

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

180 day deadline question
uncertain if they should have sent the letter
per 14.12 AVK ~~AVK~~

RULE REVIEW CHECKLIST

File No. 1935
DATE RECEIVED 8-4-92
REVIEW DATE 8-13-92
DUE DATE 8-18-92
~~(DIS)~~ APPROVED 8-13-92
WITHDRAWN

Docket No. 05 0009 0119 8-5-92
ADOPTED W/O HEARING ✓
EMERGENCY RULE
TO REVISOR ON 8-5-92
REVISOR (DIS) APPROVED 8/7/92
FILED W/SEC. OF STATE 8/14/92
RETURNED TO AGENCY 8/14/92

↓ Yes. & They now have complied w/ 14.12 8-13-92 AVK

✓ Rule as adopted (4 copies)

Notice to Solicit Outside Information/Opinion (if applicable)
June 18, 1990 Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
45.023 62A.56 Statutory Authority
no statement Small Business Statement
no statement Expenditure of public money statement
May 8, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable) — different stat. authority cited than what is cited in the notice of Intent
✓ Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
June 1, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
June 15, 1992 Date 30/25 days before adoption

unsure 180-day deadline from:
See notes Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
July 27, 1992 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Caroline Ham Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Rules ac

STATE OF MINNESOTA

Office of the Attorney General

TO : MELBOURNE R. BOYNTON
Assistant Commissioner
Department of Commerce
133 East 7th Street

DATE : August 14, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Long-Term Care

The above-referenced rule has been approved as to its legality by the Attorney General on August 13, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

Enclosures
cc: Carolyn Ham
William Brown, Chief Judge
MaryAnn Hruby

AVK:jj.rules.az4

Department of Commerce

Adopted Permanent Rules Relating to Long-Term Care

Rules as Adopted

2745.0010 PURPOSE.

Parts 2745.0010 to 2745.0050 are authorized and adopted pursuant to Minnesota Statutes, section 62A.56, subdivision 2. Their purpose is to establish general standards to ensure that assessments used in prescribing long-term care are reliable, valid, and clinically appropriate. Parts 2745.0010 to 2745.0050 apply exclusively to insurance and subscriber contracts that determine benefit entitlement based on an assessment of the insured's ability to perform the activities of daily living and to perform basic cognitive functions. Assessments satisfying the general standards in parts 2745.0010 to 2745.0050 are considered reliable, valid, and clinically appropriate.

2745.0020 ACTIVITIES OF DAILY LIVING.

General standards for determining coverage of long-term care based on an assessment of the insured's inability to perform activities of daily living include the following activities with definitions of performance not more restrictive than those shown in items A to E.

A. "Bathing" means washing oneself in either a tub or shower, including getting into and out of the tub or shower, or by sponge bath without the aid of another person.

B. "Dressing" means getting clothes from the closet or drawers, putting on clothes, and attaching any necessary braces or prosthesis without the aid of another person.

C. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene without the aid of another person.

D. "Transferring" means moving in and out of a bed, chair, or wheelchair without the aid of another person.

E. "Eating" means feeding oneself by any means

without the aid of another person.

In addition to the activities in items A to E, other reasonable activities of daily living such as continence, walking, and wheeling may be taken into account if specified in the insurance contract.

2745.0030 COGNITIVE IMPAIRMENT.

General standards for determining coverage of long-term care based on cognitive impairment shall be based on an assessment of the insured's ability to perform basic cognitive functions. The definition of cognitive impairment shall not be more restrictive than the definition in this part. "Cognitive impairment" means deficiency in the ability to think, perceive, reason, and/or remember that results in the inability to take care of oneself without the ongoing assistance of or supervision by another person.

2745.0040 USE OF ASSESSMENTS.

A long-term care insurance policy may use activities of daily living and cognitive impairment assessments as a basis for defining when a service, type of care, or procedure could not be omitted without adversely affecting the patient's illness or condition.

Determining impairment under the insurance contract shall not be more restrictive than requiring either a deficiency in three of the above activities of daily living or the presence of cognitive impairment. An insurer may, by contract, require less restrictive criteria than the above determining benefit eligibility.

The determination of physical or cognitive impairment shall be based on generally accepted tests that use objective measures and produce verifiable results such as, but not limited to, the most recently adopted Minnesota Department of Human Services Preadmission Screening Assessment Form.

2745.0050 ALTERNATIVE STANDARDS AND CERTIFICATION.

If an insurer proposes standards other than those described

in parts 2745.0020, 2745.0030, and 2745.0040, upon request the insurer shall provide to the department a detailed description of the proposed assessment methodology explaining how the assessment would reasonably be expected to produce reliable, valid, and clinically appropriate results. The insurer is responsible for demonstrating that the assessment is reliable, valid, and clinically appropriate and not less beneficial to the policyholder than the standards described in parts 2745.0020, 2745.0030, and 2745.0040. An officer of the insurance company shall provide a certification that, to the best of the officer's knowledge, the assessment methodology is reliable, valid, and clinically appropriate.

APPROVED AS TO FORM AND LEGALITY

August 13 19 92

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Amy V. Kvålseth
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

AUG 14 1992

Joan Anderson Growe
Secretary of State

RC
8:55a

OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

133 EAST 7th STREET
ST. PAUL, MN 55101
612/296-4026
FAX: 612/296-4328

RECEIVED

August 13, 1992

AUG 13 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
Paul MN 5510

The Honorable Arne Carlson
State of Minnesota
130 Capitol Building
St. Paul, Minnesota 55155

Dear Governor Carlson:

Enclosed for your reference is a copy of the adopted permanent rules relating to Long Term Care. These rules have been published for adoption with a public hearing pursuant to the Minnesota Administrative Procedures Act. The Department received no requests for hearing with respect to these rules. The proposed rules are now being reviewed by the Attorney General's Office for final approval.

The proposed rules are intended to fulfill the rulemaking mandate under Minnesota Statutes Section 62A.56 subdivision 2. The process used to develop the standards set forth in these rules involved the solicitation of information of many experts in the field of long term care. To assure that reliable, valid and clinically appropriate assessment standards were created, the Commissioner of Commerce assembled a knowledgeable 20 member ad-hoc committee representing consumer advocates, the insurance industry, nursing home providers, regulatory agencies and academia. This committee unanimously agreed upon the proposed rule language as appropriate standards.

The above discussion is being submitted pursuant to the requirement of Minnesota Statutes Section 14.12. We believe that the extra time it has taken to promulgate these long term care rules has been necessary and productive. By involving a broad range of experts and interested parties, we were able to propose sound standards and avoid a controversial rulemaking process. Should you have any questions about this matter, please contact me at 297-1118

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

Donna M. Watz

Donna M. Watz
Staff Attorney
cc: Amy Kralseth, Asst. Attorney General

OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

133 EAST 7th STREET
ST. PAUL, MN 55101
612/296-4026
FAX: 612/296-4328

August 13, 1992

Legislative Commission to
Review Administrative Rules
Maryanne Hruby, Director
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Enclosed for your reference is a copy of the adopted permanent rules relating to Long Term Care. These rules have been published for adoption with a public hearing pursuant to the Minnesota Administrative Procedures Act. The Department received no requests for hearing with respect to these rules. The proposed rules are now being reviewed by the Attorney General's Office for final approval.

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Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

Donna M. Watz
Staff Attorney
cc: Amy Kralseth, Asst. Attorney General

Stat Authority 45.023

The commissioner of commerce may adopt, amend, suspend, or repeal rules including emergency rules, in accordance with Chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.

62A.56

The commissioner may adopt rules pursuant to chapter 14 to carry out the purposes of sections 62A.46 to 62A.56 The rules may ...

62A.56 subd 2 The commissioner shall adopt rules under chapter 14 establishing general standards to ensure that assessments used in prescribing of long term care are reliable, valid, and clinically appropriate.

62A.56 cited in Notice of Intent
62A.45 subd 2 cited in SONAR

2745.0010 isn't a rule more of a summary

180 day deadline

Notice of Intent cites two authorities - commissioner may (45.023) 62A.56 - The commissioner shall adopt rules under chapter 14 establishing general standards to ensure

180 day con't

62A.56 is mandatory - Chapter 2745 was formerly repealed so this is new material now. Since rules were promugated at one time I am unsure if they should have sent letters to Gov etc pursuant to 14.12

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have paid had it been the primary
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of benefits concept clearly differs
ay be included in health care bene-
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that date.
care benefits and was issued before
vith parts 2742.0100 to 2742.0400
enewal date of the group contract;
ely bargained contract pursuant to

CHAPTER 2745
DEPARTMENT OF COMMERCE
SICKNESS AND ACCIDENT INSURANCE

2745.0100 [Repealed, 10 SR 1265]
2745.0200 [Repealed, 10 SR 1265]
2745.0300 [Repealed, 10 SR 1265]
2745.0400 [Repealed, 10 SR 1265]
2745.0500 [Repealed, 10 SR 1265]
2745.0600 [Repealed, 10 SR 1265]
2745.0700 [Repealed, 10 SR 1265]
2745.0800 [Repealed, 10 SR 1265]
2745.0900 [Repealed, 10 SR 1265]
2745.1000 [Repealed, 10 SR 1265]
2745.1100 [Repealed, 10 SR 1265]
2745.1200 [Repealed, 10 SR 1265]
2745.1300 [Repealed, 10 SR 1265]
2745.1400 [Repealed, 10 SR 1265]
2745.1500 [Repealed, 10 SR 1265]
2745.1600 [Repealed, 10 SR 1265]
2745.1700 [Repealed, 10 SR 1265]
2745.1800 [Repealed, 10 SR 1265]
2745.1900 [Repealed, 10 SR 1265]

OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

133 EAST 7th STREET
ST. PAUL, MN 55101
612/296-4026
FAX: 612/296-4328

July 30, 1992

Office of the Attorney General
Public Finance Division
515 Transportation Bldg.
John Ireland Blvd.
St. Paul, MN 55155

Re: Proposed Permanent Rules Relating to Long Term Care

Dear Attorney General:

Pursuant to the relevant sections of Minnesota Statutes Chapter 14 and Minnesota Rules Chapter 2010, we submit the following documents for your review regarding the above referenced rules.

1. Notice of Intent to Solicit Outside Opinion;
2. Copy of the Proposed Rules with the Revisor's Certificate;
3. Notice of Intent to Adopt Rules Without a Public Hearing;
4. Statement of Need and Reasonableness;
5. Affidavit of Mailing Notice of Intent to Adopt Rules Without Public Hearing and Certificate of Mailing List;
6. Copy of Notice of Intent to Adopt Rules Without Public Hearing as published in the State Register;
7. Four copies of the Rules as adopted;
8. Findings of Fact, Conclusions and Order Adopting Rules;
9. Written comments regarding the rules; and
10. Declaration of Counsel.

As indicated in the Findings of Fact, Conclusions and Order Adopting Rule, please note that we received no requests for notice of submission of the rules to the Attorney General.

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By: Donna M. Watz

Donna M. Watz
Staff Attorney
DMW:pjk
Encl.

RECEIVED

AUG 3 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg. - Suite 500
525 Park Street
Paul MN 5510

State of Minnesota

STATE REGISTER

Department of Administration—Print Communications Division



Rules edition
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18 June 1990

Volume 14, Number 51

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Contents

Minnesota Rules: Amendments & Additions

Issues 40-51 inclusive (issues #1-39 appeared in #39) 2906

Proposed Rules

Agriculture Department

Food vending machines 2908

Environmental Quality Board

High voltage lines, power plants 2914
Environmental review of certain large energy facilities 2930

Health Department

Registration fee for home care providers 2934

Labor & Industry Department

Reimbursement for copies of workers' compensation medical records 2938

Adopted Rules

Vocational Technical Education Board

License for financial aid administrator 2939

Executive Orders

Order #90-2: Assigning emergency responsibilities to state agencies 2940
Order #90-3: Providing for personnel and equipment for the Prairie Island Nuclear Power Plant exercise 2949

Official Notices

Agriculture Department

Meeting notice of the Agricultural Chemical Response Compensation Board 2950

Arts Board

Board meeting 2951

Commerce Department

Correction to adjustment of dollar amounts for the Minnesota property exemption and restrictions of deficiency judgments 2951
Opinion sought on rules for long term care insurance 2952

Human Services Department

Changes to the medical assistance (MA) program 2953
Opinion sought on rules for medical assistance reimbursement of community health clinic service providers 2954

Labor & Industry Department

Correction to prevailing wage rates 2954

Metropolitan Council

Preliminary schedule for the examination of Metro Council policies for the rural service area 2954

Public Safety Department—Emergency Response Commission

Notice of meeting and preliminary agenda 2955

Secretary of State

Vacancies in multi-member agencies 2956

Sentencing Guidelines Commission

Public hearing to consider modifications to the sentencing guidelines 2959

Transportation Department

Petitions for Variance from minimum state aid standards:
City of Fairmont for design speed (Prairie Avenue) 2960
City of Hopkins for street width (Main Street) 2960
City of Mankato for right of way width (Adams Street) 2961
City of Prior Lake for design speed (Fish Point Road) 2961
Hennepin County for street width (45th Ave., Lake Drive) 2962
Hennepin County for street width (Oak Street) 2962
Jackson County for recovery area and right of way width (CSAH 9) 2962
St. Louis County for design speed (40th Avenue West) 2963
Sibley County for diagonal parking (Main Street) 2963
Todd County for use of state aid funds (CSAH 24) 2963
Appointment and meeting of a State Aid Variance Committee 2964

State Contracts & Advertised Bids

Administration Department

Materials Management Division: Commodities and requisitions open for bid 2965
Print Communications Division: Printing, typesetting, pre-prep and copy prep, mailing services open for bid 2967

Professional, Technical & Consulting Contracts

State Designer Selection Board

Proposals sought for a project at the University of Minnesota-Duluth 2968

Gaming Department—Minnesota State Lottery

Request for interest in vendor listing for promotional merchandise 2969

Human Services Department

Proposals sought for medical information line services 2970

Investment Board

Request for money management firms 2970

Pollution Control Agency

Proposals sought to conduct a preliminary emission assessment for pressed wood manufacturing facilities 2971

State University Board

Availability of state contracts for professional/technical education services 2971

Trade & Economic Development Department

Professional economic development program and instructor(s) sought 2972

State Grants

Pollution Control Agency

Applications accepted for project development and project implementation grants through the clean water partnership program 2973

Public Safety Department—Drug Policy Office

Funds available to support community crime and drug reduction projects 2974

Tax Court Decisions

Minnesota Tax Court

Notice of discontinuation of publication in the *STATE REGISTER* 2974

Supreme Court Decisions

Decisions, opinions and orders filed Friday 15 June 1990 2975

Announcements 2976

Minnesota Statutes, Section 550.37, subdivision 4(a) was amended in 1985, effective July 1, 1986, to include dollar amount adjustments for other property exemptions within this section of statute. In 1989 a legislative amendment to subdivision 4(a) exempted indexing for subdivisions 5 and 7 by setting a maximum amount of $13,000 in each subdivision. A 1989 legislative amendment to subdivision 24(2) provided a $30,000 amount not subject to attachment in employee benefit accounts which received a cumulative index of 40% in 1990. The dollar adjustments use December 1980 as the reference base index, with indexing as follows:

Description	Original	7-1-88 30% increase	7-1-90 10% increase
Farm exemptions described under subdivision 5	$10,000	$13,000	No Increase
Business exemptions described under subdivision 6	$ 5,000	$ 6,500	$ 7,000
Total exemptions under subdivisions 5 and 6 described by subdivision 7	$10,000	$13,000	No increase
Exempted insurance benefits described under subdivision 10	$20,000	$26,000	$28,000
Additional exemptions under subdivision 10 for each dependent	$ 5,000	$ 6,500	$ 7,000
Motor vehicle exemption described under subdivision 12a	$ 2,000	$ 2,600	$ 2,800
Accrued interest exemption described under subdivision 23	$ 4,000	$ 5,200	$ 5,600
Employee benefits described under subdivision 24(2)	NA	NA	$42,000

Minnesota Statutes, Section 325G.22, was amended by Chapter 464, *1990 Session Laws* by adding the following: "Subd. 1a. [ADJUSTMENT OF DOLLAR AMOUNTS.] The dollar amount in subdivision 1 shall change periodically as provided in section 550.37, subdivision 4a." The adjustment uses the reference base index date of December 1980 and is subject to a cumulative index of 40% in 1990. The effective date of this amendment is April 24, 1990, and the dollar amount is indexed as follows:

Subdivision 1 Credit Extended	Original	7-1-90 40% increase
	$ 3,000	$ 4,200

The next published adjustment is scheduled on or before April 30, 1992, for July 1, 1992, based on the December 1991 index.

Department of Commerce

Notice to Solicit Outside Opinion Regarding Proposed Long Term Care Insurance Rules Including the Impact of Rules on Small Business

NOTICE IS HEREBY GIVEN that the Department of Commerce is seeking information or opinions from persons outside the agency to determine what rules should be adopted in regard to the establishment of standards to ensure that assessments used in the prescribing of long term care and which are required to receive coverage under long term care insurance policies, are reliable, valid and clinically appropriate. Promulgation of these rules is authorized by *Minnesota Statutes*, sections 45.025 and 62A.56, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by *Minnesota Statutes* Section 14.115, subdivision 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to:

Melbourne R. Boynton
Assistant Commissioner
Department of Commerce
133 East 7th Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-3588.

All statements of information and comment shall be accepted until July 18, 1990. Any written material received by the Department of Commerce shall become a part of the record in the event that the rules are promulgated.

Dated: 11 June 1990

Thomas H. Borman
Commissioner of Commerce

Department of Human Services

Health Care Management Division

Public Notice Regarding Changes to the Medical Assistance (MA) Program

NOTICE IS HEREBY GIVEN to providers of Minnesota Medical Assistance (MA) and to the public of certain administrative changes affecting the MA program. This notice is published pursuant to *Minnesota Statutes*, section 256B.0625, subdivision 25, which governs Medical Assistance. The purpose of this notice is to inform Medical Assistance providers and the public of changes in the process to request health services which require prior authorization.

Effective July 1, 1990, a phone-in prior authorization system will be available for MA enrolled providers to request any of the following specific health services, equipment and/or supplies.

- Powered Air Flotation Beds

  Service codes limited to: E0193

- Hearing Aids

  (Restricted to requests for more than one monaural contract aid or one set of binaural contract aids in 5 years; or repairs when the cost of parts and labor exceeds $100 or if a repair was made in the preceding 12 months; and purchase of all noncontract hearing aids)

  Service codes limited to: V5030, V5040, V5050, V5060, V5070, V5080, V5090, V5100, V5110, V5120, V5130, V5140, V5150, V5160, V5170, V5180, V5190, V5200, V5210, V5220, V5230, V5240, V5299, X5246, X5249, X5250, X5251, X5260, X5270, X5271

- Bronchial Drainage Vests

  Service Codes limited to: E1399

- Eyeglass Replacements For Loss or Breakage

  (Restricted to requests for more than one pair of eyeglasses in a 24 month period)

  Service Codes limited to: 92340, 92341, 92342, 92370

- Depo-provera For Contraception

  Service Codes limited to: J1050

Effective August 1, 1990, a phone-in prior authorization system will be available for MA enrolled providers to request the following health service:

- Nonemergency Regularly Scheduled Ambulance Trips (over 6 one-way trips in one month)

  Service Codes limited to: A0010, A1050, A0220, A0222, A0223, A0225

Telephones will be staffed during the hours of 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number available outside the metro area is 1-800-657-3616 (toll free). The telephone number within the metro area is (612) 297-2947.

The Medical Assistance/General Assistance Provider Manual publication of July 1, 1990, will contain the specific instructions and information required to be furnished by the provider during the phone-in process when requesting the services, equipment or supplies listed above.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

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

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

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

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

Additional rulemaking authority provided in Minnesota Statutes Section 45.023 authorizes the Commissioner to "adopt, amend, suspend, or repeal rules . . . whenever necessary or proper in discharging the Commissioner's official responsibilities."

The Commissioner finds the rules to be reasonable and necessary and consistent with the purposes fairly intended by the provisions of Chapter 45 and sections 62A.46 to 62A.56 of Chapter 62A.

FACTS ESTABLISHING NEED AND REASONABLENESS

BACKGROUND

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

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

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

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

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

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

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

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

Rule Part 2745.0010

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

the statutory authority for the promulgation of these rules.

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

Rule Part 2745.0020

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

Rule Part 2745.0030

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

Rule Part 2745.0040

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

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

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

Rule Part 2745.0050

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

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

SMALL BUSINESS CONSIDERATIONS

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

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

EXHIBIT A
Pg 1

Commerce Long-term Care Rule Ad Hoc Committee

Category	Person	Address
Consumer Advocates	Dr. George Warp, Chairman (926-0093) FAX 641-8969	Metro Senior Federation Long-term Care Committee 1885 University Ave. Suite 190 St. Paul, MN 55104
	Iris Freeman Executive Director (866-4373) No FAX #	MN Alliance for Health Care Consumers 5609 Lyndale Ave., South Mpls., MN 55419
	Jim Varpness Director (296-1099) FAX 296-6244	MN Ombudsman Program MN Board on Aging 444 Lafayette St. Paul, MN 55155-3843
	Elva Walker, Chair (378-1465) FAX 378-0262	MN Board on Aging 10 S.E. 5th Ave. Mpls., MN 55145
	John Kitto Executive Director (888-7653) FAX 888-8166	Alzheimer's 8053 E. Bloomington Freeway Suite 114 Bloomington, MN 55420
Insurance	Bob Johnson Sr. Vice President (292-1099) FAX 223-5443	MN Insurance Companies Federation 1310 Pioneer Bldg. 336 N. Robert St. Paul, MN 55101
	David Christianson Vice President and Actuary (340-8022) FAX 340-8389	Lutheran Brotherhood 625 4th Ave Mpls., MN 55415
	John L. Drozdal Director of Agency Administration (456-8574) FAX 456-1069	Blue Cross-Blue Shield P.O. Box 64560 Route # W-175 St. Paul, MN 55164

EXHIBIT A
pg 2

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Nursing Home and Home Care Providers	Gayle Kvenvold President (331-5571) FAX 331-1001	MN Assoc. of Homes for the Aging 221 University Ave. Suite 425 Mpls., MN 55414
	John Selstad Vice President (879-2200) FAX 879-1473	Ebenezer Society 2722 Park Ave. Mpls., MN 55407
	Patti Cullen Garvey Associate Director of Public Affairs (854-2844) FAX 854-6214	Care Providers of MN 2850 Metro Drive Bloomington, MN 55420
	Judy Schultz Past President MN Homecare Assoc. (218) 736-5475 FAX (218) 736-7283	Lake Region Hospital & Nursing Home 712 South Cascade Fergus Falls, MN 56537
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	Richard Gomsrud Department Counsel (296-5689) FAX 296-4328	Commerce Department
	Valerie Golden Assistant Commissioner (297-1118) FAX 296-4328	Commerce Department

EXHIBIT A
Pg 3

Category	Person	Address
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	Connie Krmpotich Assistant Section Chief, Quality Assurance & Revenue Section (643-2502) FAX 643-2593	MN Dept. of Health 393 N. Dunlap St. St. Paul, MN 55104
	Marlene Deschler Chief, Technical Consultation & Training (643-2543) FAX 643-2593	MN Dept. of Health
Academic Expert	Rosalie Kane Professor & Director (624-6151) and (624-3198) FAX 626-6931	University of Minnesota Long-term Care Decisions Resource Center 420 Delaware St., S.E. Mpls., MN 55455

Department of Commerce
In the Matter of the Proposed
Adoption of the Rule Relating
to Long Term Care

NOTICE OF INTENT
TO ADOPT A RULE
WITHOUT A PUBLIC
HEARING

(1) Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statute Section §45.023, and Section §62A.56.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the department will proceed pursuant to Minnesota Statutes Section 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted on or before July 22, 1992 to:

Donna M. Watz
Staff Attorney
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101
(612) 297-1118

(8) (9) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Donna M. Watz, Staff Attorney, at the above-referenced address.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Donna M. Watz, Staff Attorney at the above-referenced address.

Dated: May 8, 1992

BERT J. McKASY
Commissioner of Commerce

In the Matter of the Proposed Adoption of the Rules Governing Real Estate Uniform Conveyancing Blanks and Long Term

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA }
} SS.
COUNTY OF RAMSEY }

Pamela Jo Kolstad, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes section 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Commerce rulemaking mailing list is accurate, complete, and current as of this 1st day of June, 1992.

That on the 1st day of June, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy of thereof, to all persons and associations on the aforementioned mailing list.

Pamela Jo Kolstad
Secretary to the Commissioner

Subscribed and sworn to me
this 1st day of June, 1992.

RICHARD G. GOMSRUD
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 7, 1993

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Contents

Minnesota Rules: Amendments & Additions

Issues 40-51 inclusive (issues #1-39 appeared in #39) 2716

Proposed Rules

Commerce Department
Uniform Conveyancing Blanks 2718
Long-term Care 2724

Public Safety
Liquor: state permit fees 2725

Transportation Department
Loading and unloading of petroleum transports 2727

Adopted Rules

Higher Education Coordinating Board
Postsecondary financial assistance 2732

Technical College Board
Technical college teacher licenses: nursing college and aquaculture 2732

Executive Orders

Executive Department
Executive Order 92-6: Providing for the Governor's Commission on Canterbury Downs 2732

Commissioner's Orders

Natural Resources Department
Order No. 2446: Regulations for the use of Wildlife Management areas; superseding commissioner's orders No. 1961 and 2516 2734
No. 2448: Regulating the taking of deer; amending commissioner's order No. 2418 2736
No. 2449: Regulations for taking of turkeys during the fall season 2737

Emergency Rules

Human Services Health Care Division
Amended notice of continuation of emergency rule governing medical care surcharge and special payments 2742
Corrected notice of continuation of emergency amendments to permanent rules emergency rules relating to professional home-based mental health services 2742
Corrected notice of continuation of emergency rules relating to case management for children with severe emotional disturbance and their families 2743

Official Notices

Minnesota State Agricultural Society
Board meeting 2743

Office of Attorney General
Meeting notice regarding proposed revisions to Landlords and Tenants brochure 2743

Commerce Department
Correction to adjustment of dollar amounts for the Minnesota property exemption and restrictions of deficiency judgments 2743
Correction to adjustment of dollar amounts for the Minnesota regulated loan act 2745

Ethical Practices Board
Advisory opinion re: campaign finance 2746

Health Department
Outside opinions sought regarding amendments to proposed rules governing water supplies for camps and mobile home parks 2746

Human Services Department
Outside opinions sought regarding proposed rules governing payment rates for intermediate care facilities 2747
Vacancy on Medicaid Drug Formulary Committee 2747

State Board of Investment
Private money management firms sought to manage either equity of fixed income assets 2747

Jobs and Training Department
Outside opinions sought regarding proposed rules governing reviews by the Commissioner of an initial appeal decision 2748

Public Safety Department
Emergency response commission meeting notice 2748

Sentencing Guidelines Commission
Public hearing to consider modification to the sentencing guidelines 2749

State Treasurer
Outside opinions sought regarding proposed rule governing credit card disclosure reports 2751

Transportation Department
State aid variance meeting 2752

State Grants

Higher Education Coordinating Board
Child Care Innovation Grants 2754

Human Services Department
Refugee assistance grant funds 2754
Proposals for family-based crime prevention services for Asian youth programs 2755

Professional, Technical & Consulting Contracts

Amateur Sports Commission
Proposals sought for redesign and publishing of *Minnesota Medalist* magazine 2755

State Designer Selection Board
Sewer separation project 2756

Minnesota Historical Society
Letters of interest for consulting relating to Federal Highway Act 2757

Non-State Public Contracts

Minnesota Historical Society
Request for bids for construction of wall systems for theater space 2758

Minneapolis Community Development Agency
Historian Consultant sought 2758

State Contracts & Advertised Bids

Administration Department
Materials Management Division: Commodities and requisitions open for bid 2759
Print Communications Division: Typesetting, keylining, photo prep and seps, printing, binding, labeling and mailing contracts open for bid 2762

Department of Commerce

Proposed Permanent Rules Relating to Long-Term Care

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, Sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statute* Section § 45.023, and Section § 62A.56.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the department will proceed pursuant to *Minnesota Statutes* Section 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted on or before July 22, 1992 to:

Donna M. Watz
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133 East Seventh Street
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The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Donna M. Watz, Staff Attorney, at the above-referenced address.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Donna M. Watz, Staff Attorney at the above-referenced address.

Dated: 8 May 1992

Bert J. McKasy
Commissioner of Commerce

Rules as Proposed (all new material)

2745.0010 PURPOSE.

Parts 2745.0010 to 2745.0050 are authorized and adopted pursuant to *Minnesota Statutes*, section 62A.56, subdivision 2. Their purpose is to establish general standards to ensure that assessments used in prescribing long-term care are reliable, valid, and clinically appropriate. Parts 2745.0010 to 2745.0050 apply exclusively to insurance and subscriber contracts that determine benefit entitlement based on an assessment of the insured's ability to perform the activities of daily living and to perform basic cognitive functions. Assessments satisfying the general standards in parts 2745.0010 to 2745.0050 are considered reliable, valid, and clinically appropriate.

2745.0020 ACTIVITIES OF DAILY LIVING.

General standards for determining coverage of long-term care based on an assessment of the insured's inability to perform activities of daily living include the following activities with definitions of performance not more restrictive than those shown in items A to E.

A. "Bathing" means washing oneself in either a tub or shower, including getting into and out of the tub or shower, or by sponge bath without the aid of another person.

B. "Dressing" means getting clothes from the closet or drawers, putting on clothes, and attaching any necessary braces or prosthesis without the aid of another person.

C. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene without the aid of another person.

D. "Transferring" means moving in and out of a bed, chair, or wheelchair without the aid of another person.

E. "Eating" means feeding oneself by any means without the aid of another person.

In addition to the activities in items A to E, other reasonable activities of daily living such as continence, walking, and wheeling may be taken into account if specified in the insurance contract.

2745.0030 COGNITIVE IMPAIRMENT.

General standards for determining coverage of long-term care based on cognitive impairment shall be based on an assessment of the insured's ability to perform basic cognitive functions. The definition of cognitive impairment shall not be more restrictive than the definition in this part. "Cognitive impairment" means deficiency in the ability to think, perceive, reason, and/or remember that results in the inability to take care of oneself without the ongoing assistance of or supervision by another person.

2745.0040 USE OF ASSESSMENTS.

A long-term care insurance policy may use activities of daily living and cognitive impairment assessments as a basis for defining when a service, type of care, or procedure could not be omitted without adversely affecting the patient's illness or condition.

Determining impairment under the insurance contract shall not be more restrictive than requiring either a deficiency in three of the above activities of daily living or the presence of cognitive impairment. An insurer may, by contract, require less restrictive criteria than the above determining benefit eligibility.

The determination of physical or cognitive impairment shall be based on generally accepted tests that use objective measures and produce verifiable results such as, but not limited to, the most recently adopted Minnesota Department of Human Services Preadmission Screening Assessment Form.

2745.0050 ALTERNATIVE STANDARDS AND CERTIFICATION.

If an insurer proposes standards other than those described in parts 2745.0020, 2745.0030, and 2745.0040, upon request the insurer shall provide to the department a detailed description of the proposed assessment methodology explaining how the assessment would reasonably be expected to produce reliable, valid, and clinically appropriate results. The insurer is responsible for demonstrating that the assessment is reliable, valid, and clinically appropriate and not less beneficial to the policyholder than the standards described in parts 2745.0020, 2745.0030, and 2745.0040. An officer of the insurance company shall provide a certification that, to the best of the officer's knowledge, the assessment methodology is reliable, valid, and clinically appropriate.

Department of Public Safety

Proposed Permanent Rules Relating to Liquor; State Permit Fees

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, sections 299A.02, subdivision 3.

All persons have 30 days, until 4:30 p.m., July 15, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on July 15, 1992. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Adoption of the Rules Relating to Long Term Care

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on June 15, 1992 and was sent by United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 on June 1, 1992. (2) The Statement of Need and Reasonableness was prepared before the Notice of Intent to Adopt a Rule without a Public Hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The department received two written comments on the rules, however, (5) no requests for a public hearing on the rules were received by the department. (7) No requests for notice of submission to the Attorney General were received by the department.

Based on the comments and evidence in the record before the department, I find that the above-captioned rules are needed and reasonable. (8)

(9) NOW, THEREFORE, IT IS ORDERED that the rules identified as the Proposed Permanent Rules Relating to Long Term Care are adopted this 27th day of July, 1992, pursuant to the authority vested in me by Minnesota Statutes, sections 62A.45 and 45.023.

Bert J. McKasy

BERT J. McKASY
Commissioner of Commerce



State of Minnesota
JUL 6 1992
Dept. of Commerce

Donald Y. Edde
CLU, RHU, FLMI, ALHC, AALU
Second Vice President and Deputy Director
Compliance Department

June 30, 1992

Donna M. Watz
Staff Attorney
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Proposed Long Term Care Rules

Dear Mr. Watz:

Thank you for the opportunity to speak to the proposed changes. We would appreciate receiving a copy of the adopted rule.

The listing of proposed ADL's lists bathing. It is our understanding that in 97% of the cases where another ADL exists, the individual is unable to bathe without assistance. This drops the standard of three in five effectively to two in five and, since the industry standard seems to be settling at two, to only one ADL. We therefore request that bathing be dropped from the list.

Sincerely,

Donald Y. Edde

DYE/trh

cc: Michael J. Bartholomew
Managing Counsel
ACLI
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Washington, D.C. 20004-2599

Aetna

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Karen J. Cwirka
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Aetna Health Plans
203-636-5038 Fax: 203-636-1210

STATE OF MINNESOTA
JUL 23 1992
DEPARTMENT OF COMMERCE

July 21, 1992

Donna M. Watz, Staff Attorney
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Re: Long Term Care - Proposed Permanent Rules

Dear Ms. Watz:

This letter is to provide you with the comments of Aetna Life Insurance Company regarding the Department's proposed rules for long term care insurance.

Use of Specific "Activities of Daily Living"

Our company has used the "activities of daily living" approach for several years to determine benefit eligibility under our employer group long term care policy. However, under the terms of the proposed rules, we would not be able to offer our employer group policy in Minnesota. The proposal specifies five ADLs - bathing, dressing, toileting, transferring, and eating - which must be included in a policy to determine benefit eligibility. Requiring that specific ADLs be used in every qualifying LTC policy will be a problem for many insurers, since each one generally chooses which ADLs to include within policy coverage. We believe that the rules should remain more liberal in allowing insurers to choose among possible ADLs.

There is no degree of consensus among clinical researchers as to the appropriate number and type of ADLs to be used. Insurers have chosen their particular benefit triggers based upon research concerning which ADL losses represent an appropriate level of service need. Aetna, for instance, has found bathing to be an inappropriate indicator of a real need for long term care benefits. Aetna's ADL benefit triggers - eating, dressing, mobility, transferring and toileting - provide consumers with meaningful LTC benefits at a reasonable cost, along with what we believe are the most comprehensive consumer-oriented home care benefits in the industry today. Under the rule as currently proposed, however, this policy would not be available to Minnesota employers.

As an alternative, we would suggest that the ADL benefit trigger be flexible to allow each insurer to use its own ADLs to determine benefit eligibility. The Department of Commerce would retain control over which ADLs are ultimately used through the filing and approval process.

Cognitive Impairment

The proposed rule (section 2745.0040) discusses the use of assessments of activities of daily living or cognitive impairment to determine benefit eligibility. We believe that this requirement that a cognitive impairment alone trigger a benefit payment will result in LTC policies paying benefits on an extremely liberal basis, which will increase the cost of the coverage. A deficiency in the ability to think, perceive, reason, and/or remember will not necessarily amount to a need for assistance in performing activities of daily living. Further, we have noted that the requirement that standardized tests be used to determine deficiencies does not mention what the "passing" scores on such tests should be. As the proposal is currently written, the threshold for benefits is so low that it would be necessary to increase the cost of the coverage.

We believe that a better approach would be to use any benefit eligibility test in a manner similar to an inability to perform activities of daily living. Such an approach would provide for a more consistent standard for benefit determinations. We would suggest language such as the following:

> Eligibility for benefits shall be defined upon clinically-based empirical research in the area of disability and long term care and shall include at least one of the following triggering events for benefit eligibility:
>
> - Insureds are determined to be disabled due to an inability to perform an appropriate number of activities of daily living, or
> - Insureds have a similar level of disability, based on the medical care required, or
> - Insureds have a similar level of disability, due to cognitive impairment.
>
> A long term care insurance policy and certificate shall contain a clear and complete explanation of the eligibility criteria used. All significant terms used in describing the triggering event, including activities of daily living, the need for assistance in the activities of daily living, medical necessity, and cognitive impairment shall be defined in the policy or certificate.
>
> Insurers shall provide prospective insureds with a clear and adequate written definition of the benefit eligibility process at the point of sale.

Again, this language would allow the Department of Commerce to retain control of the benefit triggers used by insurers through the requirement that policies be approved before use. It also allows insurers flexibility to offer valuable LTC benefits at a reasonable cost, based upon their own research as to the need for assistance in performing ADLs. Consumers are aided in that insurers must clearly describe the benefit eligibility process when coverage is sold. Consequently, we believe that the above-stated language would allow more Minnesotans to purchase LTC policies providing valuable coverage at a reasonable cost.

* * *

I hope that these comments will be helpful to you in finalizing the Minnesota rules for long term care insurance. Thank you for the opportunity to present our views.

Very truly yours,

Karen J. Cwirka
Attorney
Aetna Life Insurance Company

FAX

In the Matter of Adoption of the Rules Relating to Long Term Care

DECLARATION OF COUNSEL

I, Carolyn Ham, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0119.

Dated: 7/28/92

Carolyn Ham

Special Assistant Attorney General

Department of Commerce

Proposed Permanent Rules Relating to Long-Term Care

Rules as Proposed (all new material)

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Approved by Revisor PMM

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2745.0050 ALTERNATIVE STANDARDS AND CERTIFICATION.

If an insurer proposes standards other than those described

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by Revisor _____

in parts 2745.0020, 2745.0030, and 2745.0040, upon request the insurer shall provide to the department a detailed description of the proposed assessment methodology explaining how the assessment would reasonably be expected to produce reliable, valid, and clinically appropriate results. The insurer is responsible for demonstrating that the assessment is reliable, valid, and clinically appropriate and not less beneficial to the policyholder than the standards described in parts 2745.0020, 2745.0030, and 2745.0040. An officer of the insurance company shall provide a certification that, to the best of the officer's knowledge, the assessment methodology is reliable, valid, and clinically appropriate.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Long-Term Care

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2745

The attached rules are approved for
publication in the State Register

Paul M. Marinac
Deputy Revisor