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State Employees Health Insurance
5 MRSA 285 - 2
26 MARCH 1979 - D-E-1

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
April 13, 1978

To: John P. O'Sullivan, Commissioner, Department of Finance & Administration
From: William C. Nugent, Assistant Attorney General
Re: Renewal of Group Health Insurance Policies

Below please find my responses to the questions posed in your memorandum to Don Alexander. Should the board wish to discuss this memo with me I will be happy to meet with it at its convenience.

Question 1: Does the Board of Trustees have authority to modify levels of coverage independent of the collective bargaining process?

Response:

It is my understanding that the present state employee group health insurance policies expire on April 30th. It is my further understanding that no current state employee collective bargaining agreements contain provisions regarding group health insurance coverage levels. In light of the above facts it is my opinion that the Board of Trustees can modify the coverage levels of group policies without regard to current state employee collective bargaining. Of course, the board also has authority to set coverage levels for state employees not subject to the collective bargaining law.

5 MRSA §285(2) authorizes the Board of Trustees to "determine" the "provisions" of state employee group health insurance policies. Such "provisions" clearly include the coverage levels of the insurance policies.

It is important to note that this opinion is based largely on the fact that no collective bargaining agreements now in effect address the issue of group health insurance. It is likely that some bargaining units will take the position that coverage levels are a proper subject for collective bargaining under the State Employees Labor Relations Act. The relevant section of the act reads as follows:

All matters relating to the relationship between employer and employees shall be the subject of collective bargaining, except

those matters which are prescribed or controlled by public law. 26 MRSA §979-D(E)(1).

At some future time some bargaining units may insist that a coverage level provision be put in a bargaining agreement. At that time it may become necessary to determine whether the board's authority to set levels of insurance coverage pursuant to 5 MRSA §285(2) is a "matter...controlled by public law" within the meaning of 26 MRSA §979-D(E)(1). However, since a great many collective bargaining agreements have not been executed, this opinion does not attempt to reconcile 26 MRSA §979-D(E)(1) and 5 MRSA §285(2).

Question 2: Is the process whereby rate adjustments are proportionately allocated to the various sub-classifications within the insured group consistent with Title 5 MRSA §285(7)?

Response:

5 MRSA §285(7) states, "The State of Maine, through the board of trustees, shall pay 100% of only the employee's share of this insurance." The obvious purpose of the above subsection was to assure that a state employee would be able to receive the benefits of membership in the group health insurance program at no cost to him or her.

The board's method of proportional allocation of rate increases does not conflict with Section 285(7) because it still assures that employees pay nothing for their own membership in the insurance program. The board's procedure may cause certain employees to pay higher premiums for dependent coverage than would be the case if the board specifically allocated rate increases to each subclass based on its claims experience. However, that situation is not addressed by Section 285(7), and is beyond the scope of your question. I will, however, be happy to discuss that matter with the board if it so desires.

Question 3: Is the Board of Trustees of the State's Health Insurance Program subject to the Administrative Procedure Act?

Response:

In order to determine whether the board of trustees is subject to the Administrative Procedure Act it must first be determined whether the board is an "agency" within the meaning of the APA. The Act defines an agency as, "any body of State Government authorized by law to adopt rules." 5 MRSA §8002(2). A rule is defined as,

the whole or any part of every regulation,

John P. O'Sullivan
April 13, 1978
Page 3

standard, code, statement of policy, or
other statement of general applicability...
that has the force of law...and implements,
interprets or makes the law administered
by the agency, or describes the procedures
or practices of the agency. 5 MRSA §8002(9)(A).

It is my understanding from you that the board intends to issue regulations pursuant to 5 MRSA §286(1) which would, inter alia, establish insurance eligibility criteria to cover certain unusual situations. Since these regulations would likely be given legal effect in a dispute arising between an individual and the board over eligibility for group insurance, the regulations would have the "force of law" within the definition of "rule" under the APA. Therefore, any rules promulgated by the board must comply with Subchapter II of the APA relative to rulemaking. 5 MRSA §§8051-8058.

WCN:mm

cc: Donald Alexander
Deputy Attorney General