

VOLUME NO. 37

OPINION NO. 33

DISABILITY INSURANCE - Defined and applied in limited circumstances to health service corporation health plans; HEALTH SERVICE CORPORATIONS - Exclusion of coverage in health plans for medical services rendered at state institutions; INSURANCE - Exclusion of coverage in disability insurance policies for medical services rendered at state institutions; STATE INSTITUTIONS - Exclusion of coverage in disability insurance policies for medical services rendered at state institutions; REVISED CODES OF MONTANA, 1947 Sections 40-4035, 40-4036, 40-4037 and 40-5901, et seq

HELD: Section 40-4035, R.C.M. 1947, prohibits the Montana Physicians Service from including a provision in its health service agreements which excludes payment for health services rendered to beneficiaries hospitalized at the Warm Springs Hospital or the Boulder River School and Hospital where such health services would be covered if rendered to the beneficiaries outside of such institution. Any such provisions which are included in the Montana Physicians Service agreements are void and ineffective under section 40-4037, R.C.M. 1947.

13 June 1975

Lawrence M. Zanto, Director
Department of Institutions
1539 11th Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion concerning the applicability of section 40-4035, R.C.M. 1947, to the Montana Physicians Service. I have stated your questions as follows:

Does section 40-4035, R.C.M. 1947, prohibit the Montana Physicians' Service (Blue Shield) from adopting and enforcing a provision in its prepaid health care plans which excludes coverage of medical or health services rendered to covered beneficiaries in state institutions such as Warm Springs Hospital or the Boulder River School and Hospital where such services would be covered if rendered to the beneficiaries outside of such institution.

Section 40-4035, R.C.M. 1947, was enacted as section 1 of chapter 50, Laws of 1973, and provides as follows:

From and after the effective date of this act, it shall be unlawful for any insurance company or health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution. (Emphasis added.)

Section 4 of chapter 50, Laws of 1973, made the provision effective upon passage and approval, which was February 14, 1973. Section 40-4036, R.C.M. 1947, enacted as section 2 of chapter 50, Laws of 1973, defines disability policies which are "issued in Montana" as encompassing all such policies which are purchased by persons residing in Montana at the time of purchase. Section 40-4037, R.C.M. 1947, enacted as section 3 of chapter 50, Laws of 1973, voids any provision which is prohibited by section 40-4035; providing in full part:

If the exclusion, prohibited by this act, should appear in a disability insurance policy issued in Montana after the effective date of this act, such provision shall be deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institu-

tion if such services would have been covered if rendered to an insured outside of a Montana state institution.

Sections 40-4035 through 40-4038, R.C.M. 1947, are plainly applicable to the Montana Physicians Service. The use of the term "health service corporations" is plain and explicit, subject to only one interpretation. Hammill v. Young, 32 St. Rptr. 935, 540 P.2d 971 (1975). A definition of Health Service Corporations in effect at the time sections 40-4035 through 40-4038 were enacted was found in section 15-2304, R.C.M. 1947, prior to its amendment in 1976 by chapter 319, section 24, Laws of 1975. Prior to amendment, section 15-2304, R.C.M. 1947, authorizes the organization and operation of health service corporations:

(Nonprofit) Corporations may be organized under this act for any lawful purpose or purposes. All health service corporations formed for the purposes of defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanatoria, or both professional and hospital services, or acting as agent, factor or representative of, or contracting on behalf of organizations of such licentiates or group, groups, or organizations of hospitals, or both licentiate and hospital organizations, in the matter of prepaid service plans in the field of health * * *.

It is presumed that the legislature in enacting sections 40-4035 through 40-4037, had full knowledge of the existing law on the same subject, i.e., health service corporations, Fletcher v. Page, 124 Mont. 114, 119, 200 P.2d 484 (1950); and was therefore referring to health service corporations organized and existing under section 15-2304. Further confirmation of the Legislature's understanding of "health service corporations" as being those corporations under section 15-2304 is found in chapter 59 of Title 40, enacted two years after section 40-4035 as chapter 319, Laws of 1975. Chapter 59, and in particular sections 40-5901(1), R.C.M. 1947, utilizes a definition of "health service corporations" which is substantially the same as section 15-2304. It in effect replaced section 15-2304, which was simultaneously amended by section 24 of the same chapter to delete all language following the first sentence. The Montana Physicians Service (Blue Shield) is a nonprofit health service corporation incorporated under predecessor provisions to the current section 15-2304.

Sections 40-4035 through 40-4037, R.C.M. 1947, are applicable to disability policies issued by or through the Montana Physicians Service.

The only remaining question is whether Montana Physicians Service health service plans and agreements are "disability insurance policies" as that term is used in section 40-4035. Although the term "disability insurance policies" is not defined by section 40-4035 or the companion provisions of chapter 50, Laws of 1973, the only reasonable statutory construction of the phrase is one which includes the prepaid health plans of health service corporations.

The term "insurance" commonly connotes a risk-sharing plan where a number of individuals pay predetermined premiums to a third party who undertakes to indemnify the premium paying individuals against specified contingencies or risks. See 43 Am.Jur.2d, Insurance, section 1, page 62.

Section 40-2602, R.C.M. 1947, defines insurance, for purposes of the Montana Insurance Code, as follows:

"Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

Section 40-2903, R.C.M. 1947, defines disability insurance as "insurance of human beings against bodily injury, disablement, or death by accidental means, or against disablement or expenses resulting from sickness, and every insurance appertaining thereto." Technical arguments have been made in other jurisdictions concerning whether health service organizations similar to those in Montana are insurers and whether the policies or plans they write are policies of insurance. The definitional controversy has existed over whether insurance statutes and regulations apply to health service organizations. Many jurisdictions have concluded that health service corporations are not insurers and do not write insurance, e.g., California Physicians Service v. Garrison, 28 Cal.2d 780, 172 P.2d 4 (1946); while others have apparently reached the opposite conclusion, see e.g., Cleveland Hospital Service Association v. Ebricht, 142 Ohio 51, 49 N.E.2d 929 (1943) and Associated Hospital Service of Maine v. Mahoney, 213 A.2d 712 (Maine 1965). Under the Montana Insurance Code the general applicability of the Code to health service corporations has been settled by explicit statute: Section 40-2611, R.C.M. 1947, provides:

This code shall not apply to health service corporations, to the extent that the existence and operation of such corporations are authorized by section 15-1401 and related sections of the Revised Codes of Montana.

However, neither the Montana Insurance Code definitions of insurance nor technical arguments concerning whether health service corporations are "insurors" writing insurance apply to sections 40-4035 through 40-4037. The exclusion of health insurance corporations from the Insurance Code is limited to the original insurance code, as enacted in 1959. The 1959 Code was enacted without R.C.M. designation and section 1 of chapter 286, later codified as section 40-2601, R.C.M. 1947, provided: "This act constitutes the Montana Insurance Code." Section 40-2611 was a section of the 1959 Code and therefore applicable only to the original Code. The provisions, exclusions, and definitions of the original provisions of the Insurance Code, chapter 286, Laws of 1959, therefore apply to the original Code but do not necessarily apply to subsequent legislation on the same subject.

Inclusion of sections 40-4035 through 40-4037 in Title 40 is not determinative of the legislative intention as to the definition of the term "disability insurance policies;" Heledensbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, 147 Mont. 271, 411 P.2d 744 (1966); although the existing statutory definitions of the term at the time section 40-4035 was enacted may provide guidance in determining the Legislature's intention, see Fletcher v. Page, *supra*. Turning to sections 40-4035 through 40-4037, it is of critical importance to note that the sections were enacted as chapter 50, Laws of 1973, without R.C.M. designation. Therefore, the inclusion of these sections in the R.C.M. supplement to Title 40 does not make the definition sections of the 1959 Insurance Code applicable to sections 40-4035 through 40-4037.

In constructing section 40-4035 the context in which the term "disability insurance policy" is used is more important in determining its meaning than the precise grammatical or dictionary definition. Burritt v. City of Butte, 161 Mont. 530, 535, 508 P.2d 563 (1973). The term is used in conjunction with "health service corporations," as well as with insurance companies, and therefore refers to an activity in which health service corporations engage. The health service corporation activity which most closely resembles

technically defined insurance writing is the establishment and operation of prepaid health plans. This activity was clearly authorized by section 15-2304, R.C.M. 1947, prior to its amendment in 1975, but is better defined in chapter 59 of Title 40. Section 40-5901, R.C.M. 1947, provides a comprehensive description:

(1) "Health service corporation" means a non-profit corporation organized or operating a non-profit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary;

(2) "Health services" means the health care and services provided by hospitals, or other health care institutions, organizations, associations or groups, and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry and podiatry, nursing services, medical appliances, equipment and supplies, drugs, medicines, ambulance services, and other therapeutic service and supplies;

(3) "Membership contract" means any agreement, contract or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries;

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

Section 40-5903(1) similarly provides, in relevant part:

A health service corporation may be organized for the purposes of: (1) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; * * *

The basic features of Montana Physicians Service health plans, and the plans of other health service corporations, include risk-sharing by a number of people (group) through a payment of predetermined premium, against medical and related expenses or care which may be incurred by each individual beneficiary during the policy period. While health service corporations may not expect to make a profit as do insurance companies, the nature of their health in-

insurance plans is very similar to health insurance plans offered by insurance companies. In this regard, it is interesting to note that Montana Physicians Service is in direct competition with insurance companies for health coverage of state employees for the fiscal year commencing July 1, 1977. As the result of a proposed substantial increase in M.P.S. premiums, the State of Montana Group Health and Life Insurance Plan called for bids for health coverage for the coming year. Bids were received from several insurance companies as well as from Montana Physicians Service.

Health service corporations, if not insurers under the technical definition of the Montana Insurance Code, are engaged in the business of providing insurance. This relationship was implicitly recognized by the Legislature when it enacted chapter 59 of Title 40. That chapter provides for regulation of health service corporations, and prepaid health plans, under the jurisdiction of the Montana Insurance Commissioner. There is no doubt that the Legislature used "disability insurance policies" in section 40-4035 in a nontechnical sense to include a health service corporation and prepaid health plans.

Finally, this construction is compelled by the maxim of jurisprudence that, "An interpretation which gives effect is preferred to one which makes void." Section 49-133, R.C.M. 1947. As previously pointed out, the health service corporation activity to which section 40-4035 has potential applicability is the "establishing and operating of a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members thereof." Section 40-5901(1), R.C.M. 1947. An interpretation of the words "disability insurance policies" which excludes such prepaid health plans would vitiate the section's reference to health service corporations since there would be no health service corporation activities to which the section would apply.

I conclude that sections 40-4035 through 40-4037 apply to both individual and group agreements issued by health service corporations. I mention this point only because of the coincidence that the sections have been placed in chapter 40 of Title 40. Section 40-4001, R.C.M. 1947, provides that the chapter is inapplicable to "any group or blanket policy," and separate provision for group and blanket disability policies is contained in chapter 41 of Title 40. Section 40-4035 refers generally to "disability insurance

policies" and does not distinguish between group and individual policies. The words must be given their general meaning, as encompassing all disability policies irrespective of whether they are individual or group coverages.

THEREFORE, IT IS MY OPINION:

Section 40-4035, R.C.M. 1947, prohibits the Montana Physicians Service from including any provision in its health service agreements which exclude payment for health services rendered to beneficiaries hospitalized at the Warm Springs Hospital or the Boulder River School and Hospital where such health services would be covered if rendered to the beneficiaries outside of such institution. Any such provisions which are included in the Montana Physicians Service agreements are void and ineffective under section 40-4037, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General