file

DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

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R75-512 and R76-110

76-320

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ARIZONA ATTORNEY GENERAL

Mr. J. N. Trimble, Director of Insurance
Arizona Department of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Trimble:

This is in response to your letter of February 27, 1976, and Millard Humphrey's letter of August 13, 1975 wherein this office was asked whether the prepaid dental care plans described in those letters are subject to regulation by the Department of Insurance.

Your letter of February 27, 1976 referred to a previous opinion letter issued by this office to the Arizona State Dental Board on August 22, 1973. The 1973 opinion letter concluded that a prepaid dental plan which provided specific dental services to subscribers for a fixed monthly fee did not constitute insurance within the meaning of A.R.S. § 20-103. Similarly that letter concluded that because the plan did not include basic health care services (i.e. emergency care, inpatient hospital and physician care, outpatient medical services, etc. A.R.S. § 20-1051(1)) the plan did not meet the definition of a health care plan for purposes of regulation as a health care services organization, A.R.S. § 20-1051. These conclusions remain an accurate statement of the law.

The majority of cases dealing with the subject of prepaid health plans hold that a corporation, whether or not organized for profit, the object of which is to provide members of a group with health care services, is not engaged in the insurance business. See, e.g., Jordah v. Group Health Ass'n, 107 F.2d 239 (D.C. Cir. 1939).

Both of the plans that you have submitted to us provide for the rendering of dental services to the members of the plans. They do not purport to indemnify anyone against risk of loss or expense growing out of occurrences requiring dental care. Accordingly, neither plan constitutes insurance.

If a corporation is not an insurer, then it is subject to regulation by the Director of Insurance only if a specific statute makes such a corporation otherwise subject to regulation. This is the case with hospital, medical, dental and optometric service corporations. See A.R.S. §§ 20-821--20-841. This is the case also with health care services organizations. See A.R.S. §§ 20-1051--20-1068.

As explained in the 1973 opinion letter, a corporation that provides only dental services is not included within the definition of a health care services organization. Inclusion within that definition is a prerequisite for regulation under A.R.S. §§ 20-1051 et seq.

When the 1973 letter was issued, an organization offering prepaid dental plans was not included in chapter 4, article 3 of Title 20, Arizona Revised Statutes, relating to hospital and medical service corporations. In 1975, dental service corporations were added to article 3. Therefore, a corporation offering dental service plans may be subject to regulation as a dental service corporation under A.R.S. §§ 20-821 et seq.

A.R.S. § 20-839 however exempts from regulation dental service corporations which do not offer their plans to the general public.

> This article shall not apply to any corporation operating or maintaining a . . . dental service plan . . . participation in which is limited to its employees and the employees of other persons or corporations with which such corporation may have contracted to provide such services. A.R.S. § 20-839.

When participation is limited to persons who are members of specified employee groups who have contracted with the dental service corporation for coverage, A.R.S. §§ 20-821 et seq. do not apply. If the organizations about which you inquired limit participation to selected employee groups, they are exempt from regulation as dental service corporations by virtue of A.R.S. § 20-839.

If we can be of further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

BRUCE E. BABBITT
Attorney General

Fred W. Stork III

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