

MAINE STATE LEGISLATURE

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October 17, 1963

George F. Mahoney, Commissioner

Insurance

George C. West, Deputy

Attorney General

Endorsement Authorization on Blue Cross Contracts

FACTS:

The Associated Hospital Service of Maine has filed with the Department for approval an Extended Benefits Endorsement being BC--BS--63 which provides for the reimbursement to subscribers for certain services. Attached hereto as an exhibit, please find a photostat of the explanation sheet of these services which is being mailed by the Associated Hospital Service of Maine to the public.

The Associated Hospital Service of Maine or Blue Cross, as it is commonly called, is a non-profit hospital or medical service organization, the medical service being the Blue Shield portion of the business. This has been in existence for many years, filed its original contract with the Department some twenty or twenty five years ago and from time to time files amendments to the original and subsequent contracts. This Extended Benefits Endorsement is the first radical departure of the Associated Hospital Service of Maine from supplying purely hospital and medical service benefits to subscribers.

The question has been raised as to whether the Associated Hospital Service of Maine must obtain the approval of the Commissioner for any changes in its contracts before issuing the same. Likewise with this present filing, the question has arisen as to whether the Associated Hospital Service of Maine may provide, in accordance with its Charter, various services beyond the usual hospital care.

QUESTION:

Whether the Associated Hospital of Maine must file for approval all contracts, amendments and rates with the Insurance Commissioner?

QUESTION 2:

Whether the Associated Hospital Service of Maine may issue contracts entitling subscribers to, generally, the following services: Ambulance service, dental surgery, insulin shock service, care in a nursing home or visiting nurse service, assuming that such services do not take place at a participating hospital?

ANSWER:

Yes.

ANSWER 2:

No.

OPINION:

The Associated Hospital Service of Maine was first organized as a charitable or benevolent corporation without capital stock in accordance with provisions of Chapter 70 Revised Statutes of Maine, 1930. This Chapter provides for the incorporation of social, military, literary, scientific associations or county law libraries, etc. This corporation was later incorporated by special act of the legislature, being Chapter 24 of the Private and Special Laws of Maine, 1939. The Charter of the Associated Hospital Service of Maine remained then unchanged from 1939 until 1943 at which time the Charter was amended by legislative act, being Chapter 21 of the Private and Special Laws of that year to allow for payment of medical service and other items as well as continuing to permit writing contracts for the non-profit hospital service plan for which they were originally chartered. To allow for joint administration, the Charter was amended by the legislative act, being Chapter 175 of the Private and Special Laws of 1955. A further amendment took place, being Chapter 47 of the Private and Special Laws of 1957 which provided generally as follows:

1. That the Association may act for other similar corporations;
2. Contracting physicians shall be governed by this section;
3. That the Association may make payments for non-covered items if such liability is re-insured;
4. For the allowance of services for the State and United States on a non-profit basis.

The Charter was further amended by legislative act, being Chapter 135 of the Private and Special Laws of 1963 which permitted the corporation to broaden its coverage by giving to it a right to issue contracts without re-insurance if certain deposit requirements are met. The same Charter amended the corporate annual meeting provision.

Also in 1963, Chapter 60 Section 244 and other associated sections were amended by Public Law Chapter 281 to the extent that optometric services were to be included as well as medical and surgical.

Also in 1963, by virtue of the Private Laws the Charter of the Associated Hospital Service was again amended as follows:

Section 11. P and R Law, 1939, Chapter 24 Section 3--C amended. Section 3--C of Chapter 24 of the Private and Special Laws of 1939, as enacted by Section 3 of Chapter 47 of the Private and Special Laws of 1957, is hereby amended to read as follows:

Section 3--C. ADDITIONAL COVERAGE. The corporation shall have the right to issue a contract or contracts or certificate or certificates on a non-profit basis under which it assumes liability on the whole or part of expenses incurred by a subscriber as a result of injury or disease not covered by this corporation's regular contracts for hospital service or medical service; (1) If such liability is fully re-insured by an insurance company authorized to transact such business in the State of Maine, or (2) Without such re-insurance if the corporation has made a deposit with the Treasurer of the State in the amount of \$100,000 to be held in exclusive trust for the benefit of all of the corporation's members entitled to such additional benefits as security for said additional benefits, which shall be limited to health care services and supplies and shall not extend to or include indemnity for a loss of time, incapacity or death benefits.

Further amendments to the Charter are not particularly significant to this opinion.

Thus, at first glance it would appear that under its Charter as permitted by legislative act, the Associated Hospital Service of Maine may write any health care service benefit contract except indemnity for loss of time, incapacity or death.

However, the provisions of Chapter 60 Section 244 of the Revised Statutes of Maine covers the scope of the writings of non-profit hospital and medical service organizations as follows: Section 244. Scope. -- Any corporation organized under special act of the legislature, or under the provisions of Chapter 54 for the purpose of establishing, maintaining and operating a non-profit hospital service plan whereby hospital care is to be provided by a hospital, or group of hospitals, with which such corporation has a contract for such purpose, or such corporation as may establish, maintain and operate a non-profit medical service plan whereby medical or surgical service or expense indemnity is provided to such persons or groups of persons as shall become subscribers to such plan under contracts with said corporation, may be licensed by the Commissioner on the terms and conditions hereinafter provided for in Sections 245 to 257 inclusive.

It is obvious that whatever decision is reached on the Blue Cross Plan for the Associated Hospital Service of Maine, the same will apply to the Blue Shield Plan. This opinion will direct itself only toward Blue Cross but will apply to Blue Shield equally as well.

Chapter 60, Section 245, provides as follows:

Contracts. -- Such corporation mentioned in Section 244 may enter into contracts for the rendering of hospital service to the subscribers only with hospitals approved by the departments of health and welfare of the several states. All contracts for hospital service issued by such corporation shall constitute direct obligations of the hospital or hospitals with which such corporation has contracted for hospital care.

It is obvious, therefore, that the Associated Hospital Service of Maine, as a corporation, may do only the following:

The corporation may enter into contracts to render hospital service.

It is restricted in its contracts to hospitals approved by the Department of Health and Welfare.

It may not enter into contracts with other persons or corporations.

Therefore, there appears to be some difference between the Charter as approved by the Legislature and the statutes which are in force as public laws, unless the legislature intended in the Charter revision to permit the Associated Hospital of Maine to write "health care services and supplies" benefits within the terms of the statutes. If that was true then there is no problem since they are limited as indicated above; that is, to the entering of contracts with certain hospitals to render hospital services only.

It is obvious that the Associated Hospital Service of Maine did not interpret the Charter amendment to be so limited, but rather interpreted it to mean any health care service except indemnity for loss of time, incapacity or death. This is demonstrated by the attached exhibit which indicates many services will be provided through subscribers beyond hospital service.

We are, therefore, faced with only one question in making a determination as to whether or not the Associated Hospital Service of Maine may legally extend these additional benefits beyond hospital service to subscribers: Will the Legislative Charter to this corporation control the activities of the corporation or whether the Public Laws when in conflict will control the actions of the corporation. The answer to this question will answer the two questions propounded by the Commissioner.

The basic question is one of conflict of laws, the answer to which may be found as far back as 1819 and as recently as 1961.

In 1819 the Court of Maine in *Lewis vs. Webb* (3 Me. 326) held that, "The Legislature cannot dispense with a general law for particular cases." This general proposition was reaffirmed several years later in the case of *Durham vs. Lewiston* (4 Me. 140.)

Likewise, the same question came before the Court several years thereafter and the same law was reaffirmed in 9 Me. 59.

"The Legislature has no power to exempt any particular person or corporation from the operation of the general law, statutory or common." 103 Me. 198. 218

Discriminatory laws are not invalid for that reason alone. But a classification must not be arbitrary; it must be reasonable. 105 Me. 76, 110 Me. 386, 115 Me. 176.

It would therefore appear that the Legislature may not pass legislation whereby all non-profit hospital organizations are limited to entering into contracts whereby hospital service is rendered to subscribers and then by private and special act permit one non-profit hospital service organization to enter into contracts whereby non-hospital service may be provided to subscribers in the many forms outlined in the exhibit.

It would appear that the legislative classification of non-profit hospital service organizations as opposed to profit making insurance organizations is a proper classification. The following cases additionally indicate that all non-profit hospital service organizations must be treated alike;

"It makes no difference that the legislative act is expedient and has been determined by the legislature to be necessary." 118 Me. 306.

Thus, the same law which controls the first question asked controls also the second since the Associated Hospital Service of Maine is relying on its Charter in both questions; whereas, the law requires the public laws to control in answering both questions.

As final authority that the public laws rather than the private Charter prevail, I refer to the case of Milton vs. Railway Company 103 Me. 218 at page 223, wherein the defendant contended that the Legislature by charter exempted the defendant corporation from liability for injuries caused by neglect unless certain notices had been given. To this exemption the Court ruled as follows: "To this claim of exemption the answer should be apparent. The people have not conferred upon the legislature the power to exempt any particular person or corporation from the operation of the general law, statutory or common." (cases cited) "On principle then it can never be within the bounds of legitimate legislation to enact a special law, or pass a resolve dispensing with the general law in a particular case, and granting a privilege and indulgence to one man by way of exemption from the general law, leaving all other persons under its operation."

October 17, 1963

In an opinion of the Justices to the One Hundredth Legislature in 1961, being 157 Me. 106 at page 108 the Court reaffirmed this and the other decisions upon which this opinion is based.

It is, therefore, my opinion and advise that the filings BC--
BB--63 BB-63 of the Associated Hospital Service of Maine of
September 18, 1963, be disapproved.

Respectfully submitted,

S/

Albert H. Guy
Assistant Attorney General

Signed by George C. West, Deputy
Attorney General on January 10, 1964.

This opinion was affirmed on the above
date by me.

George C. West
Deputy Attorney General