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November 7, 1986

The Honorable Janice K. Brewer
Arizona State Representative
The Honorable Gary Giordano
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I86-113 (R86-104)

Dear Representative Brewer and Representative Giordano:

You have asked whether the Arizona Health Care Cost Containment System ("AHCCCS") has statutory authority to offer "health care insurance" to people who work for businesses that employ 25 or fewer people. Representative Brewer's request specifically refers to AHCCCS's authority to implement its recently-announced Private Employer Program ("PEP"). Both of you question whether AHCCCS may lawfully compete with private enterprises in offering "group health insurance."

AHCCCS is not an insurer offering "health insurance." An insurer is a "person engaged in the business of making contracts of insurance." A.R.S. § 20-104. "'Insurance' is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies." A.R.S. § 20-103.

AHCCCS is a state agency empowered to contract with private health care providers for delivery of medical services to AHCCCS "members." A.R.S. § 36-2903(A). These contracts are obtained through public invitations for bids by qualified health care providers. A.R.S. § 36-2906(B). A "member" is an "eligible person" who enrolls in AHCCCS. A.R.S. § 36-2901(5). An "eligible person" includes "[a]n employee of a business within this State." A.R.S. § 36-2401(4)(f).

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PEP is a plan under which employees of Arizona businesses may enroll in and become members of AHCCCS. As members of AHCCCS these employees will be entitled to receive health care from providers with whom AHCCCS has contracted for such care in the same fashion as other members of AHCCCS (e.g. indigents, medically needy or the employees of state and political subdivisions) receive health care. See A.R.S. § 36-2901(4).

Our opinion is that AHCCCS is authorized to contract with providers for the delivery of health care services to people working for businesses which employ 25 or less persons, so long as such persons are "employee[s] of a business within this state." A.R.S. § 36-2901(4)(f). PEP therefore is authorized by Arizona law.

In response to your question whether AHCCCS violates Arizona's prohibition against certain forms of state competition with private enterprise, we note that Laws 1985 (1st Reg. Sess.) Ch. 306, § 11(A) provides in pertinent part:

A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public which are also offered by private enterprise unless clearly authorized by law other than administrative law and executive orders.

Our opinion is that the statutes, cited above, clearly authorize the offering of health services, through AHCCCS contracts, to persons working for Arizona businesses employing 25 or less people where such persons are "employee[s] of a business within this state." A.R.S. § 39-2901(4)(f). Consequently, AHCCCS does not violate Arizona's prohibition against certain forms of state competition with private enterprises.

Sincerely,

BOB CORBIN
Attorney General

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