79-19

RICHARD S. COHEN
ATTORNEY GENERAL

JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 15, 1979

Honorable Sandra Prescott
House of Representatives
State House
Augusta, Maine 04333

Re: Health Facilities Cost Review Board-Consumer Membership

Dear Representative Prescott:

On February 14, 1979, you orally requested an interpretation of language appearing in the Health Facilities Information Disclosure Act. See 22 M.R.S.A. §§351 to 370 (1978 Supp.). Your opinion request relates to the composition of the Health Facilities Cost Review Board, which consists of 10 members, 8 of whom are to be appointed by the Governor.[1] The 8 appointed members are to be chosen from the following fields; one from a list submitted by the Maine Hospital Association; one from a list submitted from the Maine Health Care Association; one from the field of health insurance or health care administration; five from the public who are health care consumers. Your specific opinion request is concerned with that provision of 22 M.R.S.A. §353 which governs the appointment of the five consumer members of the Health Facilities Cost Review Board.

22 M.R.S.A. §353(1)(D)(1978 Supp.) provides:

> "Five public members shall be appointed as consumers of health care. Neither the public members nor their spouses or children shall, within the preceding 12 months, have been affil-

---

1. The other two members are the Commissioner of Human Services or his designee and the Superintendent of Insurance or his designee. The former serves as an ex officio voting member of the Board while the latter serves as an ex officio non-voting member of the Board. 22 M.R.S.A. §353.

> iated with, employed by, or have had any professional affiliation with any health care facility or institution, health product manufacturer or corporation or insurer providing coverage for hospital or medical care."[2]

Your opinion request is two-fold. First, whether a person who meets all the requirements of being a "consumer of health care" within the meaning of section 353(1)(D) but who holds an insurance policy providing for health and/or medical care coverage is disqualified from serving as a consumer member on either the Health Facilities Cost Review Board or the Voluntary Budget Review Organization. Second, you have inquired whether a person who serves as a corporator or as a member of an honorary board of a health care facility or institution is disqualified from being appointed as a consumer member of the boards referred to above.

It is well-established that in interpreting a statute, the paramount consideration is the intent of the enacting body. State Development Office v. State Employees Appeal Board, Me., 363 A.2d 688(1976); Finks v. Maine State Highway Commission, Me., 328 A.2d 791(1974). In ascertaining legislative intent regarding a particular statutory enactment, it is proper to examine the relevant statutory history. See State v. Norton, Me., 335 A.2d 607(1975). Additionally, words used in a statute should be given their common and ordinary sense meaning, unless a different meaning was intended by the Legislature. See, e.g., Union Mutual Life Insurance Co. v. Emerson, Me., 345 A.2d 504 (1975); Frost v. Lucey, Me., 231 A.2d 441(1967). Language in a statute should be interpreted so as to give effect to and promote, not frustrate, the purposes of the legislation. Town of Arundel v. Swain, Me., 374 A.2d 317(1977); Natale v. Kennebunkport Board of Zoning Appeals, Me., 363 A.2d 1372(1976). Finally, it should be kept in mind that it is a basic tenet of statutory construction that the Legislature does not intend to accomplish absurd results or to enact useless legislation. See, e.g. Land Management, Inc. v. Department of Environmental Protection, Me., 368 A.2d 602(1977); State v. Larrabee, 156 Me., 115, 161 A.2d 855 (1960).

With the foregoing general background in mind, it is now appropriate to examine the legislative history of 22 M.R.S.A. §353(1978 Supp.). The Legislation was originally proposed in L.D.2136. During the course of the debate on this bill, Representative Harlan Goodwin, who spoke in favor of the majority report, discussed the composition of the Health Facilities Cost Review Board and, in particular, the consumer members thereof.

---

2. 22 M.R.S.A.§364(2)(B) and (7)(A)(1978 Supp.) contains language identical to that quoted above, but refer to the composition of voluntary budget review organizations.

Representative Goodwin stated; "five members shall be appointed as consumers of health care who have no direct affiliation with any health care facility or institution." (emphasis supplied). See Leg. Rec. at page 604, March 16, 1978. Moreover, Representative Kane, who supported the minority report, discussed the composition of the Voluntary Budget Review Organization in the following terms:

> "...[T]here would be one-third representation from the hospitals, one-third consumers and one-third, third party payers. Anyone on the Committee who has been involved in this knows that there is nobody hotter to trot on rate regulation then [sic] third-party payers, which is principally Blue Cross-Blue Shield. Although there are not a majority of consumers on the board, it is not a majority of hospitals either. It is only one-third hospitals, and for something that is supposed to be their own board, they don't even control it."

Leg. Rec. at page 608, March 16, 1978.

It would appear from the foregoing that in establishing the qualifications for consumer membership on either the Health Facilities Cost Review Board or the Voluntary Budget Review Organization, the Legislature was primarily concerned in assuring that the "public members" truly represented consumers of health care. Consequently, as Representative Goodwin pointed out during the debate on L.D.2136, neither consumer members nor their immediate families could have any direct affiliation with health care facilities or insurance carriers. Analyzing the language in section 353(1)(D) in a common sense fashion with an eye toward furthering the overall purpose of the Health Facilities Information Disclosure Act, it is my conclusion that the holding of a health care insurance policy, in and of itself, does not disqualify a person from serving as a consumer member of the Board. To hold to the contrary would disqualify the vast majority of otherwise eligible citizens of the state, who are truly representative of consumer interests. The legislative debate on L.D. 2136 makes it clear that third-party payers and health care consumers were viewed as separate and distinct groups who represented different interests. Simply because a consumer purchases, or is otherwise covered under, an insurance policy does not mean that he is "affiliated" with that insurer within the meaning of section 353(1)(D).

I reach an opposite conclusion with respect to corporators or members on an honorary board of a health care facility or institution. These individuals have a direct and substantial connection with the health care field. In some instances, these individuals may be intimately associated with a hospital or other health care institution. The affiliation of such individuals with a health care facility or institution is likely to be of a direct nature such that they do not accurately represent the

views of the health care consumers. In other words, the attitudes and views of such individuals may tend to coincide more with those of the health care facility with which they are associated than with the consumer they are expected to represent. This would be the type of "direct" affiliation which section 353(l)(D) contemplates as disqualifying one from consumer membership on either the Health Facilities Cost Review Board or the Voluntary Budget Review Organization.

I hope this information is helpful to you and please feel free to contact me again if you should need my assistance.

Sincerely,

WILLIAM R. STOKES
Assistant Attorney General

WRS:sm