

# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3660

September 29, 1989

The Honorable Alex Harvin, III  
The Majority Leader Emeritus  
House of Representatives  
P. O. Box 266  
Summerton, South Carolina 29148

Dear Representative Harvin:

Your letter of September 11, 1989 to Attorney General Medlock has been referred to me for response. In that letter, you ask the following questions:

(1) Does the Commissioner of Insurance have the statutory authority to disapprove a health insurance policy form filing which represents a new generation of major medical product on any other grounds than the standards set forth in Section 38-71-310?

(2) More specifically, does the Commissioner of Insurance have the statutory authority to disapprove a new health insurance policy filing which (1) represents a new generation of a previously approved product and (2) meets all the standards set forth in Section 38-71-310 on the grounds that the new policy is comparable to the old policy?

It appears that the questions which you have asked may be more saliently posed as follows:

(1) What statutes control the authority of the Commissioner to approve or disapprove health insurance policy forms?

(2) Whether the Commissioner has the authority to disapprove a health insurance policy form on the grounds that the underlying policy is not really a "new" policy or

The Honorable Alex Harvin, III  
Page Two  
September 29, 1989

product but, rather, is comparable to an "old" policy or product?

Firstly, the Commissioner's authority for the approval of health insurance policy forms appears to be prescribed by the provisions of 1976 S. C. Code, Section 38-71-310, as amended. Health insurance policy forms which do not meet the requirements set forth in that statute, may be disapproved by the Commissioner. The most recent version of that statute, approved by the Governor on May 22, 1989, may be found in 1989 Acts and Joint Resolutions, Advance Sheet No. 2, p. 210.

Secondly, Section 38-71-310, in pertinent part, unambiguously provides that "no policy...may be issued or delivered in this State...until a copy of its form has been filed with and approved by the Commissioner...." (emphasis supplied). The provisions of that statute make no distinction between "old" and "new" policies. Nor do they empower the Commissioner to classify a policy as "old" or "new" based on the degree of difference between the terms of the policy form before the Commissioner and a previously approved policy form.

Significantly, Section 38-71-520(1), CODE, defines a "form" as "policies, contracts, riders, endorsements, and applications as provided in Section 38-71-310." (emphasis supplied). Section 38-71-520(3), CODE, states that a "policy" means the entire contract between the insurer and insured...." (emphasis supplied).

In light of these definitions, it seems clear that if an insurer intends to issue in this State a policy, the entire provisions of which have not been approved by the Commissioner pursuant to a previous policy form filing, the insurer must first file with the Commissioner a copy of a policy form for that policy. When the policy form is filed, the Commissioner may approve or disapprove it in accordance with the requirements of Section 38-71-310.

Accordingly, and in conclusion, we would respond to your inquiries in the following manner:

(1) The Commissioner's authority to approve or disapprove a health insurance policy form is prescribed, exclusively, by Section 38-71-310, CODE.

The Honorable Alex Harvin, III  
Page Three  
September 29, 1989

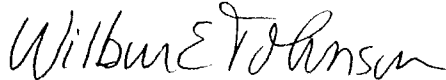
(2) Section 38-71-310, CODE, does not authorize the classification of a policy as "old" or "new" based upon the similarity of its provisions to those of a previously approved policy. Consequently, where the entire provisions of a policy have not previously been approved, an insurer which intends to issue or deliver that policy in this State, must first submit to the Commissioner a policy form for that policy. Upon the filing of the policy form, the Commissioner may approve or disapprove it in accordance with the requirements of Section 38-71-310.

This Office does not have before it the provisions of any policy proposed for issuance or delivery in this State. Therefore, no attempt is made by this opinion to comment on whether any such policy would meet the requirements of Section 38-71-310, CODE.

I trust that you will find the foregoing information to be responsive to your concerns.

Please advise me if I may be of any further assistance.

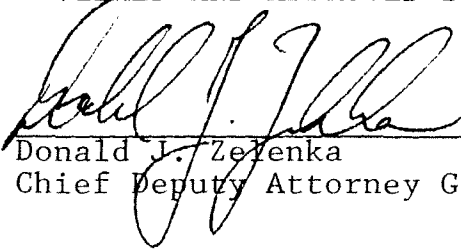
Very truly yours,



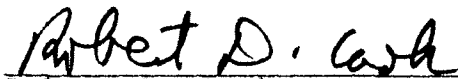
Wilbur E. Johnson  
Assistant Attorney General

WEJ/fc

REVIEWED AND APPROVED BY:



Donald J. Zelenka  
Chief Deputy Attorney General



Robert D. Cook  
Executive Assistant for Opinions