1983 WL 181870 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 29, 1983

***1** Honorable Warren D. Arthur, IV
1405 Ballentine Drive
Hartsville, South Carolina 29550

Dear Representative Arthur:
You have asked the opinion of this office concerning whether, in light of § 10 of Act No. 307 of 1980 (codified as § 38-35-545, Code of Laws of South Carolina, 1976 [Cum.Supp. 1982]), a health insurance carrier may lawfully exclude from its policy coverage '[s]ervices or 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 of such nerve interference, where such interference is the result of or related to distortion, misalignment or subluxation of, or in, the vertebral colum.' It is the opinion of this office that a health insurance carrier may lawfully exclude such coverage provided that the carrier does not deny payment for such services only when rendered by a chiropractor.

Section 10 of Act No. 307 of 1980 (§ 38-35-45, Code of Laws of South Carolina, 1976 [Cum.Supp. 1982]) provides, in pertinent part:
If an insurer offers a policy containing a provision for medical expense benefits that does not provide for payment for chiropractic services, it shall offer as a part thereof an optional rider or endorsement, if specifically requested by the insured or subscriber under an individual policy or a certificate holder or subscriber under a master policy, which defines such benefits as including payment to a chiropractor for procedures specified in the policy which are within the scope of the practice of chiropractic.

The language of § 10 is not unambiguous. This provision could reasonably be construed in either of two ways. First, it could be construed as mandating that a health insurance policy cover services and/or procedures performed by a chiropractor. Alternatively, § 10 could reasonably be construed as requiring only that if a health insurance policy covers services and/or procedures that may lawfully be performed by a chiropractor, the policy must provide for payment to a chiropractor if the insured chooses to have the covered services and/or procedures performed by a chiropractor. Cf. § 38-35-90, Code of Laws of South Carolina, 1976 (Cum.Supp. 1982) (providing that whenever a policy covers services that are within the scope of practice of a duly licensed podiatrist or oral surgeon, policyholder is entitled to payment or reimbursement if he opts to have services performed by podiatrist or oral surgeon notwithstanding any contrary language in the policy). For the reasons that follow, it is our opinion that the second interpretation must prevail.

When a statute is ambiguous, as § 10 of Act No. 307 surely is, the construction of the statute by those who are charged with administering the same is entitled to great weight and ought not, according to our supreme court, be overruled except for the most cogent reasons. See Craig et al. v. Bell, et al., 211 S.C. 473, 46 S.E.2d 52 (1948); Davidson v. Eastern Fire & Casualty Ins. Co., 245 S.C. 472, 141 S.E.2d 135 (1965); Faile v. S.C. Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976). Shortly after the enactment of Act No. 307, the Chief Insurance Commissioner, who is responsible for administering the laws of this state relating to insurance, see § 38-3-85(2), Code of Laws of South Carolina, 1976 (Cum.Supp. 1982), issued an interpretive bulletin construing § 10 of that act. This bulletin states, in relevant part:
***2** The Department feels that the phrase 'medical expenses benefits' is intended to be interpreted to apply to treatment by any health care practitioner. Therefore, the policies that would be affected are those that provide a benefit which is within the legal scope of the practice of chiropractors but which preclude payment to chiropractors because of the definition of physician.

Conversely, if the policy does not provide for payment to any health practitioner, it would not be necessary to offer a rider or endorsement specifically providing for payment for chiropractic services. * * *

Bulletin Number 80-3, March 26, 1980.

Moreover, subsequent to the enactment of Act No. 307 on January 22, 1980, the General Assembly, on May 20, 1980, by joint resolution (No. 540 of 1980), approved regulations submitted by the Department of Insurance. These regulations were promulgated by the Department of Insurance pursuant to § 38-35-1240(a), Code of Laws of South Carolina, 1976, which requires the Chief Insurance Commissioner to adopt rules and regulations to establish minimum standards for benefits for health insurance policies. These regulations, designated R69-34 (Vol. 25 of the Code of Laws), provide, inter alia:
F. Prohibited Policy Provisions and Practices
(6) No policy shall limit or exclude coverage by type of illness, accident, treatment, or medical condition more stringent than the following:

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(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;

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Thus, the quoted regulation permits a health insurance carrier to exclude from its policy coverage those procedures specified therein. These regulations, promulgated pursuant to an express grant of rule-making power, upon approval by the General Assembly, became legislative regulations and carry the full force and effect of law. See State ex rel. Commissioners of Insurance v. N.C. Rate Bureau, 300 N.C. 381, 269 S.W.2d 538 (1980) for distinction between legislative and interpretive rules, and see Faile v. S.C. Employment Security Commission, supra 267 S.C. 539-540 for distinction between effect of legislative and interpretive rules. Since Regulation 69-4F.(6)(g) permits a health insurance provides to exclude the services and/or procedures to which you made reference in your letter, it must be assumed that the General Assembly viewed this regulation as not being in consistent with § 10 of Act No. 307. See, Abell et al. v. Bell et al., 229 S.C. 1, 5, 91 SE.2d 548 (1956) (subsequent legislation may assist in interpretation of ambiguous statute by indicating construction given same by legislature itself); see also Locke v. Dill, 131 S.C. 1, 126 S.E. 747 (1925) (acts of the same session of the legislature should be construed as consistent with one another if reasonably possible).

***3** In sum, the official charged with administering the state's insurance laws has construed § 10 of Act No. 307 as not requiring health insurance providers to cover all services and/or procedures that duly licensed chiropractors may lawfully perform but only to require that such health insurers cannot refuse to pay a chiropractor for services and/or procedures that are covered by a policy and which services and/or procedures are within the scope of the practice of chiropractic. There are no cogent reasons for overruling his interpretation inasmuch as § 10 of the act is reasonably susceptible to either of two interpretations, one of which is that adopted by the Chief Insurance Commissioner. Further, a regulation of the Department of Insurance which permits health insurers to write policies excluding '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[,]' was approved by the same session of the General Assembly that enacted Act No. 307 of 1980, and the regulation

was approved after the act was signed into law. Thus, the General Assembly itself has found no conflict between § 10 of the act and the regulation at issue.

For the foregoing reasons, while the matter is not free from doubt, it is likely that a court would hold that Blue Cross-Blue Shield is not violating § 10 of Act No. 307 of 1980 (§ 38-35-545, Code of Laws of South Carolina [Cum.Supp. 1982]) by excluding the services or care as quoted in the first paragraph of this letter from coverage under the health insurance/medical benefits policies it is writing. Although an opinion of the Attorney General is generally accorded some deference by a court, such an opinion has 'no controlling authority upon the state of the law and standing alone is not to be regarded as legal precedent or authority of such character as judicial decisions.' 7A C.J.S. Attorney General § 9 at 820 (1980). Accordingly, resolution of the question you have posed might more properly and finally be resolved in an action for declaratory judgment brought by a party with standing to do so pursuant to the Uniform Declaratory Judgments Act, § 15-53-10 et seq., Code of Laws of South Carolina, 1976.
Sincerely,

Vance J. Bettis
Assistant Attorney General

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