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The State of South Carolina



Office of the Attorney General

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April 30, 1985

The Honorable David L. Thomas
Senator, District No. 8
610 Gressette Building
Columbia, South Carolina 29202

Dear Senator Thomas:

By your letter of April 10, 1985, you have referenced the report of the report of the Senate Committee on Banking and Insurance as to Senate Bill No. 53 and have asked the following questions:

1. Would Section 2 apply to the annual renegotiations of insurance contracts?
2. Would Section 3 provide that insurance companies, writing policies governed by this Section, do not have to write medical coverage and coverage for other services included in the Section, such as, for oral surgeons, podiatrists and chiropractors?
3. If Section 3 does in fact provide that insurance companies do not have to write coverage for medical services or for those services included in the Section, would the original intent to the legislation, as described in the letter of April 10, 1985, still be accomplished?

Each of your questions will be addressed separately, as follows.

REQUEST LETTER

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Question 1

Section 2 of the Committee's report provides the following:

The provisions of this act do not apply
to any existing insurance policies issued prior
to the effective date of this act.

The question to be examined is whether this section applies to all insurance policies as such are renewed after the effective date of the act, or whether the policy, upon renewal, would be exempt from these requirements since it was issued initially before the effective date of the act.

While there is authority to the effect that the renewal of an insurance policy is in effect a new contract, see Hodge v. National Fidelity Insurance Company, 221 S.C. 33, 68 S.E.2d 636 (1952) and Allstate Insurance Company v. Nationwide Insurance Company, Opinion No. 22204 (S.C. Sup. Ct. January 2, 1985), the general rule is that whether a policy in force after payment and acceptance of a renewal premium was a new and independent contract or an extension or continuation of the original contract depends upon the intention of the parties as expressed in the contract. Hudson v. Reserve Life Insurance Company, 245 S.C. 615, 141 S.E.2d 926 (1965), construing a health and accident policy, citing 44 C.J.S. Insurance §283. 1/

Depending upon the terms of the insurance policy or contract, the response to your inquiry is this: (1) if the contract is deemed to be an extension of the original contract, the provisions of S.53 would most probably not be applicable; (2) but if the insurance policy or contract is deemed to be a new contract each time it is renewed, then the provisions of S.53 would be applicable. Reference must be made to the terms of the contract to determine

1/ The general rule expressed in 44 C.J.S. Insurance § 283 is as follows:

It has generally been held that a renewal is in effect a new contract of insurance, for the period of time covered by such renewal, at least in the sense that it is subject to the laws in force at the time it is effected, and at least where there is no provision in the original policy for its renewal.

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the intention of the parties as to a new or continuing contract upon renewal.

Question 2

Section 3 of the committee report to S.53 provides the following:

Nothing in this act mandates the writing of any insurance coverage for medical services or any other coverage that is provided for under the provisions of this act. 2/

You have basically asked whether insurance policies must provide coverage for oral surgeons, podiatrists, and chiropractors, when such professions provide services within the scope of practice of each profession, keeping in mind the terms of Section 38-35-90, Code of Laws of South Carolina.

In an opinion of this Office dated March 12, 1985 and addressing House Bill No. 2319, which appears to be identical in concept and quite similar in language to the committee report on S.53, it was stated:

Present Section 38-35-90 makes it clear that if a policy of insurance provides for payment or reimbursement for any service within the scope of practice of a duly licensed podiatrist or oral surgeon, the insured or other person is entitled to payment of or reimbursement in accordance with the usual and customary fee for said services, regardless of the respective profession of the provider. H.2319 adds chiropractors to this provision, and thus the bill, if enacted, would entitle chiropractors to be reimbursed at the same rate as other professions when chiropractors provide like services. Of course, H.2319 does not expressly mandate any particular form of health care coverage. [Emphasis added.]

2/ It should be noted that, notwithstanding the language of Section 3, there is no provision at all for any coverage, either in S.53 or in the committee report. The General Assembly may wish to consider removing this apparent ambiguity.

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The same statement would be applicable to S.53. Moreover, it would appear that Section 3 of S.53 makes express what was implicit in H.2319 (see the emphasized portion of the foregoing quotation); as presently drafted, S.53 would require that if coverage is offered which includes services within the scope of practice of a chiropractor, he cannot be excluded from reimbursement if he renders such services. However, it is expressly stated by Section 3 that the act would not require any insurer to write any particular form of insurance coverage for services which might be rendered by a chiropractor or any other health care provider.

An example of this distinction can be found in present Insurance Department Regulation 69-34 (F)(6), which provides in pertinent part:

No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition more stringent than the following:

* * *

(g) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; ...

This regulation would not appear to conflict with S.53, and thus, consistent with both section 3 of the committee's report and the foregoing regulation, an insurer could simply choose not to write coverage for those services contained in subsection (g), quoted above. Again, however, S.53 would mandate that if coverage for such services is provided, payment or reimbursement for services rendered must be made in an even-handed, non-discriminatory manner.

The conclusions reached by this Office as to the committee report and S.53 are consistent with interpretations of similar statutes in other jurisdictions. Construing New York's statute regarding a similar reimbursement provision, the Court of Appeals of New York, that state's highest court, stated:

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The statute ... simply means that where an insurance policy provides for reimbursement to a physician or a psychiatrist for psychiatric or psychological services, coverage shall also be provided by the insurance company for psychological services when performed by a psychologist within the lawful scope of his practice. Obviously, the Legislature took cognizance of the fact that certain treatments of mental and emotional illnesses are common to both psychiatrists and psychologists and, therefore, should be reimbursed accordingly. The Legislature did not say that reimbursement for psychological services by a psychologist should be included in every health insurance contract, but, on the contrary, indicated that only policies which allow reimbursement for "psychological services" performed by a "physician or a psychiatrist" are affected.

Moore v. Metropolitan Life Insurance Company, 33 N.Y.2d 304, 307 N.E.2d 554, 556-57 (1973); see also Herold v. Group Health Incorporated, 80 Misc.2d 98, 362 N.Y.S. 782 (1974). Similarly, Maryland's highest court has stated:

[N]o new or additional coverage is attempted by the legislation. The mandatory provision merely provides that if a chiropodial service is covered by the [policy], the subscriber shall be reimbursed whether that service under the contract is provided by a physician or a chiropodist. There is no payment required to a chiropodist. [The insurer] ... is not required to insure any subscriber against the cost of any chiropodial service or services.

Maryland Medical Services, Inc. v. Carver, 238 Md. 466, 209 A.2d 582, 593 (1965). Finally, in explaining the policy behind a similar Indiana statute, it was stated that "payment of a claim for compensation for scheduled services performed by licensed practitioners, including podiatrists, must be conditioned solely upon the occurrence of the scheduled services and not upon who performs the services." Insurance Commissioners v. Mutual Medical Insurance, Inc., 251 Ind. 296, 241 N.E.2d 56, 58 (1968).

Question 3

The response to the second question also answers your third question.

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We hope that the above will satisfactorily respond to your inquiries. Please advise if we may provide additional assistance or clarification.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

Enclosure: Op. Atty. Gen., March 12, 1985

DATE (YY/MM/DD)	REQUESTOR	ATTYNO	SUBJECT	PRIMARY
85/04/01	WILLIAMS, C. G.	028	EMPLOYEES (PUBLIC)	Y
85/04/02	MCCONNELL, G. F.	028	CONSTITUTIONS	Y
85/04/03	DOAR, W. W., JR.	166	PUBLIC FUNDS	Y
85/04/04	MCDANIEL, T. M.	083	PUBLIC OFFICERS (DUAL OFFICE HOLDING)	Y
85/04/04	ROGERS, J. I., III	166	APPROPRIATIONS	Y
85/04/05	BROWN, W. O.	083	MUNICIPAL CORPORATIONS (ORDINANCES)	Y
85/04/08	BAILEY, G. H.	028	EDUCATION (DISTRICTS)	Y
85/04/08	BELL, R. M.	039	TORTS	Y
85/04/08	DAVENPORT, G. R., JR.	166	PUBLIC OFFICERS	Y
85/04/08	OWENS, D.	083	MUNICIPAL CORPORATIONS (ORDINANCES)	Y
85/04/10	EVANS, V. S.	039	WORDS AND PHRASES	Y
85/04/10	HODGES, J. H.	166	WORDS AND PHRASES	Y
85/04/10	ZEIGLER, H. T.	166	PUBLIC OFFICERS	Y
85/04/11	PEARCE, J. W., JR.	001	TAXATION AND REVENUE	Y
85/04/11	PHILLIPS, J. B., JR.	166	STATE AGENCIES (AERONAUTICS)	Y
85/04/11	POWELL, F.	083	LAW ENFORCEMENT	Y
85/04/11	SCARBOROUGH, C. M., JR.	108	STATE AGENCIES	Y
85/04/12	BROWN, G. A.	166	COUNTY (OFFICERS AND EMPLOYEES)	Y
85/04/12	ZEIGLER, H. T.	004	ELECTIONS	Y
85/04/16	BURRISS, T. M.	028	CONSTITUTIONS	Y
85/04/16	DOAR, W. W., JR.	166	PUBLIC OFFICERS (DUAL OFFICE HOLDING)	Y
85/04/16	GEISE, W. K.	028	EDUCATION (CONTROVERSIES)	Y
85/04/16	MCLELLAN, R. N.	001	TAXATION AND REVENUE	Y
85/04/17	BAGGETT, S. D.	166	CONTRACTS	Y
85/04/17	BARFIELD, L.	039	ALCOHOLIC BEVERAGES	Y
85/04/17	COFFIN, D. L.	028	PUBLIC INFORMATION	Y
85/04/17	EUBANKS, R. C., JR.	028	CONSTITUTIONS	Y
85/04/17	HOLLAND, D. H.	166	WORDS AND PHRASES	Y
85/04/17	KING, R. N.	126	ATTORNEYS	Y
85/04/17	REID, J. J.	166	STATE AGENCIES (INDUSTRIAL COMMISSION)	Y
85/04/17	STODDARD, E. C.	166	HOSPITALS	Y
85/04/19	FLOYD, W. E., JR.	083	DRUGS	Y
85/04/22	COLLINS, P. W.	108	PROPERTY (UNCLAIMED)	Y
85/04/22	HALL, W. S.	104	PUBLIC INFORMATION	Y
85/04/22	WYNDHAM, T. B.	083	HIGHWAYS (DUI)	Y
85/04/29	LIGHTSEY, H. B., JR.	039	WORKERS' COMPENSATION	Y
85/04/29	METTS, J. R.	083	WEAPONS	Y
85/04/29	POWERS, L.	132	CORRECTIONS (PARDON AND PAROLE)	Y
85/04/29	WHITE, R. H.	126	STATUTES	Y
85/04/29	WILSON, A. G.	166	PUBLIC OFFICERS (DUAL OFFICE HOLDING)	Y
85/04/29	WILSON, R.	166	PUBLIC OFFICERS (DUAL OFFICE HOLDING)	Y
85/04/29	WRIGHT, P. A.	107	STATE AGENCIES (HEALTH AND ENVIRONMENTAL CONTROL)	Y
85/04/29	ZEIGLER, H. T.	166	CONSTITUTIONS	Y
85/04/30	BELDING, D. E.	132	CORRECTIONS (PARDON AND PAROLE)	Y
85/04/30	BRANTLEY, D.	166	STATE AGENCIES	Y
85/04/30	RAWL, A. V.	083	WARRANTS (SEARCH AND SEIZURE)	Y
85/04/30	THOMAS, D. L.	166	LEGISLATIVE BILLS	Y

FINAL TOTALS
COUNT 47