Insurance, Health Plan Bd of Dirs STATE OF MAINE 24 MRSA § 2302

Inter-Departmental Memorandum Date November 9, 1976

To Frank M. Hogerty, Jr., Superintendent Dept. Bureau of Insurance

From S. Kirk Studstrup, Assistant Dept. Attorney General

Subject Washington County Health Plan, Inc.

I have reviewed your memorandum of October 26, 1976, concerning the correspondence from Attorney Edwin R. Schneider with regard to the composition of the Board of Directors of the Washington County Health Plan, Inc. Mr. Schneider feels there is a problem with the composition of that Board which results from conflicting federal/state requirements. With all due respect to Mr. Schneider, I believe that the conflict is more apparent than real, for the reasons stated below. Therefore it may not be necessary to have the meeting you had scheduled for November 15, 1976.

The key to answering Mr. Schneider's dilemma lies in the reading of 24 M.R.S.A. § 2302, as amended by P.L. 1975, c. 708. This section requires that a corporation organized under title 24 M.R.S.A. c. 19 have a certain composition for its Board of Directors. That section reads in pertinent part:

> "There shall be not less than 14 directors, at least a majority of whom shall be consumer representatives. For purposes of this section, 'consumer representative' means a person who does not derive more than 20% of annual income, whether directly or through that person's spouse, from the delivery of health care services. The remaining directors shall at all times be licensed health care professionals who contract with the corporation for the direct provision of health services, or persons employed by participating health care institutions or organizations that contract with the corporation to provide health services to the corporation's subscribers, or persons employed by associations, health providers and professionals of health care services."

The federal regulation involved (42 CFR. 51c) would require that the governing board be composed of at least nine but not more than 25 members, that a majority of the board be composed of individuals who are or will be served, that no more than one-half of the remaining members be individuals who derive more than 10% of their income from the health care industry, and that the remaining members of the board be representative of the community to be served.

Mr. Schneider states on page 3 of his letter of October 22, "one less than half the members of the governing board must be health professionals under the state law." However, the only statutory requirement is that "at least a majority" be consumer representatives. There is no requirement as to the number of health professionals on the board, so long as that number is less than a majority. It would even be possible under the statute to have a board composed entirely of consumer representatives, though such composition would be very unlikely because of an obvious need for some medical experience on the board.

It is my opinion that it is possible to organize a board with a composition which would staisfy both the state statute and the federal regulations. For example, a board which contains 20 members could consist of 11 individuals who would be served by the corporation and who are also "consumer representatives," 5 representatives of the service community who are also "consumer representatives," and 4 licensed health professionals who meet the requirements of section 2302. In this case there would be 16 "consumer representatives" and 4 health professionals, thereby satisfying the state statute, and the board would also satisfy the federal regulation.

In light of the foregoing, I do not believe that the exemption from the provisions of § 2302, which Mr. Schneider has requested, is necessary, even if such exemption could be given.

S. KIRK STUDSTRUP
Assistant Attorney General

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