

1982 WL 189431 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 20, 1982

*1 Jack S. Mullins, Ph.D.

Director

State Personnel Division

Budget and Control Board

1205 Pendleton Street

Columbia, South Carolina 29201

Dear Dr. Mullins:

This is in response to your August 5, 1982, letter requesting the opinion of this office concerning the required state contribution to Piedmont Health Care Association, a health maintenance organization (HMO), for basic health services provided to state employees who have, pursuant to the Health Maintenance Organization Act of 1973, P.L. 93-222, 87 Stat. 914 (42 U.S.C. § 3000e et seq.), elected the HMO option in lieu of coverage under the state's Blue Cross-Blue Shield group policy.

Regulations promulgated by the Secretary of Health and Human Services pursuant to the authority provided in [42 U.S.C. § 300e-9\(a\)\(1\)](#) speak to the subject of the employer's required contribution to an HMO on behalf of those of the employer's employees who elect the HMO option. Specifically, 42 C.F.R. § 110.808 provides:

(a) General principles. (1) The employing entity . . . shall include the HMO option in the health benefits plan on terms no less favorable with respect to the employing entity's monetary contribution . . . for health benefits calculated in dollars and cents, than those on which the other alternatives in the health benefits plans are included. * * *

(3) The employing entity . . . shall increase the amount of its contribution for the HMO option at the time the contribution to other alternatives in the health benefits plan increases (up to the amount of the HMO premium), unless (i) the employing entity's . . . contribution is fixed by a contract or other arrangement between the employing entity . . . and the HMO, or (ii) otherwise agreed to by the employing entity . . . and the HMO. (emphasis added)

Thus, in the absence of any agreement—formal or informal—between the employer and an HMO fixing the amount of the employer's contribution to the HMO, an employer is only required to pay an HMO the lesser of the HMO's premium or the amount paid to the alternative provider of health services (i.e., Blue Cross-Blue Shield).

On the facts provided by you, therefore, it is the opinion of this office that the State is required to pay Piedmont Health Care only its single rate monthly premium, viz. \$40.10, absent any contrary agreement between the State and the HMO concerning the amount of the State's contribution. It should be noted that Ms. Nancy Schaeffer, an HMO Specialist in the Atlanta regional office of the Department of Health and Human Services, has advised that HHS concurs in this opinion.

Sincerely,

Vance J. Bettis

Assistant Attorney General

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