comply with the requirements set forth in MHD 294(c)(1)(aa) and (bb) regarding the provision of emer-

gency and out-of-area services; and

(4) The applicant's geographic location and hours of operation will facilitate the reasonable delivery of health care services to potential enrollees.

(e) Quality Evaluation. Arrangements for an ongoing evaluation of the quality of health care shall include, but not necessarily be limited to, provisions for:

(1) Meeting the standards of quality review set forth in the Social Security Amendments of 1972, 42 U.S.C. 1320 c and

(2) An ongoing internal peer review system.

(f) Statistics. Each health maintenance organization shall establish and maintain procedures to develop, compile, evaluate, and report statistics which shall include the collection and maintenance of at least the following data:

(1) Operational statistics sufficient to meet the requirements of Section 62D.08, Subdivision 3(a) of the Act relating to annual financial reports;

(2) Gross utilization aggregates, including hospital bed days, outpatient visits, laboratory tests, and x-rays;

(3) Demographic characteristics, including the age and sex of enrollees;

(4) Disease-specific and age-specific mortality rates; and

(5) Enrollment statistics compiled in accordance with Section 62D.08, Subdivision 3(b) of the Act.

MHD 295. Governing Body; Consumer Members; Enrollee Participation ; Complaint System.

(a) Selection of Governing Body

(1) Non-consumer members of the governing body shall be selected in accordance with procedures set forth in each health maintenance organization's basic organizational document and/or bylaws.

(2) The basic organizational document and/or bylaws shall also provide a reasonable procedure by which the enrollee directors are to be elected. Such procedure must include notification:

(aa) To those entitled to vote for enrollee directors of the time, place, and method by which such nomination and election is to be conducted at least two weeks prior to the nomination and election;

(bb) To those entitled to vote for enrollee directors of the names of consumer nominees, a general description of their backgrounds and a description of the method by which a ballot may be cast;

(cc) To all enrollees of the results of such election including a general description of the backgrounds of the enrollee directors, to be given not later than at the time of issuance of the next annual summary of information to enrollees.

(3) Consumer representatives on the governing body must be enrollees at the time of their election and during their term of office. Should a consumer representative be removed for failure to meet this qualification or for any other reason set forth in the bylaws, he may be replaced only until the next election by

another consumer elected by the remaining consumer representatives on the governing body.

(4) The terms below which appear in Minn. Stat. Section 62D.02, Subd. 10 will be defined as follows in determining whether or not an enrollee is a consumer:

(aa) A "Licensed health professional" is any person licensed under Minnesota Statutes to provide or administer health services.

(bb) A "Health care facility" is any hospital, nursing home, or boarding care home required to be licensed as such under Minn. Stat. §144.50 to 144.56 or 144.583.

(cc) A "Substantial financial interest in the provision of health care services" is a person's receipt or right to receive not less than twenty-five (25) percent of his gross annual income directly from the rendering of health service.

(dd) A "Substantial managerial interest in the provision of health care services" is a person's supervisory or administrative responsibilities as an employee of a health care facility.

(b) Enrollee Opinion. The Board will review the proposed mechanism for affording enrollees an opportunity to express their opinions on matters of policy and operation to see if it reasonably provides such an opportunity. Permissible alternatives to those mechanisms described in Section 62D.06, Subdivision 2 of the Act may include but are not limited to one or more of the following:

(1) Permitting enrollees to attend, after prior reasonable notice, and express their opinions at certain regular meetings of the governing body or special meetings called for the express

purpose of affording enrollees an opportunity to express their opinions;

(2) Creating a special committee of the governing body which will hold meetings on at least a quarterly basis and which will be open to all enrollees to express their opinions;

(3) Designating a special administrative office within the health maintenance organization, responsible directly to the governing body, which will be open to enrollees to express their opinions on a regular basis;

(4) Creating enrollee councils, representing enrolled groups and groups of individual enrollees, which will be afforded a reasonable opportunity to meet with the governing body or its designee to express enrollee opinion; and

(5) Such other mechanisms as the Board may authorize or approve.

(c) Reserved for future use.

(d) Requirements for Complaint System. Health maintenance organization complaint system procedures for the resolution of written, enrollee complaints concerning the provision of health care services shall be considered reasonable and acceptable to the Board if they:

(1) Establish mechanisms through which written, enrollee complaints may be filed by and presented by the enrollee or

his authorized representative, and considered and retained by the health maintenance organization;

(2) Provide for informal discussions, consultations or conferences between the enrollee complainant and a person with the authority to resolve or recommend the resolution of the complaint within thirty(30) days after it is filed;

(3) Provide for hearings:

(aa) At which any complaint not otherwise resolved shall be considered within ninety (90) days after it is filed;

(bb) At which a person or persons with authority to resolve or recommend the resolution of the complaint shall preside;

(cc) Which shall include the receipt of testimony, explanations or other information from enrollees, staff persons, administrators, providers or other persons, as is deemed necessary by the presiding person or persons for a fair appraisal of the complaint; and

(dd) From which concise, written notice of all findings shall be given the complainant within thirty (30) days of the conclusion of any such hearing.

(4) Provide for impartial arbitration of any complaint which is unresolved by the mechanisms set forth in MHD 295 (d)(2) and/or (3) pursuant to a procedure approved by the Board subject to Minnesota Statutes, Chapter 572. The impartial arbitration procedure shall specify the method by which the neutral arbitrator(s) shall be mutually selected by the parties to the arbitration,

the costs of the procedure and how they shall be borne. The arbitrator(s) shall be required to render an award within thirty (30) days from the date of closing the hearings unless otherwise mutually agreed by the parties, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof in accordance with Minnesota Statutes, Sections 572.16 and 572.21.

(5) Provide for giving notice to all enrollees of the existence and operation of said complaint system.

(6) Provide for any other procedures approved by the Board.

(e) Other Processing of Complaints. A health maintenance organization need not utilize those procedures described in MHD 295 (d) as to any written and filed enrollee complaint which is processed by the health maintenance organization's legal counsel or liability insurer, provided that such other processing:

(1) Fairly considers the rights of all parties to the complaint;

(2) Is accompanied by a concise written record of all findings and recommendations arising therefrom, a copy of which record shall be given the enrollee complainant within thirty (30) days of the conclusion of any such processing; and

(3) Results in the resolution of the complaint or an enrollee election to litigate within ninety (90) days of its filing.

(f) Records of Complaints. Every health maintenance organization shall maintain a record of each complaint filed with it during the prior three years. The record shall, where applicable,

include:

(1) The complaint or a copy thereof and the date of its filing.

(2) A brief written summary of the outcome of all informal discussions, consultations or conferences held relative to each complaint and the date or dates on which each such informal discussion, consultation, or conference occurred. Such summary shall include an acknowledgment by the participants in the form of their signatures.

(3) The date or dates of any hearing and a copy of the hearing findings given the enrollee complainant.

(4) The dates of commencement and conclusion of any other processing conducted in accordance with MHD 295(e); and a copy of the concise written record of all findings and recommendations arising therefrom, which record shall include an acknowledgement by those participating in the form of their signatures.

(5) The date of submission of any complaint to arbitration; a copy of the arbitrator's decision; and the date of the decision.

(6) A brief written summary, including the filing date, of each complaint which becomes a subject of litigation; a brief written summary, with dates, of the findings or outcome of any prior processing held relative to the complaint; and a brief written statement describing the outcome of the complaint or claim as determined in litigation.

MHD 296 Annual Reports. In addition to all other information specified in the Act, every health maintenance organization shall include in its annual report to the Board the following:

(a) The results of any and all elections conducted during the preceding calendar year relative to consumer representation on the health maintenance organization's governing body.

(b) A copy of the health maintenance organization's most recent information summary provided to its enrollees in accordance with Section 62D.09 of the Act.

(c) A description of any major changes in the geographical area or areas served by the health maintenance organization.

(d) A description of the method and results of the system to evaluate the quality of health services. Such evaluation shall include, but not necessarily be limited to, study of the quality of care for at least one disease condition or age group.

MHD 297 Other Provisions.

(a) Termination of Coverage.

(1) Justification. In addition to those reasons specified in Section 62D.12, Subdivision 2 of the Act, a health maintenance organization may, upon thirty (30) days notice, cancel or fail to renew the coverage of an enrollee if such enrollee:

(aa) Knowingly gives false, material information at the time of enrollment relative to his health status, provided such cancellation or non-renewal is made within six (6) months of the date of enrollment.

(2) Notice.

(aa) In any situation where thirty (30) days notice of cancellation or non-renewal of the coverage of a specified group plan or of the coverage of any individual therein is required, notice given by a health maintenance organization to an authorized representative of any such group shall be deemed to be notice to all affected enrollees in any such group and satisfy the notice requirement of the Act;

(bb) The notice requirement of Section 62D.12, Subdivision 2 shall be deemed to be satisfied in the event of voluntary enrollee or voluntary group cancellation or non-renewal of coverage, including such voluntary cancellation manifested by the enrollee's failure to pay the prescribed prepayment amount.

(cc) The notice requirement of Section 62D.12, Subdivision 2, of the Act shall not compel a health maintenance organization to provide health care services beyond a date for which payment therefore may not reasonably be expected to be received.

(b) Insurance Terminology. Except as it relates to the name of any health maintenance organization, Section 62D.12, Subdivision 3 of the Act shall not be construed to prohibit the use of the words cited or described therein if such usage is incidental to the text of any health maintenance organization contract or literature, enhances the accuracy or understanding thereof, and is not deceptive or misleading.

(c) Maximum Enrollment. The maximum number of enrollees permitted a health maintenance organization shall pertain to current enrollment at any single point in time.

(d) Enrollment Discrimination. A health maintenance organization which refuses to enroll recipients of medical assistance or medicare because of its good faith inability to qualify for such payments because of state or federal requirements shall not be deemed to be discriminating against any such recipients.

(e) Certificate of Need. For the purpose of complying with Section 62D.22, Subdivision 6 of the Act, any health maintenance organization intending to modify the construction of or construct a health care facility as defined in MHD 295(a)(4)(bb) shall be deemed to be an "applicant," as such term is defined in Section 201(b), Minnesota State Planning Agency Certificate of Need Act Rules and Regulations, 1971.

MHD 298 Planning Grants; Applications.

(a) Applications shall be submitted on a form prescribed by the Board. Information required by the Board will include but need not be limited to:

(1) The health care needs of the proposed service area;

(2) The potential ability of the applicant to develop a viable and financially sound health maintenance organization;

(3) The potential availability and cooperation of providers; and

(4) The proposed organizational structure of the health maintenance organization.

(b) Applications shall be submitted on or before deadlines

prescribed by the Board.

(c) Applications shall be submitted for review and comment to any areawide comprehensive health planning agency having jurisdiction over all or part of the proposed service area of the applicant, provided that such agency must report back to the Board within sixty (60) days from when the grant application was submitted to it.

MHD 299 - 305 Reserved for future use.

I N D E X

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FILED
RICHARD L. BRUBACHER
Commissioner of Administration

APR 8 1974 2:40pm

BY Eda Staudenmaier
AUTH. SIGNATURE

APPROVED AS TO FORM AND LEGALITY
April 8 19 74
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 8 - 1974 - 2:10 pm
Arlen I. Erdahl
Secretary of State

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Health
Maintenance Organizations

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 62D.01 - .29, the Minnesota State Board of Health and the Department of Commerce deem it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in them by the above-referenced statute.

NOW, THEREFORE, IT IS ORDERED this 3 day of November, 1973, that a public hearing on the proposed rules captioned above be held in the Board Room, Minnesota Health Department, 717 Delaware Street S.E., Minneapolis, Minnesota, on December 12, 1973, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
BOARD OF HEALTH

Warren R. Lawson

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

DEPARTMENT OF COMMERCE

Edward J. Driscoll by B.M. Heaton

EDWARD J. DRISCOLL
Commissioner of Commerce

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
STATE BOARD OF HEALTH
AND THE
DEPARTMENT OF COMMERCE

In the Matter of Proposed
Rules Relating to Health
Maintenance Organizations

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412 subd. 4 (1971) in the above-entitled matter, in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota, on Wednesday, December 12, 1973, commencing at 9:30 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Board and the Department of Commerce propose to adopt rules relating to Health Maintenance Organizations with specific attention given to the following matters: the content of applications for a Certificate of Authority to operate a Health Maintenance Organization; the requirements for issuance of a Certificate; the methods to be used to evaluate quality; the organization of the Health Maintenance Organization, including the composition and method of selecting the governing

body, alternate ways of affording enrollees the opportunity to participate in the organization and the manner of resolving enrollee complaints; the content of the annual reports to the State Board of Health; the manner of terminating an enrollee's coverage; the information required in an application for a planning grant from the State Board of Health; open enrollment requirements; examination and licensing of agents; and the determination by the Insurance Commissioner as to whether any expenses are unreasonably high.

Copies of the proposed rules are now available and may be obtained directly at or by writing to Kent Peterson, Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Copies will also be available at the door on the date of the hearing.

A copy of the procedural rules for the hearing is attached and made a part hereof.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to the Secretary and Executive Officer of the Board at the Department of Health Building, address as above or the Commissioner of Commerce, Metro Square Building, 7th and Robert Street, St. Paul, Minnesota 55101. If the person submitting a statement cannot be present to read his statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs

or other written material relative to the proposed rules for twenty (20) days subsequent to the hearing.

It is suggested that to save time and avoid duplication, those organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

Dated: November 3, 1973.

STATE OF MINNESOTA

BOARD OF HEALTH

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

DEPARTMENT OF COMMERCE

EDWARD J. DRISCOLL
Commissioner of Commerce

MINNESOTA STATE BOARD OF HEALTH

PROCEDURAL RULES FOR HEARING

The purpose of the hearing is to allow interested parties to express their views and present facts bearing upon the proposed regulations. So as to provide for an orderly presentation of evidence, the following rules will be in effect during the hearing specified in the attached Notice of Hearing:

1. Anyone wishing to be heard should indicate by signing the speaking sheet, listing his name, address, and the group which he represents. The speaking sheet will be available at the main entrance to the hearing room. It is requested that each group select one speaker only to present its views.

2. The first time the witness makes a statement he should spell his name and identify the group he is representing. Prior to making any subsequent statements he should state his name and the group which he represents. He may be sworn upon his request but it is not required. If he elects not to be sworn, that may be considered in determining the weight to be given to his testimony.

3. By giving testimony, a witness, including one who may also be a member of the panel, subjects himself to questioning by the panel. However, he is subject to cross-examination by non-members of the panel only if he affirmatively consents to being so examined. A refusal to be cross-examined may be considered in determining the weight to be given to his testimony.

4. All parties interested in introducing any written matter may do so by having it marked as an exhibit and then introduced for the record. Unsworn written matter may be received, but the fact that it is unsworn may be considered in determining the weight to be given it.

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

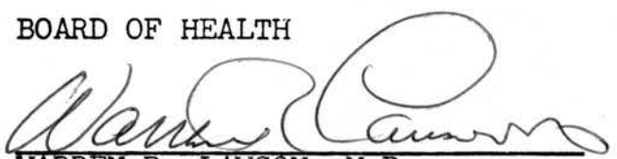
I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Health duly and properly called and held on the 12th day of July, 1973, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Health as required by Minn. Laws 1973, ch. 670 (the Health Maintenance Act of 1973) for the regulation and control of Health Maintenance Organizations as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as acting as or appointing a presiding officer at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of March, 1974.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the matter of the Proposed
Rules Relating to Health
Maintenance Organizations

CERTIFICATE

I hereby certify that the attached 302 labels & 2 1/2 sheets general labels and Health Department and Insurance Division lists constitute the complete list of persons, associations, and other interested groups who as of 4:00 O'clock P.M., this 29th day of October, 1973, have requested pursuant to Minn. Stat. § 15.0412 subd. 4 (1971), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

ARLEN I. ERDAHL

By Arlen I. Erdahl

Cecil Dixon

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of the Proposed
Rules Relating to Health
Maintenance Organizations

AFFIDAVIT
OF MAILING

Charlotte D. Sommers, being first duly sworn, deposes and says:

That on the 2nd day of November, 1973, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all members of the Minnesota Legislature.

Charlotte D. Sommers

Subscribed and sworn to before
me this 6th day of NOVEMBER, 1973

Christine A. Kuderka

CHRISTINE A. KUDERKA
Notary Public, Ramsey County, Mn.
My Commission Expires, Nov. 4, 1978

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Health
Maintenance Organizations

APPOINTMENT

David Giese is hereby appointed to serve as hearing officer on behalf of the State Board of Health in the above-captioned matter, said hearing to be held on December 12, 1973, and continue until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

This appointment is made pursuant to the following authority: resolution of the State Board of Health dated July 12, 1973.

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R Lawson

WARREN R. LAWSON, M.D.
Secretary and Executive Officer
by Duane H Johnson

Dated: Dec 12, 1973.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Health
Maintenance Organizations

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the State Board of Health.

The need to adopt these rules arises because of the legislative mandate contained in the Health Maintenance Act of 1973, Minn. Laws 1973, ch. 670, sec. 20.

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R Lawson

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

by Duane F Johnson

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
STATE BOARD OF HEALTH

In the Matter of the Proposed
Rules Relating to Health
Maintenance Organizations

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Minnesota State Board of Health on the 12th day of December, 1973, at 9:30 A.M. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, the Board makes and enters the following findings:

1. Authority to adopt regulations pertaining to the certification and regulation of Health Maintenance Organizations (H.M.O.s) is contained in Minn. Stat. §§ 62D.03 subd. 4 (m); 62D.04 subd. 1 (c); 62D.06 subd. 2; 62D.08 subd. 3; 62D.12 subd. 2 (g); and 62D.20 (1973). These statutes provide for clarification by the Board of Health of the responsibilities of H.M.O.s. Minn. Stat. § 62D.20 (1973) specifically states

that the Board may "promulgate such reasonable rules and regulations as are necessary or proper to carry out the provisions of the [Health Maintenance] act." These regulations are within that grant of authority.

2. There is a need for these regulations. The Health Maintenance Act of 1973 (Act) imposes an extensive regulatory scheme on H.M.O.s. These regulations are necessary to implement that scheme and to clear up any questions as to what is required of Health Maintenance Organizations. As noted above, the Act grants the Board the authority to promulgate reasonable regulations to carry out the provisions of the Act. The statute provides that

> . . . Included among such regulations shall be those which provide minimum requirements for the provision of comprehensive health maintenance services, as defined in section 2, subdivision 7, and reasonable exclusions therefrom.

The legislature has therefore indicated that certain reasonable regulations are needed. The Board finds that these regulations, as adopted, are reasonable and necessary to carry out its duties under the Act.

3. MHD 292 (e)(5) is an attempt to define a phrase found in the Health Maintenance Act. Minn. Stat. § 62D.02 subd. 7 (1973 Supp.) states that "preventive medical services" is one of the services required of an H.M.O. The Board finds that the four factors found in the regulation are sufficiently broad to reasonably encompass that wide range of services which the statute requires an H.M.O. to offer.

4. Minn. Stat. § 62D.20 (1973 Supp.) requires the Board to develop regulations which "provide minimum requirements for the provision of comprehensive health maintenance services." MHD 294 (c) states that such services shall include but not be

limited to emergency care, inpatient hospital care, inpatient physician care, outpatient medical services, and procedures for providing preventive medical services. This regulation is a reasonable exercise of the Board's authority in that Minn. Stat. § 62D.02 subd. 7 (1973) defines comprehensive health maintenance services as including, as a minimum, these five services. Therefore, MHD 294 (c) is well within the Board's authority to promulgate. There was testimony which favored adding additional services to this regulation. However, some conflicting testimony opposed the addition of some of the suggested services. Since many H.M.O.s are in the initial stage of development, it is found to be reasonable not to require too many services as this might over-burden an H.M.O. As the organizations become established, the addition of other services may then be required.

5. The Board is required to define reasonable exclusions from those minimum requirements for the provision of comprehensive health maintenance services. MHD 294 (c)(2) establishes certain permissible limitations and/or exclusions. Some witnesses felt that there were too many exclusions. Most of the witnesses, however, stated that more exclusions should be listed. This regulation attempts to establish certain reasonable exclusions by allowing H.M.O.s to avoid providing certain services which are both costly and not of the type generally covered by health insurance contracts. An H.M.O. may provide any of these services if it so desires. This regulation, however, permits H.M.O.s to exclude those services which may be prohibitively expensive and thereby threaten to diminish the H.M.O.'s ability to perform its more usual functions.

6. MHD 294 (e) was criticized in general as being too vague. Minn. Stat. § 62D.04 subd. 1 (b)(1973 Supp.) requires an applicant for a Certificate of Authority to make arrangements for an ongoing evaluation for the quality of health care. Thus, in fairly general language, the statute requires H.M.O.s to engage in a relatively new concept in the area of health care. The Board finds that this regulation gives some guidance to H.M.O.s by requiring as a minimum that they comply with the Federal Peer Standards Review Organization legislation when it becomes effective. Each H.M.O. must also have an ongoing internal peer review system. These requirements fulfill the mandate of the Act and are expected to provide the H.M.O. and the Board with an indication of the quality of care being given to enrollees.

7. Various witnesses gave negative testimony in relation to MHD 294 (f). This regulation is based on Minn. Stat. §62D.04 subd. 1 (c)(1973 Supp.). That statute requires each H.M.O. to have a procedure to compile and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services, and such other matters as may reasonably be required by the Board by regulation. This regulation merely spells out the types of information necessary to meet the minimum requirements of the statute. It is therefore found to be necessary and proper.

8. The regulation which is numbered 294 (g) was adopted by the Board as a means of protecting those individuals who fail to pay their prescribed prepayment amount by reason of economic hardship. The Board finds that such individuals would tend to have difficulty in obtaining alternative health

coverage and are, therefore, an underserved population. Thus, the rule is in keeping with the intent of the Act, both as expressed in section 62D.01 and section 62D.28.

9. Some adverse testimony was received on MHD 295 (c). However, the Board finds that the practice of requiring membership fees for the purpose of voting on consumer board members has the potential for use as a device to exclude people from voting or participating in enrollee opinion mechanisms. Therefore, this rule is promulgated to prevent any such abuse from occurring.

10. MHD 295 (e) is found to be necessary to comply with the exception in Minn. Stat. § 62D.11 subd. 1 (a) and (b) (1973 Supp.). The regulation affords full protection of the enrollee's rights by requiring that those rights be fairly considered and that the H.M.O. keep a complete record of the manner in which the complaint was resolved.

11. Other provisions of the regulations not specifically referred to herein are found to be supported by evidence in the record.

12. Many comments and suggested amendments were made at the hearing. Based thereon, modifications were made but in no instance do these modifications significantly change the substance of the regulations as presented at the public hearing.

13. These regulations are in keeping with and will help fulfill the policy of the state as expressed by Minn. Stat. § 62D.01 et seq. (1973 Supp.). In view of the increasing costs of health care and their increasing inaccessibility to large segments of the public, the H.M.O. concept is an alternative method of delivering health care services which

should be explored. These regulations enable the state to carry out the legislature's express wish to closely monitor H.M.O.s to assess their impact on the costs, accessibility, and quality of health care to the consumer.

14. The attached memorandum is made a part of and incorporated into this Finding of Fact.

STATE OF MINNESOTA

BOARD OF HEALTH

Dated: March 20, 1974.

John H. Westerman

JOHN H. WESTERMAN, M.H.A.
President

M E M O R A N D U M

During its 1973 Session, the Minnesota Legislature passed the Health Maintenance Act of 1973 (hereinafter Act), the purpose of which was to encourage an alternative method for the delivery of health care services. The Act eliminates the barriers to the creation of health maintenance organizations. It also expresses the intent of the legislature to closely monitor H.M.O.s in order to assess their impact on the costs, accessibility, and quality of health care provided to consumers. This end can best be accomplished through a proper regulatory scheme. Accordingly, the Act frequently states that the Minnesota State Board of Health (hereinafter Board) shall have the power to promulgate certain regulations relating to various aspects of the Act. The Board is also given general authority to promulgate such reasonable rules and regulations as are necessary or proper to carry out the provisions of the Act.

These regulations are a reasonable attempt to carry out the Board's functions under the Act. They were developed after considerable effort by the Board's staff, the Minnesota State Department of Health (hereinafter the Department) and with the benefit of input from a wide variety of sources.

After the regulations were prepared for distribution to the public, an addendum was developed which modified two regulations. It was made available at the public hearing. The regulations were modified after the public hearing based upon comments and suggestions made at the hearing and have been adopted by the Board as so modified. However, no change was made which went either to another subject matter or

resulted in a rule fundamentally different from that contained in the regulations as presented at the public hearing and as described in the notice of hearing.

MHD 291 is an altered version of the Foreward contained in the regulations presented at the public hearing. It was assigned a number for easier reference and the wording was changed to cite the specific statutory authority.

In MHD 292 (e), the word "comprehensive" was added to adopt the specific language of the statute and a short phrase was added to note that the H.M.O. must provide a group of services, a concept which the Board feels was clearly implied by the regulation presented at the public hearing.

Two regulations which have been deleted were numbered MHD 297 (d)(6) and MHD 297 (h) in the proposed regulations which were presented at the public hearing. MHD 297 (d)(6) would have arguably allowed the Board to require an H.M.O. to offer additional services merely by passing a resolution to that effect. For this reason, it was opposed by witnesses at the hearing who testified that the regulation was beyond the statutory authority of the Board. The Board never intended the regulation to be read in such a broad manner. The regulation was meant to simply be a statement of the fact that the Board, through its rule-making authority, may at some future date require H.M.O.s to offer additional services. The Board has decided to delete this regulation since, if read in the way the witnesses read it, the regulation would be beyond the legal authority of the Board. Further, in view of the intent of the Board in proposing the regulation, the regulation is unnecessary. The Board may, through subsequent rule making, require H.M.O.s to

offer additional services regardless of the existence of this rule. Therefore, this deletion does not have any substantive effect. The other deletion, formerly numbered MHD 297 (h) was first included because the earlier drafts of the regulations dealt with the subject of "open enrollment" on a substantive basis. Therefore, in MHD 297 (h), the term "open enrollment" was defined. Now, the Insurance Division of the Department of Commerce is regulating this area. As a result, the draft of the Board's regulations which went to public hearing and which have been approved by the Board no longer deal in a substantive way with the subject. Accordingly, it serves no purpose to define "open enrollment" and deleting the definition effects no significant change.

MHD 293 and MHD 294 together represent what was proposed at the public hearing as MHD 298. It was divided into two rules so that the rule relating to the content of H.M.O. application forms would be separate from the rule relating to the operating requirements. This modification was made for purposes of clarity and was neither substantive nor did it result in a rule fundamentally different from that contained in the notice of hearing.

MHD 293 (d)(4) was further changed to require that the mortality rates which H.M.O.s must compile shall be disease-specific and age-specific. This rule is not very different from the original proposal, which would have required statistics to be reported on enrollee mortality rates. By specifying that the rates be disease and age specific, the statistics will be of greater value in enabling the Board to carry out its statutory mandate to assess the quality of care offered by an H.M.O. This change was made pursuant to certain testimony at the public hearing.

The prefatory paragraph in MHD 294 is inserted for purposes of clarification. This clarification was necessary after the drafting change noted above which divided one regulation in the proposed rules into two regulations in the adopted set of rules.

At the public hearing, a proposed change in what is now MHD 294 (a) was handed out. A number of witnesses gave testimony on the proposed amendment. This change would have required an H.M.O. to provide for the payment for the cost of emergency or out-of-area services only through a policy of insurance. It was felt that this change was necessary because in the original proposal, MHD 298 (b)(2)(bb), the provision for direct reimbursement to enrollees for actual payment by enrollees probably conflicted with Minn. Stat. § 62D.12 subd. 4 (1973 Supp.). That statute provides as follows:

> No health maintenance contract or evidence of coverage shall provide for the reimbursement of an enrollee other than through a policy of insurance, except to refund payments made by or on behalf of an enrollee.

It is believed that the word "refund" in that statute specifically limits those payments which can be made to the enrollee only to those instances where the H.M.O. is repaying the enrollee for a payment already made by the enrollee to the H.M.O. This would not include a situation where a payment is made by the enrollee to a third party. Therefore, the original proposed regulation was believed to be beyond the scope of the Act. The regulation as adopted also clarifies another point. It was pointed out at the hearing that the proposal submitted at the hearing by the Board could be read

to imply that if an H.M.O. wanted to provide more than comprehensive health maintenance service, it would have to do so directly, without insurance. This was not the Board's intent and would, in fact, be undesirable. Accordingly, MHD 294 (a) has been modified for the purpose of clarification.

MHD 294 (c)(2) was the subject of much testimony at the public hearing. While some witnesses were of the opinion that specific permissible limitations and/or exclusions should be deleted, most witnesses suggested adding additional items. Most of these additional suggested items will be considered as possible subjects of future rule making. For the present, the Board has modified the rule in three ways. First, the services subject only to limitation and not exclusion were grouped together. Second, the wording of the phrase "limitations on treatment of psychiatric conditions" (formerly MHD 298 (d)(2)(dd)) was changed to "limitations upon treatment of mental and emotional conditions" (MHD 294 (c)(2)(jj)) in keeping with the wording of the entire regulation, which speaks in terms of health conditions rather than practice specialties. Third, an additional item which allows for limitations or exclusions of organ transplants was added. This addition is a somewhat more general statement of MHD 294 (c)(2)(ff), which refers to limitations or exclusions relating to kidney diseases and is entirely in keeping with the intent of the entire rule; that is, unusual and highly costly items may be excluded or limited from the coverage offered by the H.M.O.

As proposed at the public hearing, the regulation that is now MHD 294 (c)(4) (formerly MHD 298 (d)(4)) embodied the concept that profiteering on illness and injury should

be discouraged. Accordingly, where a third party is required to pay for services rendered by an H.M.O., the H.M.O. should be allowed to require an enrollee to reimburse it from the money received from the third party. The regulation presented at the hearing, however, only addressed the general subject of subrogation, thereby possibly limiting the types of situations where the H.M.O. can obtain reimbursement. The rule also referred to workmen's compensation benefits. The rule adopted by the Board has the same purpose but attempts to clarify the idea that all third party obligors, even those who are obligated solely by contract, come within the scope of the rule. This rule is entirely in keeping with the intent and purpose of the rule which was proposed at the hearing.

MHD 294 (g) was adopted because it was felt that there was a definite group of people who needed protection. That group includes those people who, because of economic hardship, are unable to pay their prescribed prepayment amount. Such individuals are presently underserved by the health care industry and this regulation was thus felt to promote the purpose of the legislature in increasing the availability and accessibility of health care.

MHD 295 (a) provides the mechanism for selecting the governing body. Some of the language has been altered because, as proposed at the hearing, the regulation went somewhat beyond the language of the Act. The Act provides that at least 40 percent of the governing body shall be composed of consumers elected from among the enrollees. The Act does not specify that all enrollees have the right to participate in the election. In fact, Minn. Stat. ch. 317

governs the manner in which non-profit corporations may elect a governing body. Therefore, some language was modified in MHD 295 (a) to bring the regulation more clearly in line with the Act and Minn. Stat. ch. 317. The changes in the regulation were not major.

MHD 295 (c) prohibits H.M.O.s from charging an enrollee a membership fee "for the privilege of participating in the nomination and election of consumer board members or of participating in enrollee opinion mechanisms." Minn. Stat. § 62D.06 subd. 1 (1973 Supp.) requires that at least 40 percent of the governing body be composed of "consumers elected from among the enrollees." Presently, some H.M.O.s require an enrollee to pay a membership fee to vote for members of the board of directors. Since the Act defines "enrollee" as "any person who has entered into, or is covered by, a health maintenance contract," Minn. Stat. § 62D.02 subd. 6 (1973 Supp.), the Board is of the opinion that the practice of charging a fee for voting ought to be prohibited because it prevents enrollees from participating. By this regulation, the Board requires H.M.O.s to allow all enrollees to participate in the election of consumer members of the governing body.

At the hearing, the Board passed out an addition to the regulation which was then numbered MHD 299 (d)(4). This amendment was suggested by the American Arbitration Association as a means of clarifying the original proposed regulation. The amendment spells out in greater detail some of the procedures which must be specified by the H.M.O. in establishing an impartial arbitration procedure. Comment was received at the hearing and the Board has decided to adopt

MHD 295 (d)(4) in keeping with the purpose of Minn. Stat. § 62D.11 (1973 Supp.). That statute requires an H.M.O. to "establish and maintain a complaint system including an impartial arbitration provision . . . ."

MHD 297 contains much of what was proposed at the public hearing as MHD 301. However, 301 (a)(1)(aa) and (bb) have been deleted. These provisions would have allowed the H.M.O. to terminate coverage if an enrollee unreasonably refused to comply with a treatment program. There was very negative testimony at the hearing on these two provisions because of the potential for abuse by the H.M.O. It was felt that the H.M.O. could terminate coverage of an "expensive" patient by alleging that he didn't comply with the treatment program. In accordance with the testimony, the Board will attempt to determine if there is any real need for such provisions before promulgating them.

MHD 297 (a)(2)(bb) has been modified from what was proposed at the hearing as MHD 301 (a)(2)(bb). The hearing draft of the regulation was worded in such a way as to indicate that Minn. Stat. § 62D.12 subd. 2, which requires that 30 days notice of cancellation be given by an H.M.O., did not apply to certain situations where the enrollee voluntarily terminates coverage. A rule clearly cannot contravene a statute and the hearing draft of the rule seemed to be doing that, although this was not the Board's intent. Without changing the substance of the rule, the wording has been changed to state that when the enrollee or group voluntarily cancels coverage, the intent of the statute is obviously fulfilled and its notice requirement shall be deemed to be satisfied. Thus, the Board has only clarified this regulation and has not effected any substantive change.

The regulation of H.M.O.s is an entirely new field in which the Board has become involved. The testimony at the public hearing was quite valuable in assisting the Board in determining how best to regulate H.M.O.s. Many of the recommendations will be incorporated in future rules since they speak to new subject matters not embodied in the Board's proposed regulations. To the extent that the testimony suggested improvements on the proposed draft of the regulations, the Board has attempted to incorporate these recommendations into these adopted regulations.

STATE OF MINNESOTA

BOARD OF HEALTH

Dated: March 20, 1974.

John H. Westerman

JOHN H. WESTERMAN, M.H.A.
President

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of the Proposed Rules Relating to Health Maintenance Organizations

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Minnesota State Board of Health on the 12th day of December, 1973, at 9:30 A.M. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Regulations for the Certification and Regulation of Health Maintenance Organizations are adopted this 22 day of March, 1974, pursuant to authority vested in me by Minn. Stat. § 62D.20 (1973 Supp.) and by resolution of the Minnesota State Board of Health duly adopted at a meeting of the said Board on the 14th day of March, 1974.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Health duly and properly called and held on the 14th day of March, 1974; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the Regulations for the Certification and Regulation of Health Maintenance Organizations be and they hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. §§ 15.0412 and 62D.20 (1973 Supp.) and that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and hereby is authorized and directed to sign an order adopting these rules, to submit said rules to the Attorney General for approval and, upon being approved, file said rules with the Secretary of State and the Minnesota Department of Administration."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of March, 1974.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General John A. Breviu, do hereby declare that I have examined the proposed rules relating to Health Maintenance Organizations and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. An exception is as follows:

At the March 14, 1974 meeting of the Minnesota State Board of Health, the following regulation was proposed by a Board member:

> MHD 294 (g) Non-payment by enrollee of premium to an H.M.O. shall not cause termination of coverage with that H.M.O. until a period of 90 days has elapsed.

It was at this meeting that the Health Maintenance Organization regulations were adopted. The above rule was adopted with the rest of the regulations. This rule speaks to a new subject matter which was not presented at the public hearing in the proposed regulations. Accordingly, there was no opportunity for members of the public to present testimony on this rule. There is also no evidence in the record supporting MHD 294 (g).

For the above reasons, I am of the opinion that the Manual of Rule Making Procedures was not followed in the adoption of MHD 294 (g). Procedural errors were committed which violate both Atty. Gen. 303 (c) and Atty. Gen. 304.

Dated: March 20, 1974

John A. Breviu

JOHN A. BREVIU
Special Assistant
Attorney General