

**Background Paper on Service Area Requirements**  
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## Background

The Patient Protection and Affordable Care Act (ACA) directs the U.S. Department of Human Services (HHS) to issue certification criteria for qualified health plans (QHPs) sold in American Health Benefit Exchanges. In March 2012, HHS issued final rules governing the Exchanges, including a requirement that Exchanges establish or evaluate QHP service areas to ensure they include a minimum geographical area that is established without regard to racial, ethnic, language, health status, or other factors that exclude specific high cost or medically underserved populations.

Service areas are geographic boundaries within which issuers market and sell health plans. As defined in § 155.305 of the final rule, individuals must reside or be employed within the QHPs service area in order to enroll. Service areas are distinct from rating areas which provide geographic boundaries established or approved by State regulators by which issuers may adjust premiums. Minnesota's regulatory requirements for health maintenance organizations (HMOS) link service areas to network adequacy standards, ensuring that covered services are accessible to enrollees.

This background paper has two purposes:

- 1) to describe federal Exchange requirements related to service areas and compare those requirements to existing related state laws and rules. As previously noted in work group discussions, these existing standards will serve as the basis for addressing federal certification requirements for the first year of Exchange certification and operation;
- 2) to outline potential service area standards that may be considered for implementation starting in 2015. Adoption of new standards would require modification of existing statutes and/or rules. Insurers would subsequently need adequate lead time to develop and seek certification for new products meeting different standards.

## Federal Service Area Requirements and Existing State

In March 2012, HHS issued the final rules governing the establishment of Exchanges and Qualified Health Plans. These rules require Exchanges to establish or evaluate QHP service areas to ensure they include a minimum geographical area that is at least a county or group of counties unless the exchange determines that a smaller area is nondiscriminatory and in the best interest of consumers. Service areas must be established without regard to racial, ethnic, language, health status, or other factors that exclude specific high cost or medically underserved populations.<sup>i</sup> As noted in the preamble to the final rules, this service area standard mirrors the "county integrity rule" for Medicare Advantage plans which is discussed in more detail in this document.<sup>ii</sup>

The Minnesota Department of Health (MDH) is the lead regulatory and licensing agency for health maintenance organizations (HMOs) operating in the state. HMOs applying for a certificate of authority in Minnesota must provide a statement describing the geographic service area where they plan to market and sell health plans.<sup>iii</sup> To obtain approval for a service area, HMOs must have sufficient providers in the area to meet network adequacy and access standards.<sup>iv</sup> Should MDH determine that there are not sufficient providers within the approved service area, they may institute a corrective action plan with the health maintenance organization. This plan may require the HMO to pay out of network providers, reduce its service area, or limit new enrollment to those areas with sufficient provider availability.<sup>v</sup>

HMOs may enroll people residing outside the service area, but they must notify those individuals of the potential consequences of enrollment.<sup>vi</sup> HMOs wishing to expand their service area must file a request with MDH including a detailed map of the proposed area containing network provider locations, evidence of provider contracts, and other supporting documentation.<sup>vii</sup>

The Minnesota Department of Commerce is the lead regulatory and licensing agency for all non HMO products issued in the state. Regulators with the Minnesota Department of Commerce do not currently collect service area information in conjunction with required issuer filings. Preferred provider organization (PPO) filings may contain broad references to the geographic area of provider networks, and enrollee contracts may also contain statements regarding the availability of national provider networks.<sup>viii</sup>

While Minnesota does not have a specific regulation prohibiting discriminatory service areas, the state does prohibit some activities that may discourage enrollment by high risk individuals or groups. Minnesota Statutes 72A.20 prohibits health plans from designing provider networks, provider access policies, or marketing strategies in such a way that discourages enrollment by individuals or groups whose health care needs are perceived as more expensive than average. While not directly linked to service area definitions that limit health plan operations or enrollment, this statute prohibits other discriminatory practices designed to limit risk.

### **Service Areas in Medicare Advantage, Medical Assistance, and MinnesotaCare**

The service area requirements for QHPs mirrors the requirement used in Medicare Advantage (MA) organizations. The preamble to the final rule governing Exchanges suggests that the “county integrity rule” establishing service area standards for MA organizations provides a useful resource for evaluating QHP service areas. The preamble notes that while the Medicare Advantage standards contain guidance for applying the service area standards to QHPs, Exchanges have discretion to interpret the requirement.

The Centers for Medicare and Medicaid Services (CMS) has established minimum service area requirements for Medicare Advantage (MA) that generally consist of counties or groups of counties. Under the “county integrity rule”, CMS may approve of service areas including partial

counties when these sub-county areas are deemed necessary, nondiscriminatory, and in the best interest of beneficiaries. CMS may also consider whether the proposed service area mirrors either those areas served by the existing commercial market or other MA plans offered by the same issuer. MA organizations must meet criteria for all three of the conditions listed above in order to obtain exceptions to the county integrity rule. Specifically:

- For a partial county to be deemed **necessary**, an MA organization must demonstrate that it is unable to establish a provider network due to geographic barriers, insufficient supply or capacity of providers, or an inability to establish economically viable provider contracts;
- For a partial county to be deemed **non-discriminatory**, an MA organization must demonstrate that both the racial and economic composition and the anticipated enrollee health cost in the service area are similar to that of the partial county area that will be excluded;
- For CMS to determine whether a partial county is in the **best interest of beneficiaries**, an organization must provide supporting documentation that may include enrollee satisfaction surveys, grievance and appeal files, and utilization data.

Medicare Advantage service area requirements also include network adequacy and access considerations. All network based plans must have provider networks sufficient to deliver all covered services within the service area.<sup>ix</sup> The service area designation also determines payment rate benchmarks, eligibility, and the geographic boundary beyond which the MA organization must cover emergency services. While these issues are broadly related to geographic service area requirements for MA plans, the final rule for Exchanges contains no requirement to include network adequacy or access considerations within service area standards.

Within Minnesota's Medicaid and MinnesotaCare managed care contracts, service areas are counties within which the managed care organization is contracted to provide health coverage. The managed care organization (MCO) must enroll all persons who are eligible for the programs residing within the defined service area and choose that MCO. Participating MCOs are also restricted from marketing to enrollees or prospective enrollees outside the service area. In accordance with federal law, Medical Assistance MCOs must provide supporting documentation demonstrating capacity to serve the expected enrollment in its service area in accordance with the State's standards for access to care. As with Medicare Advantage plans, service area designations provide the geographic boundary for the coverage of out of network emergency or other urgent care services.<sup>x</sup>

## Factors to Consider Related to Service Area

A primary goal of service area requirements is to protect against red-lining or other discriminatory practices and ensure market access in areas that may have a concentration of higher risk. Service area standards may limit health plan operations including enrollment and marketing activities in those areas without access to providers or provider networks. Within managed care and health maintenance organizations in Minnesota, service areas relate to network adequacy standards, ensuring that all members within the service area have meaningful access to available services.

While the final rule points to service area standards used in Medicare Advantage plans, Exchanges still have flexibility to use or develop criteria appropriate to their own market. The federal guidance permits Exchanges to establish or evaluate QHP service areas to facilitate participation by local health plans provided that the standard protects against discrimination. The preamble suggests that the Exchanges consider aligning service areas with existing rating areas for administrative simplification and to facilitate consumers' ability to compare premiums.<sup>xi,xii</sup>

The following discussion questions may be helpful in informing the workgroup's recommendations for service area requirements:

- Should the Exchange consider defining specific geographic service areas? To what extent is it important that service areas are the same across carriers?
- What kind of service area standard strikes the best balance between protecting against any potential red-lining while encouraging new carriers to enter into the marketplace?
- Under which circumstances should a sub county service area be considered acceptable for plan certification purposes?
- What relationship, if any, should service area requirements have with network adequacy and access standards including payment for out of area emergency services?
- What relationship, if any, should service area requirements have with health plan operations including marketing and enrollment standards?
- How will geographic service area requirements impact consumers in rural portions of the state?

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<sup>i</sup> 42 CFR § 155.1055

<sup>ii</sup> United States Department of Health and Human Services, "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans", p. 378, March 12, 2012.

<sup>iii</sup> MN Statutes § 62D.03

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<sup>iv</sup> Interview with MDH staff on June 28, 2012

<sup>v</sup> MN Statutes § 62D.03

<sup>vi</sup> Minnesota Rule 4685.3400

<sup>vii</sup> Minnesota Rule 4685.3300

<sup>viii</sup> Interview with Department of Commerce staff on July 2, 2012.

<sup>ix</sup> 42 CFR § 42

<sup>x</sup> “Minnesota Department of Human Services Contract for Medical Assistance and MinnesotaCare.” Available at [http://www.dhs.state.mn.us/main/groups/business\\_partners/documents/pub/dhs16\\_156514.pdf](http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs16_156514.pdf)

<sup>xi</sup> United States Department of Health and Human Services, “Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans”, p. 377, March 12, 2012.

<sup>xii</sup> Pending the outcome of a final definition of “rating area” from the Internal Revenue Service, uniform rating and service areas may also simplify determination of the benchmark plan and eligibility determinations for tax credits.