

# MAINE STATE LEGISLATURE

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*Insurance Authority to approve Health Insurance Rates*

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May 11, 1977

Honorable John L. Martin  
Speaker of the House  
House of Representatives  
State House  
Augusta, Maine 04333

Dear John:

I am responding to your letter of April 29, 1977, in which you requested our advice concerning the authority of the Board of Trustees of Maine Blue Cross and Blue Shield to put into effect a rate increase after that increase has been denied by the Bureau of Insurance. Generally speaking, the Board of Trustees would have the authority to increase rates charged to subscribers if such increase is consistent with the organization's articles of incorporation and bylaws, unless the Superintendent of Insurance has the statutory authority to prevent such increases. Therefore, the answer to your question depends upon whether the Superintendent has such powers. After carefully reviewing the pertinent statutes, it is our conclusion that the Superintendent of Insurance has relatively little statutory authority to directly review and approve or disapprove increases of rates by nonprofit hospital or medical service organizations such as Maine Blue Cross and Blue Shield.

There are extensive statutory provisions found in Chapter 25 of Title 24-A M.R.S.A. (§§ 2301, et seq.) concerning the authority of the superintendent of Insurance in the rate-making procedures applicable to insurance companies. However, statutory provisions applicable to organizations like Maine Blue Cross and Blue Shield are separately set forth in Title 24 M.R.S.A., and there are no provisions in that Title comparable to those in Chapter 25 of Title 24-A. Therefore, the Superintendent of Insurance does not have the statutory authority to directly review proposed increases by Maine Blue Cross and Blue Shield.

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The only reference to rates found in Title 24 concerns initial approval of a certificate of authority for nonprofit hospital or medical service organizations. The applicant for such certificate must meet the requirement that "The rates charged and benefits to be provided are reasonable." 24-A M.R.S.A. § 2305, sub-§ 3. The "reasonableness" of the proposed rates would be reviewed by the Superintendent under this provision before the certificate of authority is granted. However, once the organization has obtained its certificate, there is no specific provision for routine review and approval of rate increases. It should be noted that the Superintendent may revoke a certificate of authority "for cause" after a hearing on the matter. 24 M.R.S.A. § 2314. Construing together the two statutory provisions just referenced, it is our opinion that the Superintendent may call a hearing to determine whether proposed rate increases are "reasonable" and to determine whether such increases would be "cause" for revocation of the certificate of authority if it is found that they are indeed not reasonable. It is important to realize, however, that the scope of the Superintendent's review under these procedures and the action which he may take are quite different from the rate-making provisions found in Title 24-A as applied to insurance companies.

We have also reviewed legislative history to determine whether there have been any recorded statements of intent on the question of why nonprofit hospital and medical service organizations are treated differently than insurance companies for rate-making purposes. Unfortunately, our review has been unproductive. The pertinent provisions of the present statutes in this regard are essentially the same as when they were enacted by P.L. 1939, Chapter 149. There were no statements of legislative intent at the time of this enactment. Nor was there any statement of legislative intent on the question of why these provisions were retained in Title 24 at the time that the Insurance Code was revised as Title 24-A. This latter change was the result of P.L. 1969, Chapter 132.

In your letter you also mentioned a possible need for legislation in this regard. We note that legislation on this subject, in the form of L.D. 1769, has been introduced.

Please continue to call on us whenever we may be of assistance.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB:mfe

cc: Representative Nancy R. Clark  
Superintendent Frank M. Hogerty, Jr.