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SELECTED ATTORNEY GENERAL'S OPINIONS

**Opinion 82-71**

**Prepaid Dental Plans May not be Licensed as Health Maintenance Organization**

August 27, 1982

You have requested my official opinion as to whether certain types of prepaid dental plans constitute the offering of insurance and, if so, may those plans be licensed as health maintenance organizations pursuant to Ga. Ins. Code Ch. 56-36. Before addressing the specific types of plans mentioned in your letter, an examination of what constitutes the offering of insurance in Georgia is in order.

Georgia Insurance Code § 56-102 [§ 33-1-2] defines "insurance" broadly as "a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies." Thus, to constitute insurance, a plan must involve a "contract" that agrees to pay "specified amount[s] or benefits upon determinable contingencies" and contain an element of risk distribution. Op. Att'y Gen. 74-48. *See Piedmont Life Insurance Co. v. Bell* , 109 Ga. App. 251, 260 (1964); Op. Att'y Gen. 72-62.

All of the plans discussed in your request, including that of a particular corporation (Dent-A-Care of Georgia, Inc.), involve contracts that call for the provision of specified benefits on determinable contingencies. That the benefits provided are services, as opposed to cash, is not relevant. Op. Att'y Gen. 74-48. Thus, whether these plans are insurance depends upon whether they also involve "a plan for distributing individual losses,"  *i.e.* , risk distribution.

The first generic type of plan addressed in your request is one whereby a participant pays a fixed amount for all the scheduled dental services which may be needed during the period of the contract. Since this type of plan presumably will charge a premium which is considerably below the cost of the services potentially available to each participant, it necessarily anticipates the distribution of losses among its participants and constitutes insurance.

Another generic type of plan discussed in your letter involves an arrangement by which the participants pay a fixed amount for the right to participate and the dentists involved agree to provide scheduled services at reduced cost to participants, usually 20 to 25 percent of the normal and customary fee for such services. Assuming that the percentage charged is substantially below the dentists' actual cost of providing the services, the effect of this arrangement is also to distribute losses and thus the plan constitutes insurance. *See* Op. Att'y Gen. 72-62. Of course, if the amount charged each time a service is rendered at least approximates the dentists' actual cost, no risk distribution and thus no insurance is being effected.

The final generic type of plan discussed in your request is described as a " capitation " plan whereby the sponsoring plan pays participating dentists a fixed fee for each participant enrolled by that dentist (as opposed to reimbursing participating dentists for services rendered as per the first type of plan discussed above) and the dentist agrees to provide all the services scheduled for this fixed fee. As with the type of plan first discussed above, if the fee charged to participants is highly disproportionate to the maximum benefits theoretically available to participants, the plan constitutes the offering of insurance.

As described in your request, the Dent-A-Care plan is a combination of the first and second generic types discussed above which involves a set periodic fee for which participants receive free specified preventive dental services and more comprehensive dental services at reduced charges. As with the first and second types discussed above, the arrangement will constitute risk distribution and thus insurance unless the amounts charged to each participant at least approximate the cost of the services rendered to that participant.

In short, it is my official opinion that all of the above-discussed prepaid dental plans constitute the offering of insurance if their financial success depends upon some participants not fully utilizing the available benefits so as to offset the cost of participants who fully utilize available benefits. Alternatively, if in fact a plan's charges to each participant approximate the cost of the services rendered to that participant, no insurance or risk distribution among participants would be involved. An examination by your office of the fee structure and costs of operation of a particular plan may be necessary to reach the proper determination as to that plan.

Finally, you have asked that in the event it is determined that a prepaid dental plan is offering insurance, may that plan be licensed as a health maintenance organization pursuant to Ch. 56-36 of the Georgia Insurance Code. Pursuant to Ch. 56-36, all health maintenance organizations must provide "basic health care services." Ga. Ins. Code § 56-3603(2)(c) [§ 33-21-3]; Department of Human Resources Regulation 290-5-37-.03. Since this term is defined in Ch. 56-36 to include "as a minimum ... inpatient hospital and physician care, and outpatient medical services" (Ga. Ins. Code § 56-3601(2)) [§ 33-21-1], it is my official opinion that a plan offering only dental services may not be licensed as a health maintenance organization since it does not provide basic health care services.

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