

1974 WL 27675 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1974

*1 The Honorable Heyward N. Dantzler
Member
House of Representatives
Orangeburg County
Route 1
Holly Hill, South Carolina 29059

Dear Heyward:

Thank you for your letter of March 12 referring to Act No. 1170 of 1971, now codified as Section 46-750.61, Code of Laws, 1962, and relating to the definition of 'non-payment of premium' where, among the enumerated bases of cancellation, is failure to maintain membership in an organization if membership is a condition precedent to insurance coverage.

You inquire:

Will the definition as outlined in Section 46-750.61 apply under S-371 as it relates to 'failure to maintain membership in an organization if membership is a condition precedent to insurance coverage'?

S-371 is a complete modification of the basic concepts of the 1971 Act referred to in your letter.

Cancellation provisions appear to be included within the provisions of Article III, Section 1 thereof, and Article IV, Section 3 thereof. These provisions do not include authorization for cancellation for non-membership in an organization.

It is my opinion that the answer to your question is in the negative and that the definitions contained in Section 46-750.61 do not per se apply to S-371.

I point out, however, that a different consideration may be possible where an insurer qualifies as a specialized insurer under the provisions of Article I, Section 1, of S-371. Approval as a specialized insurer is contingent upon the action of the Chief Insurance Commissioner. An insurer approved as a specialized insurer may limit its obligation to write types of business inconsistent with its specialty and, presumably, it may cancel such insurance should an insured no longer qualify as coming within its specialty. In my opinion, this determination ultimately rests in the discretion of the Chief Insurance Commissioner.

You further inquire:

How would an opinion on the above matter affect, in the future, legislation as related to group hospitalization insurance by select groups and group life insurance policies available to select groups?

In my opinion, the course of future legislation would not be affected by the conclusions expressed above as a matter of law, but would be dependent upon future legislative discretion.

I am taking the liberty of forwarding a copy of this with the request that he submit such other and further views upon the matter as he may consider appropriate. I feel that he is especially qualified to respond to a matter of this nature in view of his greater familiarity with the statutes involved and in view of his specialized knowledge of the precise problem. The foregoing conclusions are predicated largely upon a discussion of the matter with him and I would defer to his opinion.

Very truly yours,

Daniel R. McLeod
Attorney General

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