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July 20, 2012

The Honorable Sean R. Nienow
Senator District 17
120 State Capitol Building
75 Rev Dr Martin Luther King Jr Blvd
St. Paul, MN 55155-1606

RE: Implementation Status of Executive Order 11-06

Dear Senator Nienow:

Thank you for your correspondence dated June 6, 2012 with certain questions relating to the status of the managed care contract audits as authorized by the Governor's Executive Order 11-06, which mandated in part that the Minnesota Department of Human Services ("DHS") "submit data from the managed care plans for state public programs to the Commissioner of Commerce so that regular financial audits of data will be conducted." This letter responds to the questions posed, in the order presented, relating to Commerce's audit plan in implementing the terms of this Executive Order.

1. Are you auditing the state funded programs or the Commercial products of the health plans?

As stated above, the Governor's Executive Order 11-06 required, in part, that DHS:

"3. Submit data from the managed care plans for state public programs to the Commissioner of Commerce so that regular financial audits of data will be conducted."

Our audits therefore will be targeted on the state public programs. However, by its nature an audit considers information that is ancillary to the target, in order to establish the interrelationships of different aspects of a company's business.

2. Are you auditing more than mere solvency of the plans under NAIC accounting standard #47 for government funded programs? Please supply me with the scope of your audit.

NAIC Statement of Statutory Accounting Principles 47 (SSAP 47) provides guidance for accounting for "uninsured programs." This means programs for which an insurer provides administrative services only (ASO), not taking on insurance risk. SSAP 47 is one element to be considered in determining the appropriate statutory accounting to be used by insurers that have ASO business. However, the public program business of managed care plans is not ASO business.

The Department's audits under the Executive Order will review for accuracy and consistency the information provided to DHS by the plans, including the administrative expenses associated with public programs.

3. What is the difference between the audit you are doing now as a requirement of Governor

Dayton's Executive Order regarding government funded programs and the audits for government programs you have done of the health plans in the past? Have you in fact, audited government funded programs in the past?

No, Commerce has not audited the government-funded programs of health plans.

4. What is the budget appropriation for this current audit you are performing and what was the budget appropriation for the most recent audit prior to this one?

The legislature did not make an appropriation for these audits.

5. Have you begun the audit and where are you at in the process?

Commerce has commenced the audit and has begun review of the annual financial statements that were received by Commerce.

Commerce intends to perform the audits in sequence, not simultaneously, since there are eight entities to audit.

6. When do you expect this audit to be complete?

Commerce's goal is to have the HMO reports publicly available by mid-fall, 2012.

7. Does the MN Department of Commerce audit the underlying actuarial assumptions which the health plans use to create the data which then is used to certify the Medicaid rates or costs to the federal government?

No, Commerce does not audit the underlying actuarial assumptions.

8. If your answer is no because this information is trade secret how can you ensure the integrity of government programs when the venders are allowed to keep this kind of information secret?

Please see the response to #7 above.

9. On Feb. 14th 2012, during an informational hearing before the House HHS Committee, you were asked the following questions: "Do the venders in the state's public health programs assume any insurance risk?" You deferred the question to Commissioner Jesson saying you couldn't answer and she should respond. She did not answer the question. I now ask you again, as the regulator of the business of insurance of the State of Minnesota, does it appear to you that these venders to the state Department of Human Services are actually assuming any significant insurance risk? I am aware of the text of the contracts that the venders sign with the Department. I want to know if you, as the regulator of the business of insurance, believe that these venders are assuming any significance insurance risk, especially in light of the attached fiscal note.

Thank you for your question. Commerce continues to defer to Commissioner Jesson on the nature of the contracts between the Department of Human Services and the managed care plans.

10. On Feb. 15th 2012, the Minnesota Department of Health, working with Delloitte Consulting LCC, published a report which said "the lack of consistency in reporting administrative expenses and investment income made it extremely difficult to compare the health plans to each other. It also made it difficult to determine if the reported administrative expenses were reasonable. To the extent health plans participate in the commercial market as well as the state public programs, it was not possible to determine if administration expenses and investment income was being properly and fairly allocated among all of a HMOs lines of business" (page 2). Here is the link to the document for your reference: [http:// archive.leg. state.mn.us/docs/2012/mandated/120264.Pdf](http://archive.leg.state.mn.us/docs/2012/mandated/120264.Pdf) I assume that Delloitte's conclusion was based on information they obtained from the Minnesota Department of Commerce. Can the Minnesota Department of Commerce compare the health plans to each other, determine if reported expenses are reasonable and to the extent that health plans participate in state and public programs, determine if administrative expenses and investment income are being properly allocated among all the HMOs lines of business?

The Deloitte study to which you refer was not based on information from Commerce. The report was based on the financial statements that are filed with the Minnesota Department of Health.

In the past, Commerce has not been asked to "compare the health plans to each other, determine if reported expenses are reasonable and to the extent that health plans participate in state and public programs, and determine if administrative expenses and investment income are being properly allocated among all the HMOs lines of business."

Under Executive Order 11-06, Commerce plans to provide audit reports on each managed care plan as described above.

11. If you can answer these questions and attest to the appropriateness and fairness of these allocations, how were you able to do so when Delloitte was not?

Please see the response to #10.

12. On January 14th, 2011, the Centers for Medicare Medicaid Services (CMS) received a letter from the American Academy of Actuaries. According to this document, the state's consulting actuary is not required to do any of the following: "A. determine whether the data or other information supplied by others are falsified or intentionally misleading; B. develop additional data compilations solely for the purpose of searching for questionable or inconsistent data; or C: audit the data." Does the Minnesota Department of Commerce perform any of these functions?

We have not seen the letter to which you refer, but we are familiar with the distinction that the letter is apparently trying to make. An actuary is not an auditor, and actuaries often rely on the work performed by auditors when preparing reports containing actuarial opinions.

13. If the Department of Commerce does not, to the best of your knowledge, who does perform these functions?

Please see the answers to the questions above.

14. Given the fact that both Commissioner Jesson and Governor Dayton said that the state was paying too generously for those programs why did you not detect this?

Commerce has not audited the government-funded programs of health plans.

15. Do you believe that the Department of Commerce has any fiduciary responsibility to the federal government to prevent the overpayment of federal money for state health care programs?

Commerce is not the agency responsible for administering state health care programs.

Sincerely,



Tim Vande Hey
Assistant Commissioner
Insurance Division

