

OFFICE OF THE ATTORNEY GENERAL

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Honorable Taylor F. Harper
House of Representatives
Alabama State House - 5th Floor
11 South Union Street
Montgomery, Alabama 36130-3401

Pharmaceutical Insurance
Coverage Act - Health
Maintenance Organization -
Pharmacists - Prescriptions

Pharmaceutical Insurance
Coverage Act is applicable
to Health Maintenance
Organizations.

Dear Representative Harper:

This opinion is issued in response to your
request for an opinion from the Attorney General.

QUESTION

Is the Pharmaceutical Insurance
Coverage Act, Section 27-45-1, et
seq., Code of Alabama 1975,
applicable to Health Maintenance
Organizations (HMOs) so that
recipients are free to choose any
pharmacist to obtain
pharmaceutical benefits?

FACTS AND ANALYSIS

Code of Alabama 1975, §27-45-1 provides that the
Pharmaceutical Insurance Coverage Act shall apply to
health insurance and employee benefit plans providing

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for pharmaceutical services, including without limitation, prescription drugs. The Act, in §27-45-2(6), (7), and (8) defines several terms which are important to a resolution of this issue. They are:

- covered policy of plan - any policy, employee benefit plan or contract within the scope of this chapter;
- health insurance policy - any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract providing for pharmaceutical services, including without limitation, prescription drugs, incurred as a result of accident or sickness, or to prevent same;
- employee benefit plan - Any plan, fund, or program heretofore or hereafter established or maintained by an employer or an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its

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participants or
their
beneficiaries,
through the
purchase of
insurance or
otherwise,
pharmaceutical
services, including
without limitation,
prescription drugs.

Code of Alabama 1975, §27-45-3 provides that no health insurance policy or employee benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state shall prevent any party or beneficiary of such health insurance policy or employee benefit plan from selecting and using the pharmacist or pharmacy of his choice for the purchase of prescription drugs. This section also specifically states that no health insurance plan or employee benefit plan may deny any pharmacy or pharmacist the right to participate as a contracting provider for such policy or plan. Pursuant to the Act it is unlawful for any insurer or person to provide any health insurance policy or employee benefit plan providing for pharmaceutical services that does not conform to the provisions of this Act.

The question which then must be answered is whether benefits received by an employee pursuant to a Health Maintenance Organization can be considered to be part of a health insurance policy or employee benefit plan. This question must be answered in the affirmative. First, the fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting a statute. Clark v. Houston County Commission, 507 So.2d 902 (Ala. 1987). However, where the language of the statute is clear and unambiguous no construction is required. Allen v. Hawes, 539 So.2d 273 (Ala. Civ. App. 1988).

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Here, the statutes involved seem to clearly indicate that they apply to any plan maintained or offered by an employer that provides prescription drugs to its employees. No exclusion was made as to prescription drugs provided by a Health Maintenance Organization. Since pursuant to §27-21A-1(6) a Health Maintenance Organization furnishes to any enrolled employee "any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or disability," it must be assumed that prescription drugs are covered within this broad definition. Further, there is nothing in the Health Maintenance Organization law that would prevent an enrolled employee from using the pharmacy of their choice as §27-21A-2(7) states that basic health care services (which assumedly include prescription drugs) shall be provided directly or under contractual arrangements and that "[w]hen reasonable and appropriate, the organization may provide physician services and basic health care services through other arrangements." Such language does not prohibit the employee from choosing the provider of prescription drugs.

It has been held that when possible, statutes should be resolved in favor of each other. Sparks v. Calhoun County, 415 So.2d 1104 (Ala. Civ. App. 1982). Here, such can be done as nothing in either statute prevents a consistent interpretation of the other. The two statutes may be read together so as to form one harmonious plan as was intended by the Alabama legislature.

Further, when there is a conflict between statutes, the last legislative expression will control. Baldwin County v. Jenkins, 494 So.2d 584 (Ala. 1986). Here, the Pharmaceutical Insurance Company Act enacted on May 3, 1988, is the most recent expression of the legislature. It is the controlling authority in this issue.

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CONCLUSION

The Pharmaceutical Insurance Coverage Act is applicable to Health Maintenance Organizations so that employees are free to choose their own pharmacy and pharmacist to obtain prescription drugs. Thus, pursuant to §27-45-8 the Commissioner of Insurance has the duty to enforce the provisions of the Pharmaceutical Insurance Coverage Act. This opinion is directed to an interpretation of Alabama law relative to the applicability of the Pharmaceutical Insurance Coverage Act to HMOs and does not address any federal law question which may be involved.

Sincerely,

JIMMY EVANS
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BY:



JAMES R. SOLOMON, JR.
CHIEF, OPINIONS DIVISION

JE/GIH/tm