

OPINION
77-53

November 4, 1977 (OPINION)

The Honorable Byron Knutson
Commissioner
North Dakota Insurance Department
Capitol Building
Bismarck, ND 58505

Dear Mr. Knutson:

This is in response to your letter of October 18, 1977, wherein you request an opinion of this office relative to Rules and Regulations of the Insurance Department concerning coordination of benefits under groups coverages. You have also enclosed related correspondence and copies of the policies to which your inquiry relates. You submit the following in your letter of inquiry:

A controversy has developed over the Rule and Regulation promulgated by the Insurance Department and made effective September 1, 1971 pertaining to coordination of benefits under group coverages.

Two inquiries have been received from insurance companies in regard to the intention of Blue Cross of North Dakota to begin coordinating benefits with other limited payment contracts. Blue Cross contends that these contracts in question are group contracts because the premiums are paid through payroll deductions.

Enclosed is a copy of the Rule and Regulation in controversy, a letter received from American Family Assurance Company's local counsel along with their two contracts in question, and a letter from the secretary of Life of Mid-America Insurance Company.

Would you kindly review the materials and issue an Attorney General's Opinion as to whether or not the contracts are group contracts and subject to coordination of benefits?

Initially we would note the statutory provisions relative to coordination of benefits as the same pertain to accident and sickness insurance, nonprofit medical service contracts and nonprofit hospital service contracts. The same are set forth under the provisions of Sections 26-03-48, 26-27-15 and 26-26-15 of the North Dakota Century Code, as amended, providing as follows, respectively:

26-03-48. COORDINATION OF BENEFIT PROVISIONS. Group health insurance policies may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance. (Emphasis supplied.)

26-27-15. COORDINATION OF BENEFIT PROVISIONS. Group nonprofit medical service contracts may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance. (Emphasis supplied.)

26-26-15. COORDINATION OF BENEFIT PROVISIONS. Group nonprofit hospital service contracts may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance. (Emphasis supplied.)

It is to be noted that each of the respective statutes provides and addresses its application to "Group" contracts of Group "policies." There is no application to individual policies.

We must also note that under the provisions of R26-03-48-02 of the Rules and Regulations Governing Coordination of benefits under Group Coverages, as promulgated by the Insurance Department, the application of coordination of benefit provisions, as limited to "group" coverages, as the same is defined under the said Rule in Subsection 2 thereof.

Accordingly, it is clear that coordination of benefit provisions apply to only "group" coverages and have no application to individual policies or insurance contracts.

The question is then whether payment for premiums by payroll deduction, in and of itself, creates a "group" coverage or "group" contract or policy. Inasmuch as payroll deductions are authorized and permitted for various and sundry purposes, some with total participation by employees and others only upon individual selection and determination, we do not believe that such mode of payment is determinative or affects the basic nature or type of policy or contract upon which such premium payments are made. Whether a policy or contract is a "group" plan or "group" coverage, as contemplated by the statutes or by the Rules and Regulations of the Department of Insurance, would necessarily need be determined from the terms of the policy or contract itself rather than the mode of payment of premiums.

You have enclosed with your letter of inquiry two policy forms which you request that we review and determine whether or not the same group contracts and subject to coordination of benefits.

While we have reviewed the same, we are of the opinion that such determination is an administrative function rather than a subject of statutory interpretation. Such administrative determination, of course, rests with the agency having supervisory powers over such matters as are contemplated by the statutes and the Rules and Regulations of the agency, as in this case, the Insurance Department. We would note from our review, however, that there appears no restriction or provisions in the contracts or policies which appear to limit or otherwise create a "group" type of contract. For instance, there is no requirement that the policy or contract holder

need belong to any particular group either at the time of issuance of the contract or during the term or terms of coverage contemplated thereby. The contracts appear to be guaranteed renewable for life and appear to be available to any individual who meets the underwriting requirements. From these general observations, it would appear to us that the contracts are not nor do the same contemplate a "group" type of issuance or "group" contract as defined by the Rules and Regulations of the North Dakota Insurance Department, and insofar as there are no employer contributions to the premium payments, the mere fact that premiums are paid by a "payroll deduction" would not appear to create a "group" contract or policy.

We trust that the foregoing general observations, comments, and expressions will adequately set forth our opinion upon the matters presented by your letter of inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General