

VOLUME NO. 37

OPINION NO. 151

CORPORATIONS - Health service - payment for services of psychologists; HEALTH PRODUCTS AND SERVICES - Payment by Blue Cross and Blue Shield for services of psychologists; INSURANCE - Blue Cross, Blue Shield as insurance companies; INSURANCE - Health Service Corporations - requirement to pay for services rendered by psychologists; PSYCHOLOGISTS - Payment by Blue Cross and Blue Shield; REVISED CODES OF MONTANA, 1947 - Sections 40-2611, 40-4108, 40-5901 and 40-5902(2); Title 15, chapter 23, and Title 40, chapters 26-53.

- HELD: 1. Montana Physicians Service (Blue Shield) and Blue Cross of Montana are not insurance companies but are health service corporations.
2. Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so.

25 July 1978

Michael M. Nash, Ph.D.
Board of Psychology
P.O. Box 1281
Bozeman, Montana 59715

Dear Mr. Nash:

I am in receipt of your correspondence wherein you asked for my opinion concerning payment by Montana Physician's Service (Blue Shield) and Blue Cross of Montana for services rendered by psychologists. I have stated your question in the following manner:

1. Are Montana Physicians Service (Blue Shield) and Blue Cross of Montana insurance companies?
2. Are Montana Physicians Service (Blue Shield) and Blue Cross of Montana required to pay for services rendered by psychologists?

Organizations which are in the business of indemnification, and insurance and indemnity contracts themselves, are governed generally by the Montana Insurance Code in Title 40, chapters 26 through 53 of the Revised Codes of Montana, 1947. However, some organizations are not governed by the Insurance Code. Section 40-2611, R.C.M. 1947, states:

This code shall not apply to health service corporations, to the extent that the existence and operations of such corporations are authorized by section 15-1401 and related sections of the Revised Codes of Montana, 1947.

Section 15-1401, R.C.M. 1947, was a specific section authorizing the creation of nonprofit corporations designated as health service corporations. This section was repealed by Laws of Montana (1967), ch. 198, in a bill which recodified laws pertaining to nonprofit corporations and set forth one procedure for the creation of nonprofit corporations in chapter 23 of Title 15, R.C.M. 1947.

Section 40-5901, R.C.M. 1947, defines health service corporations. It says:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit 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; ***

Blue Cross and Blue Shield (hereinafter, Blues) are non-profit corporations pursuant to section 15-1401 and its successor provisions and operate nonprofit plans as set forth in section 40-5901. Therefore, the Blues are not health insurance corporations under the Insurance Code but rather are a special legislative creation exempt from the Insurance Code.

Your second question is whether or not the Blues must pay for services rendered members by psychologists. The Insurance Code contains a section which would appear to require insurance companies to pay for such services. It is entitled: "Policies to Provide for Freedom of Choice of Practitioners," and states:

All policies ... shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. ... (Emphasis added.)

Section 40-4108, R.C.M. 1947. However, this section is part of the Insurance Code from which the Blues are exempt.

Even if there is an argument that the Blues are not exempt from this section, there is a conflict between this section and the Health Service Corporation Act. Section 40-5918(8) of the Act provides:

*** Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

The Legislature foresaw such conflicting statutes arising. Section 40-5902(2) says:

(2) A law of this state other than the provisions of this act applicable to health service

corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this act, the latter shall prevail.

Insurance companies are required to pay for services rendered by psychologists. Health service corporations (the Blues) may make reimbursement available to its members for whatever services the board of directors approve. The Blues are not required to pay for psychologist services provided to their members unless they have contracted to pay for such services.

THEREFORE, IT IS MY OPINION:

1. Montana Physicians Service (Blue Shield) and Blue Cross of Montana are not insurance companies but are health service corporations.
2. Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so.

Very truly yours,

MIKE GREELY
Attorney General