Opinion No. 77-13

April 18, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Bruce R. Kohl, Assistant Attorney General

TO: Honorable Bennie Aragon, New Mexico State Representative, 10310 Rafael SW, Albuquerque, New Mexico 87105

ACCIDENT AND HEALTH INSURANCE-NONPROFIT HEALTH CARE PLANS-WORKMENS COMPENSATION-SELECTION OF A PRACTITIONER OF THE HEALING ARTS-INSURANCE AND HEALTH CARE PLAN BENEFITS.-Neither an accident and health insurer or a nonprofit health care plan may limit the freedom of choice of an insured as subscriber in their selection of a practitioner of the healing arts; the employer has the right under the Workmens Compensation Act to select the physician to provide the treatment to an employee entitled to benefits under the Act.

QUESTIONS

1. Are nonprofit health care plans organized under Sections 58-25-1 et seq., NMSA 1953 Comp. (1975 P.S.) required to comply with the provisions of Section 58-11-19, NMSA, 1953 Comp. (1975 P.S.) relating to freedom of choice of a subscriber in the selection of a physician, osteopath, dentist or chiropractor?

2. May an accident and health insurer or nonprofit health care plan limit the right of an insured or subscriber to choose a physician to those listed by the insurer or health care plan?

3. May an accident and health insurer or nonprofit health care plan limit the benefits to be paid under a policy or contract for health care services provided by a particular practitioner of the healing arts while not so limiting the benefits to be paid for other health care services?

4. Does an employee have the right to choose his own physician, osteopath, dentist, or chiropractor under the provisions of the Workmen's Compensation Act?

CONCLUSIONS

1. Yes.

2. No.

3. See Analysis.

4. No.

ANALYSIS

1. Section 58-11-19, NMSA, 1953 Comp. (1975 P.S.) provides in part:

Within the area of, and limits of, coverage offered an insured and selected by him in the application for insurance, the right of any person to exercise full freedom of choice in the selection of any hospital for hospital care, or of any practitioner of the healing arts or optometrist or podiatrist as defined in subsection B of this section, for treatment of any illness or injury within his scope of practice, shall not be restricted under any new policy of sickness or accident insurance, contract or health care plan issued after June 30, 1967, in this state . . . (Emphasis added.)

OPINION

The above section provides for freedom of choice by the insured or subscriber in the selection for health care treatment of a hospital or practitioner of the healing arts, optometrist or podiatrist. However, this freedom of choice is limited to those areas of coverage offered in the insurance policy or health care plan, and by the stated limits of the policy or plan. The choice of practitioner is also limited to treatment of an illness or injury that is within the scope of practice of the health care purveyor selected by the insured or subscriber.

As used in the statute a "practitioner of the healing arts" is defined as:

. . . any person holding a license or certificate provided for in Article 3, 4, 5 or 8 of Chapter 67, NMSA, 1953 authorizing the licentiate to offer or undertaken to diagnose, treat, operate on or prescribe for any human pain, injury, disease, deformity or physical or mental condition . . .

Thus, the term "practitioner of the healing arts" would include practitioners of chiropractic (Sections 67-3-8 et seq., NMSA, 1953 Comp.), dentistry (Sections 67-4-1 et seq., NMSA, 1953 Comp.), medicine and surgery (Sections 67-5-1 et seq., NMSA, 1953 Comp.), and osteopathy (Sections 67-8-1 et seq., NMSA, 1953 Comp.).

Under the languages of Section 58-11-19, supra, noted above, the freedom of choice provisions of the statute are made applicable to policies of accident and health insurance, and to contract or health care plans. A "health care plan" is defined in Section 58-25-3(K), NMSA, 1953 Comp. (1975 P.S.) as meaning ". . . a nonprofit corporation which is authorized by the superintendent of insurance to enter into contracts with subscribers and to make health care expense payments . . ." A "subscriber" is defined as ". . . any individual who, because of a contract with a health care plan entered into by or for him, is entitled to have health care expense payments made on his behalf or to him by the health care plan . . ." Section 58-25-3(G), NMSA, 1953 Comp. (1975 P.S.). By virtue of Section 58-11-19, supra, the freedom of choice

provisions set out above are made to apply to such health care plans as are organized under the Nonprofit Health Care Plan Act, Sections 58-25-1 et seq., NMSA, 1953 Comp. (1975 P.S.). It should be noted that Section 58-11-19, supra, would not apply to a policy of workmen's compensation insurance or liability insurance. See Section 58-11-18, supra.

*{*115}* 2.-3. Section 58-11-19, supra, provides that an insurer or health care plan may not limit the right of an insured or subscriber to select his own physician, nor may they restrict the choice of the insured or subscriber to a list of practitioners designated by the insurer or health care plan. To so restrict the freedom of choice of the insured or subscriber to a designated list of practitioners would be in clear contravention of Section 58-11-19, supra. By the same reasoning, an insurer or health care plan may not so limit the benefits to be paid for the services rendered by a particular profession of health care providers so as to effectively limit the freedom of choice of the insured or subscriber, and thus defeat the legislative mandate of Section 58-11-19, supra. However, it should be noted that neither the Accident and Health Insurance Act, Sections 58-11-1 et seq. supra, or the Nonprofit Health Care Plan Act, Sections 58-25-1 et seq., supra, specifically prohibit an insurance carrier or health care plan from placing reasonable limits on the benefits to be paid for the rendering of various health care services. Such limitations on benefits provided under the policy of accident and health insurance or health care plan must be clearly noted on the policy or contract as required by Section 58-11-3(E), supra, and Section 58-25-15(b), supra, respectively.

4. Section 59-10-19.1, NMSA, 1953 Comp. of the Workmen's Compensation Act provides in relevant part:

A. After injury, and continuing as long as medical or surgical attention is reasonably necessary, the employer shall furnish all reasonable surgical, physical rehabilitation services, medical, osteopathic, chiropractic, dental, optometry and hospital services and medicine . . . unless the workman refuses to allow them to be so furnished.

B. In case the employer has made provisions for, and has at the service of the workman at the time of the accident, adequate surgical, hospital and medical facilities and attention and offers to furnish these services during the period necessary, then the employer shall be under no obligation to furnish additional surgical, medical or hospital services or medicine than those so provided . . . (Emphasis added.)

The above provisions of the Workmen's Compensation Act make it clear that an employee does not have an absolute right to select his own physician, osteopath, dentist, or chiropractor, especially if the employer has made provision at the time of the accident to provide such health care services to the employee as are reasonably necessary. However, under Section 59-10-20, supra, of the Workmen's Compensation Act, the employee may have a physician of his choice present at any physical examination requested by the employer or workmen's compensation insurer, but the employee must pay for the services of such physician. It should also be noted that the employer or insurer has the right to select the physician to conduct the physical

examination allowed under Section 59-10-20, supra. This view is in accord with a previous opinion of the Attorney General dealing with the same question. See Opinion of the Attorney General No. 65-52, dated March 22, 1965.

ATTORNEY GENERAL

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