1982 WL 189288 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 11, 1982

***1 SUBJECT: Health Services, Public Employees, Health Maintenance Organizations, Payroll Deductions**

(1) State agencies and institutions subject to the requirements of the State Health Planning and Franchising System, under Public Law 93-641, must offer to employees the option to subscribe to federally-recognized health maintenance organizations in lieu of other health benefit and insurance programs offered to such employees.

(2) Employees electing the HMO option are entitled to have premiums or subscription costs for membership in an authorized HMO deducted from their payroll and paid directly to the HMO.

(3) Payroll deductions are available to eligible employees who select such option whether or not 500 or more employees subscribe to an HMO plan.

Department of Mental Health

QUESTIONS:

(1) Do the provisions of the Health Maintenance Organization Act, Title 42, Sections 300(e), et seq., U. S. Code, and regulations promulgated thereunder require that a federally-qualified HMO be allowed an opportunity to present and explain its health service program to State employees?

(2) If an employee elects to enroll in an authorized HMO, are State agencies and institutions required to make payroll deductions for the premiums or subscription fees at the employee's request?

DISCUSSION:

Public Law 93-641 requires the coordination of Federal, State and local governmental entities in developing and implementing health plans, paragraphs 2-6, Hospital Law Manual, Volume 11A. Health Maintenance Organizations (HMO), which are organized and funded pursuant to Public Law 93-222, and authorized and licensed under Sections 38-25-10, et seq., Code of Laws of South Carolina, 1976, are an integral part of the State health planning and franchising system. See, Code Section 44-7-130(9). As such, if there is a conflict between the controlling federal and state health planning laws concerning an HMO, the federal law and regulations properly promulgated thereunder, must prevail. See, Montgomery County (Maryland) v. Califano, 449 F.Supp. (D.Md. 1978), and Park East Corp. v. Califano, 435 F.Supp. (SD.N.Y, 1977).

HMO's in this state are governed by PL 93-222, and Federal Regulations thereunder. See, particularly, 42 CFR, Part 110, with reference to the questions herein discussed. Such HMO's are further governed by the regulations of the Department of Health and Enviromental Control and of the Insurance Commissioner. See, SCR 61-10, et seq., and SCR 61-15, Section 506. The latter regulation directly ties HMO's to applicable Federal regulations.

The specific Federal regulations here concerned are found at 42 CFR, Part 110. Section 110.801 defines an ‘employing entity’ whose employees are entitled to participate in HMO benefit plans as including the State and its political subdivisions within the HMO service area. Section 110.802 requires the State (or political subdivision) to offer employees the option to participate

in HMO plans if it offers other health benefit plans to its employees, which this State does. Section 110.804 requires the HMO option to be offered at the same times any other health benefit plan is offered; and Section 110.806 requires the HMO have the same opportunity to present its plan (literature, brochures, meetings, etc.) as given to other health benefit plan providers. Further, if the employer contributes to a health benefit plan for employees, it must make a similar contribution for employees who select the HMO option, Section 110.808. Finally, Section 110.809, requires the employer to make payroll deductions (at the employee's request) for the employee's HMO premiums or subscription fees.

***2** It is significant that the Federal regulations make no reference to a requirement that a minimum number of employees select the HMO option before these regulations take effect. Section 8-11-80, Code of Laws of South Carolina, 1976, requires that a minimum of 500 employees must request payroll deductions for a specific program. This includes insurance programs as well as other programs for which payroll deductions are authorized by State law. However, in accordance with the above-cited authorities the Federal regulations must prevail as to payroll deductions for employees choosing an HMO plan in preference to other health benefit plans offered by the State.

CONCLUSION:

It is the opinion of this Office that:

(1) Health Maintenance Organizations qualified under federal statutes and regulations, and licensed under State law, must be given the same opportunity to present and explain the HMO plan and benefits to State employees in the HMO service area as is given to other providers of health benefit plans offered by the State (or political subdivisions) to employees in the area.

(2) If an employee elects to enroll in such authorized HMO plans, State agencies and institutions (or political subdivisions) are required to make payroll deductions for the HMO's premiums or subscription fees, at the employee's request, without regard for the number of employee's making such request.

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