

Commissioner's Opinion

File No. OP 4614H

CALIFORNIA DEPARTMENT OF CORPORATIONS

June 9, 1983

Opinion:

THIS LETTER IS NOT AN INTERPRETIVE OPINION FOR THE REASONS STATED BELOW.

Robert C. Schur
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The request for an interpretive opinion contained in your letter dated February 25, 1983, as supplemented by your letters dated March 9, 1983, March 30, 1983, and April 8, 1983 has been considered by the Commissioner. Your letters raise the question whether National Benefit Association ("NBA"), a California corporation, will be a health care service plan within the meaning of Section 1345(f) of the Knox-Keene Health Care Service Plan Act of 1975 ("Act") if it engages in the activities described below.

You have represented that NBA was established to provide its members with multiple buying services at discounted prices. An annual membership fee is required of each individual member. A member is entitled to receive discounts of up to 50% of the normal retail price for goods and services. Presently, discounts are provided for automobiles, home appliances, and various other consumer goods.

NBA proposes to extend this discount buying into health care services, including vision, dental, and medical care and prescription drugs. NBA proposes to seek and contract with health care providers who are willing to offer NBA members a percentage discount off their reasonable and customary fee. A list of such providers would be made available to the members of NBA.

The membership fees received by NBA cover NBA's costs of operation and administration. The membership fee would include the health program and no additional fees would be required. NBA's proposes to add the following statement to its member booklet: "Your membership fee is for the discount buying services only. NO PART of this fee includes charge for the use of the Legal, Dental, Medical/Physician, Prescription Drug or Vision Care programs. Such programs are provided as an additional no cost service to you. Your decision to join the NBA program should not be made because of the availability of these discount services."

The proposed contracts with health care providers purport to obligate the provider to extend a specified "courtesy discount". These contracts also appear to contemplate that the provider may unilaterally cease offering the courtesy discount with 30 days notice of such discontinuance to NBA.

Section 1345(f) of the Act defines "health care service plan", in relevant part, to mean any person who undertakes to arrange for the provision of health care services to subscribers or enrollees in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees.

The Act does not provide guidance on the definition of prepaid or periodic charges which are not used for arranging for the provision of health care services. In our view, any benefit or services given or delivered with, or as a bonus on account of, any purchase of a membership constitutes a part of the subject of the purchase. Thus, notwithstanding NBA's statement that no part of the membership fee is used for the health care services aspect of its program, we conclude that the membership fee is a prepaid or periodic charge paid for, among other things, the arrangement of certain health care services.

NBA, by contracting with dentists, doctors, pharmacists, and optometrists to provide services to members of NBA and by making such services available to members of NBA in return for an annual membership fee, is arranging for the provision of health care services to subscribers or enrollees in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees. Accordingly, it is our opinion, based on the representations contained in your

letters, that NBA will be a health care service plan within the meaning of Section 1345(f) of the Act. See Comm. Op. 77/10H.

Inasmuch as interpretive opinions are issued for the principal purpose of providing a procedure by which members of the public can protect themselves against liability for acts done or omitted in good faith in reliance upon the administrative determination made in the opinion, and since there can be no such reliance where the Commissioner asserts jurisdiction with respect to a particular situation or determines that a legal requirement is applicable, advice to that effect, as contained in this letter, does not constitute an interpretive opinion.

By order of
FRANKLIN TOM
Commissioner of Corporations

ROBERT E. LA NOUE
Assistant Commissioner