

Are Ambulance Subscription Programs Illegal in NY?

by Bradley M. Pinsky

Many ambulance companies throughout New York state and throughout the nation have enacted "subscription programs" or "membership programs". These programs typically provide that in exchange for a flat fee each year, a paying member or "subscriber" will not be charged for all or a portion of the ambulance service if such service is utilized.

Recently, the federal government commented that these programs do not violate any federal law if the programs meet certain requirements. New York state might take a different view, and the ambulance company that sponsors the program might be violating the Insurance Law and committing criminal fraud.

The New York State Insurance Department issued an opinion on May 29, 2001 that concludes that this type of plan is not permitted under the New York State Insurance Law. The general reasoning is that the subscription price is equivalent to an insurance premium and that the ambulance company is providing insurance to subscribers. Under New York Insurance Law § 1101(b)(1)(A) (McKinney 2000), the making as insurer of any insurance contract constitutes the doing of an insurance business in this state. Since the sponsors of these subscription programs are not licensed by this Department, and because these programs are not specifically exempted from the statutory requirement for licensing, subscription programs are not permitted under the New York State Insurance Law.

However, the Insurance Department has also stated as follows: *"Finally, there also exists the possibility that the network members, whose participation in the Plan essentially amounts to the waiving of co-payments, could be construed as running afoul of N.Y. Penal Law § 176.05 (McKinney 2000). That section provides as follows:*

"A fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, self insurer, or purported insurer, or purported self insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of a commercial insurance policy, or certificate or evidence of self insurance for commercial insurance or commercial self insurance, or a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance which he knows to: (i) contain materially false information concerning any fact material thereto; or (ii) conceal, for the purpose of misleading, information concerning any fact material thereto."

The waiving by health care service providers of otherwise properly payable co-payments and deductibles has been viewed by the Department as violative of the above provision.

The Insurance Department has referred these matters to the Attorney General for prosecution. Although we are not aware of any prosecutions to date, the threat of such action is real.

Those who offer subscription programs in any form should consult their lawyer regarding this issue and should strongly consider terminating these programs. Those who are interested in continuing these programs might consider sponsoring a change in the Insurance Law to permit these programs on a case by case basis. Until that time, those who

offer subscription programs in any form should consult their lawyer regarding this issue and should strongly consider terminating these programs.

Brad Pinsky frequently advises clients on billing matters such as these in an effort to prevent his clients from entering into questionable business arrangements.