

Minnesota Attorney General: Administrative Rules Proceedings

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286

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Special Assistant
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February 2, 1977

- Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

Minnesota Department of Health Rules

Amendments to Chapter Twenty-Two

Rules for Regulation of

Health Maintenance Organizations

MHD 377. General Provisions.

(a) Definitions. In addition to the definitions in Minn. Stat. §§62D.02, 62E.02 and Minn. Rule 367, the terms and phrases defined in this section have the meaning given them.

(1) "Applicable employer" applies to any person, partnership, association, trust, estate, corporation or political subdivision which:

(i) During the calendar quarter preceding the date of request pursuant to MHD 377(c) or MHD 377(f), employed in Minnesota an average number of not less than 100 employees, other than employees engaged in seasonal employment as defined in Minn. Stat. §268.07, Subd. 5;

(ii) Offers, or on whose behalf there is offered, in the calendar quarter preceding the date of request pursuant to MHD 377(c) or MHD 377(f), a health benefits plan to its eligible employees,

whether purchased from an insurer or a health maintenance organization or provided directly by the applicable employer on a self-insured basis;

(iii) Has received a written request for inclusion in the health benefits plan from a health maintenance organization in the manner prescribed by MHD 377(c). Such a written request is not required before applicability to employers who do not offer an accident and health insurance option but are otherwise included under this definition.

One ceases being an applicable employer for a particular calendar quarter in which either: (a) one fails to employ 100 persons as in paragraph (i) above; or, (b) one ceases to offer a health benefits plan to employees during a calendar quarter as in paragraph (ii) above.

(2) "Collective bargaining agreement" means an agreement entered into between an employer, who is required by any State or Federal law to negotiate health benefits with employees in a bargaining unit and to produce a written agreement evidencing the result of such bargaining, and the bargaining representative of its employees.

(3) "Designee" means any person or entity authorized to act on behalf of an applicable employer

or group of applicable employers to offer an accident and health insurance policy, health maintenance contract, or self-insured health benefits plan, to the applicable employer's eligible employees.

(4) "Eligible employee" means an employee who meets the terms and conditions established by an applicable employer, or its designee to participate in an existing health benefits plan.

(5) "Existing health benefits plan" means either:

(i) Any contract or agreement between an applicable employer, or its designee, and a health maintenance organization or an insurer which provides for payment for, or provision of, medical, surgical or hospital care; or

(ii) Any self-insured program made available by the applicable employer which provides for payment for, or provision of, medical, surgical or hospital care.

A plan shall be deemed an "existing health benefits plan" when it is subject to the terms of a collective bargaining agreement which specifically mandates health benefits or identifies the health maintenance organization or insurer which is to be contracted with for health benefits.

(6) "To offer a health benefits plan," as the phrase is used in Minn. Stat. §62E.17, Subd. 1, means to make participation in an existing health benefits plan available to eligible employees, or to such employees and their eligible dependents, where a financial contribution is made by the employer on behalf of such employees.

(b) Applicability to Employers.

(1) An employer, who, prior to the effective date of these rules, offered a dual option of either an accident and health insurance policy or health maintenance organization contract and continues to make a dual option available, shall not be considered to be an "applicable employer" for purposes of these rules.

(2) If an employer has executed a written agreement with an insurer and health maintenance organization to offer a dual option at the next renewal of the health benefits contract, the employer shall not be considered to be an "applicable employer" for the purposes of these rules.

(3) An employer who offers an accident and health insurance option and is not requested in writing by a health maintenance organization shall not be deemed to be an "applicable employer" subject to offering the health maintenance organization option and shall not be deemed in violation of this law.

(4) Nothing in these rules shall prevent an employer from seeking out a health maintenance organization or insurer in order to offer the dual option without being subject to these rules.

(c) Request to Employer for Dual Option Inclusion by a Health Maintenance Organization. A request for dual option inclusion in an employer's health benefits plan by a health maintenance organization shall be received by the employer or the employer's designee not less than 120 days in advance of the renewal date of the existing health benefits plan, unless the employer or its designee waives this time requirement. The request shall:

(1) Be in writing, dated and directed to the specific employer, or the employer's designee.

(2) Provide evidence that the health maintenance organization has a certificate to operate a health maintenance organization in Minnesota.

(3) Describe the service area of that health maintenance organization filed with the state board of health according to Minn. Stat. §62D.03, Subd. 4(i).

(4) Describe the location of facilities where health services are provided or will be provided, and give the days and hours of operation of those facilities. The provision for listing of days and

hours of operation shall be waived for health maintenance organizations which provide health services through more than twenty (20) ambulatory health care locations.

(5) Include sample contracts to be entered into between the health maintenance organization and the employer, or its designee. The health maintenance organization shall specify the final contract at least 30 days prior to the group open enrollment.

(6) State the proposed schedule of charges to be required for various categories of enrollment. After the request is submitted to the employer but at least 30 days prior to the group open enrollment, the schedule of charges may be adjusted by the health maintenance organization in consideration of demographic and other information provided by the employer.

(7) Provide a copy of the most recent annual financial statement of health maintenance organization.

(8) Include sample copies of marketing brochures and membership literature.

(d) Substitution of Another Health Maintenance Organization. If the applicable employer or its designee, subject to MHD 377(c), selects one or more other health maintenance organization which may not have made a request under MHD 377(c), but is willing to

be included in the health benefits plan, the applicable employer is not required to include the option of enrollment in the specific health maintenance organization which initiated the request for inclusion.

(e) Multiple Health Maintenance Organization Options. An applicable employer, or its designee, may include in the health benefits plan offered to its employees, the option of enrollment in other health maintenance organizations which the applicable employer or its designee may decide to offer.

(f) Obligation to Offer the Accident and Health Insurance Option. An applicable employer shall offer an accident and health insurance policy to eligible employees and their dependents at the next renewal of the existing health benefits contract. The applicable employer may choose any insurer which operates pursuant to Minnesota Statutes Chapters 62A or 62C.

MHD 378. Offer of the Dual Option to Employees.

(a) Collective Bargaining.

(1) For those employees whose existing health benefits plan is offered through collective bargaining agreement, the dual option shall be subject to the collective bargaining process, when a new collective bargaining agreement is negotiated or if such agreement is automatically renewable, on its anniversary date.

(2) If the collective bargaining representative rejects all the new dual option alternatives, the employer shall not be considered to be an applicable employer for the purposes of these rules until the next renewal date of the existing health benefits plan. If more than one dual option request is forwarded to the collective bargaining representative, the employer may specify that no more than one of the dual option alternatives be selected.

(3) The applicable employer shall be required to make dual option available to employees not subject to collective bargaining at the next renewal date of the contract covering those employees.

(b) Renewal Date. The employer's obligation to offer a dual option to employees shall be applicable on the first renewal of the existing health benefits plan. In the case of an existing health benefits plan that has no fixed term, the contract shall be treated as renewable on the anniversary date of the contract or the renewal of the collective bargaining agreement, at the discretion of the employer. If the applicable employer is self-insured, the fiscal year shall be considered the term of the existing health benefits plan.

(c) Group Enrollment Period. An applicable employer who offers the option of enrollment with an insurer or health maintenance organization pursuant to MHD 377(c) or (f), shall provide for a group open enrollment period in which dual option is offered. During the first time dual option is made available, the health benefits plan alternatives shall be presented to each eligible employee with the requirement that an affirmative written selection be made by each employee among the alternatives included in the health benefits plan.

(d) Selection by New Employees or Transferees. The opportunity to select among the options within a health benefits plan shall be made available to new employees and employees who have been transferred to a new geographic location at the time the employees are eligible to participate in the health benefits plan, regardless of whether this coincides with the open enrollment period. At the time such employees are eligible to participate in the health benefits plan, such opportunity shall be presented to such employees with the requirement that they make an affirmative written selection among the alternatives included in the health benefits plan.

(e) Access to Employees. The applicable employer shall provide each health maintenance organization

or insurer which is included in its health benefits plan under MHD 377(c) or (f) with fair and reasonable access, at least thirty days prior to and during the group enrollment period, for the purpose of presenting and explaining its program. This accessibility shall include, at a minimum, the opportunity for distribution of educational literature, brochures, announcements of meetings and other relevant printed materials to each eligible employee. This information shall be free of untrue or misleading statements, as prohibited by Minn. Stat. §62D.12, Subd. 1 and §72A.17 to §72A.321. In no event shall the access to eligible employees provided to a new option under MHD 377(c) or (f) be more restrictive than that provided offerers of alternatives in the health benefits plan, whether or not the representatives of the other alternatives elect to avail themselves of such accessibility.

(f) If, following completion of the first annual enrollment period and before the actual effective date, less than twenty-five employees select an option offered in accordance with Minn.Rule MHD 377(c) or (f), then the applicable employer, health maintenance organization under MHD 377(c) or insurer under MHD 377(f), may choose not to provide such new option. If the new option is cancelled due to this clause, the applicable

employer shall re-open the enrollment process and shall permit each eligible employee to select among the remaining options in the health benefits plan, without penalty to the employees.

MHD 379. Employer Contribution for Dual Option Alternative.

(a) The monetary contribution by an applicable employer for dual option added pursuant to MHD 377(c) or (f) shall be based on terms no less favorable than the terms on which contributions to the existing health benefits plans are based. In no event shall the employer's contribution be less in absolute dollar amount per employee for the new dual option alternative than the employer's current contribution for the existing health benefits plan, unless the same absolute dollar amount of the current contribution would exceed the schedule of charges of the new dual option alternative. The applicable employer shall use payroll deduction to collect the eligible employee's contribution toward health benefit coverage if such a payroll deduction system is used under the existing health benefits plan.

(b) The amount of the applicable employer's contribution shall be determined in a manner consistent with the following factors:

(1) The amount of the applicable employer's contribution shall not be reduced on the basis of administrative expenses of the applicable employer or its designee associated with offering the dual option.

(2) The amount of the applicable employer's contribution may exclude such portions of the contribution allocated to benefits other than medical, surgical and hospital care (e.g., life or disability insurance) for which eligible employees and their eligible dependents will continue to be covered, regardless of selection of the dual option alternative.

(c) If the amount of the applicable employer's contribution for health benefits is fixed by a collective bargaining agreement or by a contract with eligible employees, the amount so determined shall constitute the applicable employer's obligation for contribution toward the health maintenance organization prepayment charge or accident and health insurance premium on behalf of an eligible employee and his or her eligible dependents.

(d) Where the applicable employer's contribution for health benefits is determined by a collective bargaining agreement, but the amount so fixed includes contribution for benefits in addition to health benefits, the applicable employer or its designee shall

determine the portion of such employer's contribution applicable to health benefits in accordance with this section.

(e) In the absence of a collective bargaining agreement or employer-employee contract specifying contribution for health benefits, the applicable employer's contribution on the behalf of eligible employees and their eligible dependents, unless otherwise agreed to by the health maintenance organization or insurer and the applicable employer or its designee, shall be based upon the total costs of such health services offered to Minnesota employees for the most recent period for which experience is available, reduced by such amounts identified in accordance with paragraph (b)(2) of this rule. Such cost determination shall be consistent with paragraph (a).

MHD 380. Dual Option on a Self-Insured Basis.

(a) The requirement for offering an accident and health insurance policy in these rules shall be satisifed if the employer pays claims under a health benefits plan which includes all the mandated benefits required by Minn. Stat. Chapters 62A or 62C. For the purposes of these rules, the self-insured plan need not be otherwise approved by the commissioner of insurance.

(b) The requirements for offering a health maintenance organization contract in these rules shall be satisfied if the employer provides health services which include all the comprehensive health maintenance services required by Minn. Stat. Chapter 62D. For the purposes of these rules, the employer-operated health maintenance organization need not be otherwise authorized by the state board of health to perform health maintenance organization functions.

MHD 369(d). Service Area Standard.

(4) The applicant's geographic location and hours of operation will facilitate the reasonable delivery of health care services to potential enrollees. In assessing this standard of reasonable delivery of services, the Board may consider the utilization patterns of the existing health care delivery system in the proposed geographic area.

APPROVED AS TO FORM AND LEGALITY
FEB 01 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 1 - 1977 - 3:15 pm
Joan Anderson Growe
Secretary of State

ADMIN. 1000A
3

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - HEALTH

Office Memorandum

TO : Michael Miller
Special Assistant
Attorney General
Administration
G19-K Admin. Bldg.

DATE: Jan. 5, 1977

FROM : John A. Breviu
Special Assistant
Attorney General

SUBJECT: Dual Option and Service Area Rules

Enclosed for your review is the record for the above-referenced rules which have been adopted by the Board of Health.

If you have any questions, please feel free to give me a call.

JAB:ss
enclosures

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the proposed rules captioned above be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street S.E., Minneapolis, Minnesota on September 20, 1976, commencing at 9:00 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 a Notice of Hearing be mailed 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.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Monday, September 20, 1976, commencing at 9:00 A.M., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota, (612) 296-8112, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would set forth conditions for the implementation of the dual option requirements of Minn. Laws 1976, ch. 296, the "Catastrophic Health Insurance Act of 1976", including:

1. The conditions under which an employer will be subject to the dual option provisions of this law;

2. The method for presenting the dual option offer to employees;

3. The extent of, and method of determining, the employer contribution for dual option alternatives.

4. The standards under which an employer may qualify as offering a dual option on a self-insured basis.

These rules will also amend the service area requirements in the existing Health Maintenance Organization rules.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Kent Peterson, HMO Unit, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing. The authority to promulgate rules is contained in Minn. Laws 1976, ch. 296 § 17 and Minn. Stat. § 62D.20 (1974). A Statement of Need explaining the necessity for the adoption of these rules and a Statement of Evidence, outlining the testimony the Board of Health will introduce at the hearing, will be filed with the Office of Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

Under Minn. Stat. § 10A.01 subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

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: July 23, 1976

STATE OF MINNESOTA

BOARD OF HEALTH

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

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

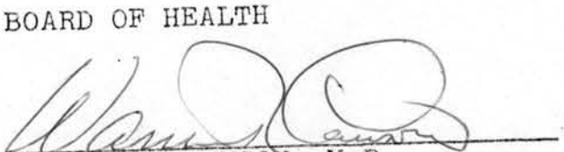
I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Health duly and properly called and held on the 8th day of July, 1976, 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 relating to dual option requirements for employers providing health benefits plans 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 15th day of September, 1976.

STATE OF MINNESOTA

BOARD OF HEALTH



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

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Katherine Teksten, being duly sworn on oath deposes and says:

1) That she is an employee of the Minnesota Department of Health.

2) That on the 12th day of August, 1976, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearing relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 12th day of August, 1976, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Katherine J. Teksten

Subscribed and sworn to before me
this 25th day of August, 1976.

Marie B. Tromiczak

MARIE B. TROMICZAK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission expires Oct. 9, 1980

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations

AFFIDAVIT OF MAILING

Katherine M. Tebsten, being first duly sworn, deposes and says:

That on the 17 day of August, 1976, at the City of Minneapolis, County of Hennepin, State of Minnesota, I he 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 Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Katherine M. Tebsten

Subscribed and sworn to before me this 17th day of August, 1976.

Marie B. Tromiczak

MARIE B. TROMICZAK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 9, 1980

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of Proposed
Adoption of Rules of the
Minnesota State Board of
Health Governing Dual Option
Requirements of Employers
Providing Health Benefit
Plans and Service Area
Requirements of Health
Maintenance Organizations

CERTIFICATE

I hereby certify that the 498 general labels and 3 page list for the Minnesota State Board of Health all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 3:15 o'clock P.M., this 12th day of August, 1976, have requested pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1975), 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.

Joan Anderson Growe
SECRETARY OF STATE

JOAN ANDERSON GROWE

By Ceil Droir

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

STATEMENT OF NEED

The above-captioned rules are amendments to existing rules of the State Board of Health. The last time the above-captioned rules were amended was September 6, 1974 (date of order adopting rules). A public hearing was held on May 7, 1976 regarding other amendments to the Health Maintenance Organization rules of the Board of Health. Those amendments are currently under review and are expected to become effective in the near future.

The need to adopt these rules arises out of legislation which was enacted in the 1976 Minnesota legislative session. Minn. Laws 1976, ch. 296, Art. I, § 17 imposes dual option requirements on employers in this state who employ, on the average during a calendar quarter, 100 employees or more. This dual option requirement compels such employers who offer a health benefits plan to offer to employees a dual option to obtain health benefits through either an accident and health insurance policy or a health maintenance organization contract if one is available. That statute requires the Board of Health, in consultation with the Commissioner of Insurance, to adopt rules to implement the dual option program. The need to adopt each section of these proposed rules is set forth below:

MHD 377. General Provisions.

(a) Definitions. This section contains definitions which are used in the statute and in these rules but which were not previously defined in either Minn. Stat. § 62D.02 (1974), Minn. Laws 1976, ch. 296 Art. 1, § 2 or Minn. Reg. MHD 367.

This rule is necessary to effect a uniform interpretation of the statute and to avoid uncertainty and ambiguity in the administration of the statute and the rules.

(b) Applicability to Employers. This rule creates an exemption for employers who have previously offered dual option and continue to make dual option available to their employees. There is a need to adopt this rule in that the intent of Minn. Laws 1976, ch. 296 Art. 1, § 17 is to make dual option available to new employee groups rather than to alter in any way the existing enrollment procedures, contribution systems or other operational provisions for employees who already have the benefit of dual option. Failure to have such an exemption would require employers who already offer dual option to their employees to undergo a costly administrative procedure to make a new "offer" to the employees even though the "offer" need not contain any additional benefits for the employees.

Minn. Laws 1976, ch. 296, Art. 1, § 17, subd. 1 states that employers shall offer dual option if a health maintenance organization is available. Since there are only nine health maintenance organizations operating in Minnesota, there is not sufficient enrollment potential to make the dual option available to all employees covered under the statute. Accordingly, there is a need for a rule to indicate when an HMO is "available" within the meaning of the statute. This rule fulfills that need by indicating that an HMO is "available" when it makes a written request to the employer to be included in the employer's health benefits program.

(c) Request to Employer for Dual Option Inclusion by a Health Maintenance Organization. Since an HMO becomes "available" only upon making a written request to the employer, a rule is necessary to govern the procedures for making such a request. This rule states when the request must be made and what items of information must be included within the request. There is clearly a need to set forth the information with which an employer must be provided to enable the employer to undergo the administrative process of offering an HMO as part of a dual option program.

(d) - (e) HMO Substitution and Multiple HMOs. These rules permit an employer to substitute one HMO for another or to offer multiple HMOs. The rules

are necessary to clarify the fact that an employer is not locked into one HMO's services simply because the particular HMO was the first one to submit a written request.

(f) - (g) Insurance Companies. These rules require insurance companies to submit essentially the same information to an employer as an HMO if they wish to become part of a dual option program. An employer is also permitted to substitute another insurance company for the one who initiated the request for inclusion in the health benefits plan. These rules are necessary to provide employers with adequate information to process an insurance company's request for inclusion in the health benefits plan and to prevent employers from being locked into an insurer simply because the insurer submitted a written request for inclusion.

MHD 378. Offer of the Dual Option to Employees.

This rule sets forth some essential requirements in the process of offering dual option to employees. While generally it is anticipated that the mechanism for offering dual option will be set by the employer, it is necessary in implementing the statute to establish certain standards in regard to offering the dual option.

First, it is necessary to recognize that where a collective bargaining agreement exists, the mechanics of the offer will differ somewhat from when no such agreement exists. MHD 278(a) addresses such a situation. Second, it is necessary to set a standard indicating when the offer of a dual option must be made. MHD 378(b) sets such a standard. Third, since Minn. Stat. § 62D.10 (1974) and Minn. Reg. MHD 373 impose open enrollment requirements upon health plans, a rule is needed to indicate the manner in which open enrollment will be provided in a dual option setting. MHD 378(c) sets an open enrollment requirement and indicates the manner in which employees shall be provided with notice of their health benefits alternatives. Fourth, it is recognized that the timing of the dual option offer must differ for new employees or transferees. Accordingly, MHD 378(d) states that new employees and transferees are able to select among the options available in the health benefits plan. Next, since the purpose of the statute is to provide employees with the benefit of a choice between health maintenance organization services or insurance coverage, the Board believes that there is a need

to enable HMOs and insurers to have access to employees for the purpose of informing them of the options available to them and the relative advantages of each option. Thus, MHD 378(e) is necessary to assure such access to employees for the purpose of providing information about the employee's health benefits options. Last, since the statute permits the employer, HMO or insurer to discontinue offering the dual option if fewer than 25 employees select one of the options, a rule is necessary to set forth the rights of the employees who have selected the health benefits option which is discontinued. MHD 378(f) gives those employees the right to select among the remaining options in the health benefits plan.

MHD 379. Employer Contribution for Dual Option Alternative.

The statute does not indicate any minimum contribution which an employer must make to the employee's health benefits plan. However, implicit in the concept of offering a dual option is the idea that an employer cannot discriminate in his contribution between or among the options. If such discrimination did exist, employees would not have a genuine option. Rather, one option could be given a significant financial advantage or disadvantage by the employer. Accordingly, MHD 379 is necessary to require that employers treat all health benefits options equitably in regard to the employer's financial contribution.

MHD 380. Dual Option on a Self-Insured Basis.

This rule is necessary to clarify the health benefits which must be provided by the employer if it wishes to come within the self-insured provision of the statute.

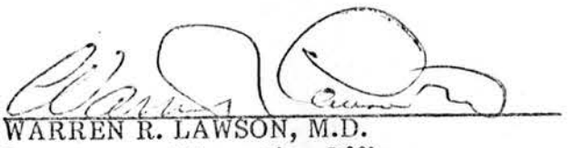
Amendment to MHD 369(d). Service area standard:

In making a determination regarding the proposed service area of an HMO, the Board is required by Minn. Stat. § 62D.04 subd. 1(a) (1974) to assess the availability and accessibility of health services in the area. In making such a determination, the Board feels the need to examine existing utilization patterns in the geographic area in which an HMO proposes to serve. Accordingly, the Board finds it necessary to amend MHD 369(d) to place HMOs on notice that existing

utilization patterns will be examined in any Board determination regarding a proposed service area.

STATE OF MINNESOTA

BOARD OF HEALTH



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

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, and in support thereof the Minnesota State Board of Health will introduce into evidence a Statement of Justification which explains in detail the facts and opinions upon which the agency is relying and proving the need for and reasonableness of the proposed rules. A copy of this statement is attached hereto. Also attached are communications with the Commissioner of Insurance.

The agency will call upon Kent Peterson of the Minnesota Department of Health to testify at the hearing. His testimony will summarize and, if necessary, clarify the material contained in the Statement of Justification.

We will be citing the following statutes and case law:

Minn. Laws 1976, ch. 296
Minn. Stat. § 62D.01 et seq. (1974)
Stabs v. City of Tower, 40 N.W.2d, 62 (1949)
Minn. Stat. § 645.44 subd. 7 (1974)
Minn. Stat. § 15.0412 (Supp. 1975)
Minn. Reg. MHD 366-376

STATE OF MINNESOTA

BOARD OF HEALTH

Dated: 8-25-76

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations

STATEMENT OF JUSTIFICATION

This Statement of Justification is the Board's explanation of the reasoning behind the proposed rules including support for the necessity and reasonableness of these proposed rules. These rules are based upon specific authority in Laws of Minnesota (1976), Chapter 296, Article I, Section 17, Subdivision 4, for the Board to adopt rules to implement dual option. The fundamental concept for these rules is that certain employers, under certain circumstances of time and relationship with employees, shall offer an option of either an H.M.O. contract or accident and health insurance policy. The thrust of the legislation is toward that initial offer, not control of subsequent offers, as long as the basic choice continues to be available.

A second factor which we feel is germane to basic understanding of these rules is that there are a very limited number of health maintenance organizations operating in Minnesota, specifically, nine H.M.O.s enrolling 124,000 people.* Meanwhile, many hundreds of

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* 1975 Annual Report to the State Board of Health.

insurance companies operate in Minnesota with millions of subscribers. The health maintenance organization enabling act (Minn. Stat. §62D) was adopted in 1973 and, therefore, the H.M.O. enrollment potential is limited.

Due to the lack of equal availability of H.M.O.s as compared to insurance companies, we did not place the immediate burden on employers to find both an available insurer and available health maintenance organization. We feel that it is much more reasonable to implement the dual option provisions through a gradual system of letters of request to employers. At the time of receipt of a letter of request, an employer will become "applicable."

As pointed out above, Chapter 296, Section 17, applies to the dual option offer at the next renewal date. These rules do not control subsequent dual option offers and do not control employers who have made dual option offers voluntarily before the letters of request are submitted to employers. We feel that such limitation in the scope of these rules is necessary for orderly involvement of as many groups as possible in dual option programs.

The Board prepared these rules with the input of affected parties including employers and health maintenance organizations. As required by law, the Board also consulted with the Commissioner of Insurance on these rules. The first correspondence requesting consultation was sent to Berton W. Heaton on April 29, 1976 (attached as Appendix 1). We received a reply correspondence on May 17, 1976 from John T. Ingrassia, Supervisor of the Life and Health Section

(attached as Appendix 2), on June 23, 1976. We sent another draft to the Insurance Division on June 24, 1976 (Appendix 3). After that date there were several telephone conversations between Kent E. Peterson of the Health Department and John T. Ingrassia. The Insurance Division has no additional suggestions for these rules.

This Statement of the evidence in support of the Board of Health's proposed rules will be presented section-by-section. Proposed MHD 377 contains key definitions as well as conditions under which an employer will be subject to the dual option provisions of the law. Proposed MHD 378 contains six paragraphs relating to the methods for presenting the dual option offer to employers. Next, proposed MHD 379 contains five paragraphs explaining the extent of, and method of determining, the employer contribution for dual option alternatives. Proposed MHD 380 describes standards under which an employer may qualify as offering a dual option on a self-insured basis. Finally, these proposed rules will also amend the service area requirements in the existing health maintenance organization rule MHD 369(d).

Section 1. Dual Option Implementation.

MHD 377. General Provisions.

MHD 377(a) deals with six separate terms and phrases which are used in the Act and in these rules but were not previously defined in either Minn. Stat. §62D.02 (the Health Maintenance Act of 1973), Minn. Stat. §62E.02 (the Catastrophic Health Insurance Act of 1976) or, Minn. Rule MHD 367 (definition section of the H.M.O. rules). These definitional provisions, discussed individually below, are necessary to effect a uniform interpretation of the Act and these rules and, to avoid uncertainty

and ambiguity in dealing with the Act and rules. The Board is authorized under Laws of Minnesota (1976), Chapter 296, Article I, Section 17, Subdivision 4 to adopt rules necessary and reasonable to implement the provisions of dual option. These definitional rule provisions fall within this authority.

MHD 377(a)(1). "Applicable Employer".

This definition implements Section 17 of Laws of Minnesota (1976), Chapter 296 by giving additional clarity to the type of "employer" which is described in Sec. 17 and defined for general purposes in Sec. 2 of Laws of Minnesota (1976), Chapter 296.

The general definition of "employer" in Sec. 2 of Chapter 296, applies to all entities which employ ten or more individuals who are residents of this State. Obviously, the term employer which is used in Sec. 17, Subd. 1 of the same Act, applies to a portion of the entities which are included in the defined category of "employer" because Sec. 17 applies only to employers who employ 100 employees or more, rather than ten or more employees. Sec. 17 also is limited in application to employers who offer a health benefits plan to employees and is, furthermore, limited to situations where a health maintenance organization contract "is available."

Therefore, the definition of "applicable employer" includes the three conditions which are described in Sec. 17, Subd. 1 of Chapter 296.

Questions have been addressed to the Department of Health regarding the applicability of "political subdivisions" to Sec. 17 of this Act. Sec. 2 of Chapter 296 lists "any person, partnership, association, trust, estate or corporation." The law is silent regarding political subdivisions. The question arises as to whether or not "political subdivisions" are within the meaning of the term "person".

Minn. Stat. §645.44, Subd. 7 (1974) states as follows:

> "'Person' may extend and be applied to bodies politic and corporate, and to partnerships and other incorporated associations."

The State's Supreme Court comment in Stabs vs. City of Tower, 40 NW 2d 362 (1949), requires that the word "person" must be examined in the context of the statute in which it appeared to determine the scope of its meaning. In Minn. Laws 1976, Chapter 296, the word "person" is used interchangeably with the word "employer," and there is nothing that expressly indicates whether governmental units are included or excluded.

It is clear that the purpose of the statute is to provide employees in Minnesota with a choice as to the type of health benefits plan they wish to use. There appears to be no logical reason to interpret the statute in such a way as to prevent governmental employees from enjoying such a choice. For this reason, it was decided that the term "political subdivision" should be included within the definition of "applicable employer" to clarify any uncertainty among affected parties.

It might be reasonably questioned as to why the Board has proposed to make these dual option provisions applicable to employers only after a written request for inclusion has been received from a health maintenance organization or insurer. During the drafting process, we considered another alternative and that was to make all applicable employers immediately subject to the dual option requirements and place the burden on the employer to prove that he has attempted to find a dual option choice of an insurance program or a health maintenance organization program. This alternative was decided to be not practical because of the extremely large number of employers who are affected by this Act and, the extremely small number of H.M.O.s which are available to fulfill this large demand. At this time, there are seven health maintenance organizations operating in the metropolitan Twin Cities area and two health maintenance organizations operating in the Iron Range area. There are well over 2,000 employers who are affected by this Act and, at least, one million employees and dependents who are covered by the health benefits plan of these employers. There is capacity for less than 200,000 people in the currently operating H.M.O.s and, it would be an administrative burden to expect employers to seek inclusion in the enrollment of these H.M.O.s when there is such limited capacity available. It was decided to use the system of a written request for inclusion by the health maintenance organization or insurer as the more practical system for implementation.

This concept for use of written requests by health maintenance organizations is utilized in all the other state mandatory dual

option programs known to this office (Michigan, Rhode Island and Washington) and, the concept is also utilized in the federal H.M.O. dual option provision.

MHD 377(a)(2). "Collective Bargaining Agreement".

The term "collective bargaining agreement" is necessary to indicate the type of agreement which exists between employers and the bargaining representatives in certain situations of employment. When this type of agreement is in existence, there are unusual circumstances which affect the fringe benefit privileges of employees. The National Labor Relations Act determines when this agreement is required and, therefore, this Act needs to be recognized in the rules implementing dual option provisions in Minnesota. This definition does not cause a waiver of dual option provisions, but merely this definition and its substantive provisions hereafter, create a somewhat different set of circumstances in which the "offer" is made to employees to obtain either insurance coverage or a health maintenance organization contract.

MHD 377(a)(3). "Designee".

Frequently, a person or entity, such as a broker or a trust fund, is authorized by an employer to act as his designee for the purpose of offering the options of fringe benefits to employees. While this designation does not relieve the employer of the ultimate liability for not making a dual option offer, it is appropriate to recognize the existence of these designated persons or entities.

MHD 377(a)(4). "Eligible Employee".

Not all employees of an applicable employer may be eligible for a fringe benefit programs at any point in time. For example, many employers only start fringe benefits after a certain number of days of employment or part-time employees may not be eligible for fringe benefits. This definition of "eligible employee" clarifies that the employer's terms and conditions established for participation in existing health benefits programs shall continue to apply to the dual option provision.

MHD (a)(5). "Existing Health Benefits Plan".

Laws of Minnesota 1976, Chapter 296, Article I, Section 17, Subdivision 1 states that only an employer "who offers a health benefits plan to employees, whether (i) purchased from an insurer or a health maintenance organization, or (ii) provided on a self-insured basis" shall be applicable under this Act. This definition enlarges upon the statutory language by stating that the existing plan may be any contract or agreement which provides for payment for or provision of medical, surgical or hospital care; or, in the case of a self-insured program, which is defined in Laws of Minnesota 1976, Chapter 296, Article I, Section 2, Subdivisions 21 and 22, a program made available by the employer to provide medical, surgical or hospital care. An additional paragraph is placed in the definition of "existing health benefits plan" in order to clarify the plan which merely mandates health benefits or identifies the H.M.O. or insurer which is contracted with for health benefits but, may not have any additional terms or conditions on the fringe benefit program. In these situations, the collective bargaining agreement specifies the aggregate amount of money paid by the employer for

fringe benefits and mandates health benefits or identifies an H.M.O. or employer; however, the specific amount of money and the contract or agreement with the H.M.O. or insurer may be left to a "designee."

MHD(a)(6). "To Offer a Health Benefits Plan".

This phrase is the operative requirement in Laws of Minnesota 1976, Chapter 296, Article I, Sec. 17, Subd. 1. This definition is needed to provide a more concise definition of the employer's obligation and to specify that the requirement exists only where there is a financial contribution made by the employer on behalf of his employees. It is reasonable to require that there is "a financial contribution" in that the Statute, in Section 17, Subd. 1, states "purchased from insurer or health maintenance organization," or "provided on a self-insured basis." The terms "purchased" and "provided" strongly suggest the presence of a financial contribution.

MHD 377(b). Applicability to Employers.

(1) This first section on applicability to employers explains that employers who have previously offered dual option and continue to make dual option available, will not be required to "offer his employees the dual option program." It would be a costly administrative procedure and of no value to the prospective enrollees for the previous dual option employers to go through a new system of making such an "offer" to employees. We believe that it is the intent of this legislation to make the dual option available to new employer groups and not to affect the existing enrollment procedures, contribution systems, and other operational provisions for employers who already have dual option.

(2) Furthermore, we feel that the employers who have executed a written agreement with an insurer and a health maintenance organization to offer the dual option on a voluntary basis without necessarily using all of the procedures specified in this rule, should not be considered to be an "applicable employer." In these situations, the affected parties have developed an agreement which accomplishes the goal of the statute without the specific enforcement procedure of a "request to employer" which is specified in proposed MHD 377(c) and (f). Finally, the Board finds it to be reasonable to apply these rules only to the situation where the employer, insurer or health maintenance organization have not previously agreed to a system of dual option on a voluntary basis.

(3) Section 17, Subd. 1 states that the dual option of insurance and H.M.O. contracts shall be offered "if one is available." Therefore, this rule is necessary to clarify that a health maintenance organization or insurer shall not be deemed to be "available" when the employer has not been requested in writing to make the dual option available. This rule is consistent with the intent of the legislation to place a dual option mandate on the employer at the time when sufficient enrollment potential is available in health maintenance organizations. As stated before, health maintenance organizations are in the early stages of development and there is not sufficient enrollment potential in the nine health maintenance organizations operating in Minnesota to make the dual option available to literally all employees

of the type referred to in the law.

(4) As an informational provision, this paragraph states the right of an employer to take the initiative to seek out a health maintenance organization or insurer without waiting for a request to be submitted to the employer according to proposed MHD 377(c) or (f). It is reasonable that this private, voluntary right shall continue to exist for the employer.

MHD 377(c). Request to Employer for Dual Option Inclusion by a Health Maintenance Organization.

This specifies the procedure and the information that must be included in a request for inclusion in an employer's health benefits plan by a health maintenance organization. This is a clarification and an expansion of Sec. 17, Subd. 1. After considerable discussion with employers, insurers and health maintenance organizations, it was decided that the request should be received at least 120 days in advance of the expiration of the renewal date of the agreement. This section makes recognition of the time needed to prepare brochures, design enrollment and coverage change forms, arrange corresponding payroll deduction accounts and procedures, plan for communication strategy, compare the program with insurers and health maintenance organizations in the service area, and to allow for enrollment. We have been advised that these procedures may be conducted within the 120 days allotted and that there is not an undue burden on any affected party if the 120-day time limit is utilized. Naturally, a request may be submitted before

the 120-day deadline specified in these rules. The six items of information required to be submitted in the request are considered by the Board to be needed for the employer to be fully informed on the dual option inclusion. It is reasonable that the employer receive a written notification and that the notifications be dated so that the 120-day deadline can be evaluated. Additionally, for the purposes of recognizing legal qualification of a health maintenance organization, there should be evidence that the health maintenance organization is certified under Minnesota law.

Two other items which are mandated to be included in the request are the descriptions of the service areas of the health maintenance organizations and the description of the location of the service facilities. These items are basic for the understanding of how services are provided and it is not an administrative burden for health maintenance organizations to provide this information. The inclusion of proposed contracts and the proposed schedule of charges has been a matter of dispute in the preliminary drafts of these rules.

Representatives of employer groups have urged that specifics on contracts in terms of the benefits to be included and the charges to be made should be known at the earliest point of the required inclusion. On the otherhand, H.M.O. representatives have urged that the specifics of contracts and schedule of charges be made a part of the later negotiation process and that the employer and H.M.O. work out these specifics after more complete information on the characteristics of the employer group is known.

While it is recognized that H.M.O.s may be handicapped in making a proposed schedule of charges when they are not fully advised of the demographic characteristics of an employer group and have not learned the general health claims history of the employees, the Board feels that the rights of the employer must be protected in this case of required inclusion of dual option. If these two items were not included in the request for inclusion, the employer would not necessarily know the specific proposed contract or the proposed schedule of charges until the offer is actually made. While common business practices would suggest cooperation between the H.M.O. and the employer, compliance is not assured unless this rule specifically mandates the disclosure of the information.

MHD(d). Substitution of Another Health Maintenance Organization. This section is included to provide the applicable employer or its designee with an opportunity to select another health maintenance organization in lieu of the original H.M.O. which made the request for inclusion, at the discretion of the employer. It is felt that this section supplies the proper competitive environment to protect the employer and the subsequent enrollees from improper advantages by certain health maintenance organizations. Since all health maintenance organizations in Minnesota must be licensed by the State Board of Health and maintain specific standards for operation, there is protection that a substitute H.M.O. would not be a sub-standard quality operation and the public would not be harmed by this substitution.

MHD(e). Multiple Health Maintenance Organization Options.

This section is added to provide additional clarity in the possibility of multiple health maintenance organization options. Neither Minn. Stat. §62D nor Laws of Minnesota 1976, Chapter 296, prohibit an employer from including more than one H.M.O. option in its health benefits plan. This paragraph, therefore, merely points out this possibility and that no additional restrictions to the employer relationship with insurers or health maintenance organizations exist.

MHD(f). Request to Employer for Dual Option Inclusion by an Insurer.

Similar to the right of a health maintenance organization to request dual option inclusion to an employer, an insurer in this section is granted the right to request an employer to offer dual option under similar circumstances. Again, the 120-day minimun is established to permit the employer to have adequate time to conduct the administrative procedures necessary to provide the offering of dual option. Information required to be in the request to employers is similar in paragraph (f) and paragraph (c). The only difference is that the description of service area of the H.M.O. and the description of locations of H.M.O. facilities are not applicable to insurers and similar descriptions do not exist for insurers.

MHD(g). Substitution of Another Insurer.

Similar to paragraph (d), an employer may select a substitute insurer which may not have submitted a request under this rule.

This paragraph encourages a competitive environment for the protection of the employer and the potential enrollee. It is permitted under the statute and a reasonable process for such substitution to take place.

Proposed MHD 378. The Offer of Dual Option to Employees.

(a) Collective Bargaining. The existence of a collective bargaining agreement creates a unique relationship between the applicable employer and the employees. Under this type of agreement the actual "offer" to the employees is made through a bargaining representative of the employees. In order to avoid undue administrative confusion and interruption of the entire collective bargaining process, this rule presents the requirement that the dual option shall be "offered" when the new contract is negotiated or if such agreement is automatically renewable, on its anniversary date. The Board feels that this procedure is the most reasonable method for dealing with the collective bargaining situation. The offer of dual option is made available to bargaining agents for employees and there is minimum interference with the collective bargaining process.

(b) Renewal Date. This paragraph clarifies the time at which the dual option must be included. Sec. 17, Subd. 1 of Chapter 296, states that the dual option must be made available upon the next renewal date of the health benefits plan contract. This paragraph utilizes the same concept

and applies the employer's obligation to the submission of a request for inclusion pursuant to proposed MHD 377(c) and (f). It is reasonable that the anniversary date of the contract shall be considered the renewal date in situations where there is no fixed term in the existing health benefits plan. Additionally, the fiscal year is the most appropriate time period for the term of an existing health benefits plan for a self-insured employer.

(c) Group Enrollment. This section deals with the group open enrollment period during which eligible employees could enroll in the alternative of their choice of an H.M.O. or an insurer without application of waiting periods or limitations based upon health status. "Open enrollment" is defined in the existing H.M.O. rules, MHD 367(m), where it states that this term means "the acceptance of coverage by health plans of group enrollees without regard to underwriting restrictions." To assure that the eligible employees are offered the dual option, it is necessary for this rule to state the requirement that there be group open enrollment. During the first time the dual option is made available, the Board feels that it is especially important for eligible employees to have full notice of the choice between H.M.O. and accident and health insurance programs. For this reason, the Board has required in this paragraph that an"affirmative written selection" be made by each employee among the alternatives included in the health benefits plan. Without this requirement of affirmative written selection there would be no

assurance that employees receive at least minimum explanation of the programs available.

(d) Selection by New Employees or Transferrees. Analogous to the requirement of an affirmative written selection by existing employees, the Board considers it to be reasonable for any new employee or transferree to receive the same privilege of an opportunity to select among the alternatives as soon as eligibility is established. This section establishes no greater privileges for new employees or transferrees than existing employees except that the choice may occur at a time other than the open enrollment period of the group.

(e) Access to Employees. In order to have an opportunity to explain the dual option to employees, each health maintenance organization or insurer must be given fair and reasonable access to employees at least thirty days prior to and during the open enrollment period. Thirty days prior to the beginning of the open enrollment period is needed for distribution of educational literature, brochures and announcements of meetings with eligible employees. Most of the education of employees must be done before the thirty days of open enrollment so that no employee initiates a change in health benefits coverage without having full knowledge of the results of a decision. The Board considers it to be important for the offerers of new alternatives in the health benefits plan to have no more restrictive access to eligible

employees. Frequently, the educational program of an existing health benefits program does not need to be as complete as the education for a new alternative. Therefore, the rule is stated so that the offerer of a new alternative has no less restrictive access to employees, whether or not the representatives of other alternatives elect to avail themselves of such access.

(f) This paragraph is authorized specifically in Laws of Minnesota (1976), Chapter 296, Sec. 17, Subd. 1. The language of the law is: "an option need not be provided if less than twenty-five employees select that option." This paragraph clarifies that the clause may be implemented following the completion of the first annual open enrollment period and before the actual effective date. To implement this clause before the completion of open enrollment would not assure full opportunity for employees to make the choice of plans. Additionally, to implement the clause after the actual effective date would create an excess penalty to employees who have selected the new option which might later be terminated. This paragraph, furthermore, protects the rights of eligible employees by requiring that the applicable employer re-open the enrollment process for the remaining options of health benefits plans. The dropping of a dual option mandate when there is less than twenty-five employees selecting the option should not penalize employees. We believe that it is reasonable to draft the rules to require employees to be returned to one of the remaining options.

This procedure would not penalize employers because employers would be offering only those options which were previously available to employees and, there would be no significant expense for this re-opening of the choices.

Proposed MHD 379. Employer Contribution for Dual Option Alternative.

(a) This section clarifies that an employer shall not be required to pay more for health benefits as a result of offering the new alternatives than would otherwise be required to pay for health benefits by an existing health benefits plan. It does not prohibit the employer from paying more for the new health benefits program but, such additional payment would not be mandatory. The requirements for use of payroll deduction for collection of an employee's contribution is mandatory only if such payroll deductions are already used in the existing health benefits plan. These conditions create no burden on the employer and merely create equity on the behalf of employees.

(b) This section names two factors which shall be used in determining the contribution level of the employer. The first point is that the applicable employer's contribution shall not be reduced on the basis of any alleged administrative expenses associated with the offering of the new dual option provision. While the gross amount of fringe benefits allocated to employees may be indirectly affected by the administrative costs associated with offering a dual option, it would be inequitable for the employees who choose a new

dual option alternative to bear the full administrative expenses which may be associated with the new offer. It is more appropriate for the administrative expenses to be applied to the gross cost associated with offering fringe benefits.

The second factor to be considered in the employer's contribution is the allowance for exclusion of those portions of employers contributions allocated to benefits other than medical, surgical and hospital care. These would be benefits which the eligible employee and dependents would continue to be covered for, regardless of selection of the dual option alternative. In these benefits such as, life or disability insurance, it would be inequitable to employees who do not choose the dual option alternative to fully include the allocated portions. It is fairest for all parties involved to have non-health benefits deleted when dealing with comparison of the two types of health benefits plans.

(c) This section clarifies that when the amount of contribution is fixed by a collective bargaining agreement or some other contract with eligible employees, such amounts shall constitute the obligation for contribution toward the health benefits program. This is the clearest type of contribution level and when such fixed agreement or contract exists, it would be most appropriate to utilize such fixed amounts.

(d) In situations where the applicable employer's contribution is fixed by a collective bargaining agreement but

the contribution for benefits includes benefits other than health benefits, it is appropriate that the employer or its designee determine the portion of the contribution applicable to health benefits. This determination must be made with the best information available at the time and must be fully at the discretion of the employer or its designee. To require an arbitrary fixing of the health contributions as compared to the non-health contributions by someone other than an employer or its designee, would be unfair removal of the rights of the employer.

(e) In the absence of a collective bargaining agreement or other contract specifying contribution levels for health benefits, the general principle for determining the contribution level shall be based upon the total costs of such health services offered to Minnesota employees for the most recent period for which experience is available, adjusted for other factors named in previous rules. This is the most appropriate fashion we feel for dealing with the "self-insured" employer situations where the costs are paid by the employer without "indemnification" of health benefits. In situations where the money was paid out directly by the employer, information is readily available as to the total costs for services during a recent period and it would be entirely fair and reasonable to make the requirement for use of the most recent historical data.

Proposed MHD 380. Dual Option on A Self-Insured Basis.

(a) This section is taken almost directly from Laws of Minnesota (1976), Chapter 296, Article I, Section 17, Subd. 2. This section of the statute clearly permits the dual option to be offered on a self-insured basis and specifies that this type of program may be either accident and health insurance type of coverage or health maintenance organization type of coverage. When the program is used to replace the requirement for offering an accident and health insurance policy, under these rules, the law specifies that the self-insured program must meet the requirements of the laws of this State as to covered services and benefits provided. These "mandated" benefits are found in Minn. Stat. Chapters 62A and 62C. It is stated in the statute that the self-insured plan need not be otherwise approved by the commissioner of insurance.

(b) Similar to the above procedure for accident and health insurance policies which are offered on a self-insured basis, a health maintenance organization contract may be offered on a self-insured basis and found acceptable in the dual option situation. Again, in this situation, the employer must provide all the health services which are required for "comprehensive health maintenance services" in Minn. Stat. Chapter 62D. The law does not require the employer-operated health maintenance organization to be otherwise licensed by the State Board of Health to perform health maintenance organization functions.

Service Area Standard. Amendment of MHD 369(d).

This proposed amendment to H.M.O. rules, clarifies the authority of the State Board of Health to evaluate information in order to make a proper determination of availability and accessibility of care under Minn. Rule MHD 369(d). The Board obtained its original authority to promulgate MHD 369 from the general authority in Minn. Stat. Section 62D.20 and its specific need to clarify the meaning of Minn. Stat. §62D.04, Subd. 1(a) which states that the applicant for a certificate of authority must demonstrate "the willingness and potential ability to insure that health care services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities." This standard must be maintained in order to continue to hold a certificate of authority to operate a health maintenance organization.

This rule is necessary to advise H.M.O.s that the Board may consider existing utilization patterns in the proposed geographic area in making assessment of reasonable availability and accessibility. The Board will research the matter on its own and will include information on the existing community standards for receiving health care in its documentation of reasonable delivery capability. It would be inappropriate to affix a definite number of miles to the service area provision; however, this general assessment of patterns of utilization is appropriate in the study of a particular service area. Without this proposed rule the Board would be unable to deal with the unique

characteristics of specific geographic service areas which may have sparse or dense populations, agricultural versus industrial economies, adequate versus inadequate highway systems, or other social and economic factors unique in different sections of Minnesota.

April 29, 1976

Berton W. Heaton
Commissioner of Insurance
Department of Commerce
Fifth Floor Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

RE: RULES FOR MANDATORY DUAL OPTION

Dear Commissioner Heaton:

Attached is a discussion draft of the rules for implementation of mandatory dual option (Section 16) of the recently adopted Comprehensive Health Insurance Act, Laws of Minnesota 1976, Chapter 296. We ask that you and your staff review this draft so that we can discuss the matter with you in the near future.

I will be contacting Mr. John Ingrassia soon to make an appointment to discuss these rules with the appropriate people.

Respectfully,

Kent E. Peterson
H.M.O. Unit

KEP:kmt
Enclosure
cc: John Ingrassia

STATE OF MINNESOTA

DEPARTMENT COMMERCE - Insurance Division

Office Memorandum

RECEIVED
MAY 19 1976
HMO Unit
Minn. Dept. of Health

TO : Kent E. Peterson
HMO Unit
Department of Health

DATE: 5-17-76

FROM : John T. Ingrassia
Supervisor
Life and Health Section

PHONE: Ext. 2202

SUBJECT: Rules for Mandatory Dual Option

I have made a preliminary review of your draft and suggest consideration of two minor editorial changes.

MHD 379 (a) (2) should read: "Provide evidence that the insurer has been licensed by the Commissioner of Insurance."

(3) "Include proposed accident and health insurance policies approved by the Commissioner of Insurance....".

Item MHD 379 (a) (4) would indicate a dual responsibility as the Insurance Division follows an advertising code. We do not require prior approval, but if sample advertising copy is submitted, it becomes subject to our approval.

You may wish to select a date for a personal discussion of the rules.

JTI:mw
0617

HEALTH

Mr. John T. Ingrassia
Supervisor, Life & Health Section

6/24/76

Kent E. Peterson
H.M.O. Unit

5365

RULES FOR MANDATORY DUAL OPTION

Enclosed is a new draft of the proposed rules implementing Section 17 of S.F. 60. This draft was prepared after meetings with Mr. John Breviu, Special Assistant Attorney General assigned to this section and, includes the suggestions you made in your memo of May 17, and our discussion of June 23, 1976.

As you suggested in our meeting of June 23, 1976, I am sending this draft to your attention so that you and your attorney may give the matter further review. If your attorney has questions of a legal nature, you should have him call Mr. Breviu directly at 5402.

To assure compliance with the statute which requires "consultation with the Commissioner," I would appreciate your reply to this matter in writing. So that this draft, or a draft similar to this, may be presented to the State Board of Health at its July 8th meeting for authorization of a public hearing, I would appreciate your reply to me on this matter by July 6, 1976.

Also enclosed is a copy of an informal opinion from Mr. Breviu regarding definition of "employer" in S.F. 60. He notes that "person" may include "political subdivisions."

KEP:lmt
Enclosure

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

MATERIALS RECEIVED FOLLOWING NOTICE PURSUANT TO MINN. STAT. § 15.0412

The attached documents constitute all material received following a notice issued on June 3, 1976 (which notice is herewith filed with the Office of Hearing Examiners) pursuant to Minn. Stat. § 15.0412 subd. 6 (Supp. 1975) seeking information or opinions on the above-entitled matter.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

STATEMENT OF PERSONS EXPECTED TO ATTEND AND LENGTH OF HEARING

The number of persons expected to attend the hearing on the above-captioned matter is 25 and it is estimated that the length of the hearing will be two hours.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

BOARD OF HEALTH

In the Matter of the Proposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations.

AGENCY PERSONNEL WHO WILL REPRESENT AGENCY AT HEARING

Kent Peterson will represent the Board of Health at the rules hearing on September 20, 1976. John A. Breviu of the Attorney General's office will also represent the Board of Health at that hearing.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of theProposed Adoption of Rules of the Minnesota State Board of Health Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Minnesota State Board of Health on the 20th day of September, 1976, at 9:00 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 (Supp. 1975) 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 Rules Governing Dual Option Requirements of Employers Providing Health Benefit Plans and Service Area Requirements of Health Maintenance Organizations are adopted this 15 day of December, 1976, pursuant to authority vested in my by Minn. Laws 1976, ch. 296, Art. I § 17, and by resolution of the Minnesota State Board of Health duly adopted at a meeting of the said Board on the 9th day of December, 1976.

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 9th day of December, 1976; 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 rules relating to dual option requirements of employers providing health benefit plans and service area requirements of health maintenance organizations, identified as MHD 369(d) and 377-380, are found to be reasonable, necessary and supported by the evidence contained in the record, and are hereby approved and adopted, pursuant to authority vested in us by Minn. Stat. § § 62D.20 and 62E.17 and that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and hereby is authorized to sign an order adopting those rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15 day of December, 1976.

STATE OF MINNESOTA

BOARD OF HEALTH



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

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF HEALTH

IN THE MATTER OF PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA STATE)
BOARD OF HEALTH GOVERNING DUAL)
OPTION REQUIREMENTS OF EMPLOYERS)
PROVIDING HEALTH BENEFIT PLANS AND)
SERVICE AREA REQUIREMENTS OF HEALTH)
MAINTENANCE ORGANIZATIONS.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 20, 1976, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Board of Health on November 4, 1976; and

WHEREAS, the Board of Health has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Board of Health has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed.

NOW, THEREFORE, upon receipt of this Report, the Board of Health has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 21st day
of December, 1976.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

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 dual option requirements of employers providing health benefits plans and service area requirements of 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.

Dated: January 5, 1977

John A. Breviu

JOHN A. BREVIU
Special Assistant
Attorney General