Insurance: Self Insurance by State
5 MRSA § 285

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To: John P. O'Sullivan, Commissioner Finance and Administration

From: S. Kirk Studstrup, Assistant Attorney General

Subject: Self-insurance under the State Employee Health Insurance Program

We are responding to your memorandum of August 3, 1977, in which you asked whether the State is able to provide the group accident and sickness or health insurance coverage specified in 5 M.R.S.A. § 285 through self-insurance. We assume that you are asking whether there is legal authority for the State to provide the coverage through self-retention or self-insurance rather than through a group policy with a commercial insurance company or non-profit organization. The answer to your question is that coverage in this manner is not anticipated under the statutes as they are presently drafted.

Title 5 M.R.S.A. § 285, sub-§ 5 states, in pertinent part:

> "The Board of Trustees shall purchase, by competitive bidding, from one or more insurance companies or non-profit organizations, or both, a policy or policies of group accident and sickness or health insurance, including major medical insurance, to provide the benefits specified by this section."

Unlike the express authority to self-insure with regard to coverage of State property (5 M.R.S.A. § 1728, sub-§ 3) or the implied authority to self-insure with regard to tort claims against the State (14 M.R.S.A. §§ 8115 and 8116), the Legislature has not provided such latitude with regard to the State employee insurance program. Therefore, it is our opinion that some legislative action in the form of an amendment to 5 M.R.S.A. Chapter 13, Subchapter II, would be required in order to give the Board of Trustees the authority to provide the required coverage through self-insurance.

We assume that one means of administering a self-insurance program would be for the State to contract with a commercial insurance company to act as the "servicing carrier." Although such contract could be with an insurance company or nonprofit organization and could be submitted to competitive bidding, we do not believe that a contract of this type, which is generally limited to administrative services, would be a "policy or policies of group accident and sickness or health insurance" as that term is used in 5 M.R.S.A. § 285, sub-§ 5.

It should be noted parenthetically that coverage under the present program is extended to dependents of State employees and premium payments for this additional coverage are deducted from the employees' pay checks. While there is no longer any specific reference in the applicable statutes to dependents' coverage since the repeal of 5 M.R.S.A. § 255, sub-§ 4 by P. & S.L. 1975, Chapter 90, the question of resolving dependent coverages under a plan of self-insurance would still have to be answered. It is suggested that any legislation proposed to allow the State to self-insure with regard to coverage for employees should also address this question.

Kirk Studstrup

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