

46 Op. Att'y Gen. No. 17

INSURANCE - Uniform health benefit plans;

STATUTORY CONSTRUCTION - In determining intent, unambiguous statutes require no reference to other statements;

STATUTORY CONSTRUCTION - In harmonizing statutes, newly-enacted specific statutes control earlier, more general provisions;

MONTANA CODE ANNOTATED - Title 33, chapter 22; sections 1-2-101, -102; 33-1-311, -501; 33-22-245, -522, -1521(2); 33-31-322;

MONTANA LAWS OF 1995 - Chapter 527.

HELD:

Uniform health benefit plans, authorized by 1995 Montana Laws chapter 527, must include coverage for the services and articles specifically referred to in sections 33-22-245 and -522 and the mandated benefit provisions of title 33, chapter 22.

June 3, 1996

Mr. Mark O'Keefe
State Auditor
Mitchell Building, Room 270
P.O. Box 200301
Helena, MT 59620-0301

Dear Mr. O'Keefe:

You have requested my opinion on the following issue:

Must uniform health benefit plans authorized by 1995 Montana Laws chapter 527 include benefits not specified in chapter 527, but mandated by other provisions of the Montana Insurance Code?

In 1995, the Montana legislature passed an act relating to health benefit plans. 1995 Mont. Laws ch. 527. The Act is titled as follows:

AN ACT RELATING TO HEALTH BENEFIT PLANS; PROVIDING FOR THE PORTABILITY OF HEALTH BENEFIT PLANS BY REQUIRING INSURERS TO WAIVE CERTAIN TIME PERIODS APPLICABLE TO PREEXISTING CONDITIONS; REQUIRING CERTAIN INCREASES IN PLAN CHARGES TO BE DISTRIBUTED PROPORTIONATELY AMONG ALL PLANS OF AN INSURER; REQUIRING DISCLOSURE OF CERTAIN POLICY FEATURES AT OR BEFORE THE TIME OF APPLICATION; CREATING A LOW-COST UNIFORM HEALTH BENEFIT PLAN; CAPPING PREMIUM RATES ON CERTAIN CONVERSION POLICIES; AMENDING SECTIONS 33-22-101, 33-22-508, AND 33-30-1007, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

1995 Mont. Laws ch. 527, at 2672-73.

Your question deals with the portion of this Act relating to "uniform health benefit plans." These plans were newly created by 1995 Montana Laws chapter 527 and are codified in Mont. Code Ann. §§ 33-22-245 (regarding individuals) and 33-22-522 (regarding groups). The only other mention in the Act of a "uniform health benefit plan" is codified in Mont. Code Ann. § 33-31-322, which requires that health maintenance organizations offer a uniform health benefit plan, comparable to that set out in Mont. Code Ann. § 33-22-245(2).

Thus, the statutory provisions regarding this new type of insurance plan are not extensive. They are as follows:

33-22-245. Uniform health benefit plan - individual. (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to an individual shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed \$1,000 per person or \$2,000 per family;

(c) include a limitation of \$5,000 per person or \$7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of \$1 million.

33-22-522. Uniform health benefit plan - group. (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to a group shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed \$1,000 per person or \$2,000 per family;

(c) include a limitation of \$5,000 per person or \$7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of \$1 million.

As stated above, the only other mention of "uniform health benefit plan" is in Mont. Code Ann. § 33-31-322.

Your question is whether this new type of insurance plan is subject to the numerous provisions of title 33 which require that all insurance plans provide coverage for services such as mammography examinations, well child care, mental illness, and home health care. These provisions are referred to as "mandated benefits." As Commissioner of Insurance, you are required to review all medical insurance policies sold in this state to determine whether they include coverage of these mandated benefits. Mont. Code Ann. §§ 33-1-311 and -501. You therefore are seeking my opinion as to whether the mandated benefit provisions of title 33 apply to the new uniform health benefit plans.

Your question is resolved by reference to a number of rules of statutory construction. First, the intention of the legislature, in passing a statute, is to be discerned from the plain meaning of the words used. Mont. Code Ann. § 1-2-102; Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995); Lovell v. State Comp. Mutual Ins. Fund, 260 Mont. 279, 285, 860 P.2d 95, 99 (1993); State ex rel. Roberts v. Public Serv. Comm'n, 242 Mont. 242, 246, 790 P.2d 489, 492 (1990); Thiel v. Taurus Drilling Ltd., 218 Mont. 201, 205, 710 P.2d 33, 35 (1985).

Second, when several statutory provisions are pertinent to a subject, the provisions are to be harmonized and considered together so that all are given effect. Mont. Code Ann. § 1-2-101; Matter of WJH, 226 Mont. 479, 483-84, 736 P.2d 484, 486-87 (1987); Darby Star Ltd. v. Department of Rev., 217 Mont. 376, 705 P.2d 111 (1985); McClanahan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980).

It is clear that the 1995 legislature intended to create uniform health benefit plans which must contain coverage for the "services and articles" listed in Mont. Code Ann. § 33-22-1521(2). There is no ambiguity in the language of sections 33-22-245 and -522 regarding the coverages listed in section 33-22-1521(2). Where no ambiguity exists, a court need not look beyond the language of a statute to determine the legislative intent. Gulbrandson, supra; State v. Mummey, 264 Mont. 272, 277, 871 P.2d 868, 871 (1994); Lovell, supra.

Similarly, there is no ambiguity in the statutes requiring all disability insurance plans to have certain types of coverage. These statutes are generally referred to as mandated benefit provisions. See, e.g., Mont. Code Ann. §§ 33-22-111, -114, -130, -131, -132, -303, -512, -703, -1002, -301, -504, -304, and -506. They unambiguously require the inclusion of certain coverages in group and individual insurance policies. Your question concerns the relationship between this type of statute and sections 33-22-245 and -522.

The codification instruction passed as part of chapter 527 leaves no question regarding the placement of the new statutes, as it provides:

(3) [Sections 5 and 8] are intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [sections 5 and 8]

(4) [Sections 6 and 9] are intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [sections 6 and 9].

1995 Mont. Laws ch. 527, at 2679 (brackets in original). Thus, the legislature expressly placed the uniform health benefit plans with other insurance plans and the mandated benefit provisions spread throughout title 33, chapter 22. It did so without any language restricting application of the mandated benefits provisions.

The legislature is presumed to act with full knowledge of existing laws. Thiel v. Taurus Drilling Ltd., 1980-II, 218 Mont. 201, 207, 710 P.2d 33, 36 (1985). Harmonizing the new Act with the existing statutes leads to the conclusion that the mandated benefit provisions apply to uniform health benefit plans.

There is some overlap between the mandated benefits and the services listed in section 33-22-1521(2). See §§ 33-22-1521(2)(p) and -504, regarding coverage of newborns. Where there is such an overlap, the reference to section 33-22-1521(2) in section 33-22-255 must control. For where "a general and particular provision are inconsistent, the latter is paramount to the former." Mont. Code Ann. § 1-2-102. The statutes enacted in 1995 are clearly specific to uniform health benefit plans. Also, later statutes control earlier statutes. Wiley v. District Ct., 118 Mont. 50, 55, 164 P.2d 358, 361 (1945). Application of these rules allows harmony between the statutes so that all have effect.

It has been suggested that the legislative history of chapter 527 indicates an intention not to require application of the mandated benefit provisions to the newly-created uniform health benefit plans. In a similar vein, statements have been provided to me by various persons involved in the passage of chapter 527 indicating their views of the intention of the drafters of the legislation. Even if I assume the intention of the drafters and persons advancing this health benefit plan was to exclude mandated benefits, the language of the legislation must provide that. The law does not allow me to consider these matters in deciding the question you pose and then to place into the statute what is not there. Only the legislature has that authority. Even if I assume the intention of the drafters and persons advancing the uniform health benefit plans was to exclude mandated benefits, the language of the legislation does not so provide. Only the legislature has the authority to add such language; I am precluded by law from such action.

The function of one construing a statute is to declare what the statute means, relying if possible on the language of the statute alone. Resort to extrinsic materials such as legislative history documents is appropriate only where an ambiguity exists in the statutory language itself. The extrinsic materials cannot be used to create an ambiguity that does not exist in the plain statutory language. In Fulton v. Farmers Union Grain Terminal Ass'n, 140 Mont. 523, 536, 374 P.2d 231, 238 (1962), the Montana Supreme Court stated that "[w]here the [statutory] language is clear and unambiguous we cannot be guided by what is

asserted to have been intended." The same rule applies here. The language of chapter 527 clearly states what coverage is to be provided by uniform health benefit plans and the language of the mandated benefit provisions of title 33, chapter 22, clearly apply to all disability plans. There is no basis in the statutory language on which to imply an exception to this language which would exclude application of the mandated benefit provisions.

I find nothing to the contrary in the Supreme Court's decision in State ex rel. Griffin v. Greene, 104 Mont. 460, 469-70, 67 P.2d 995, 999-1000 (1937). In that case, the legislature passed a law creating certain regulations on movie theaters and assessing a tax. The bill as originally introduced provided that the tax was to be collected annually. During legislative consideration, an amendment was added to require collection of the tax quarterly, but the reference to annual tax collections was inadvertently left in place, so that as enacted the bill provided for both quarterly and annual tax collection. The Supreme Court resolved the uncertainty in the statutory language by holding that the original annual collection language was obviously left in the bill in "manifest error" when the quarterly collection amendment was adopted, and was therefore to be disregarded. Here, unlike in Griffin, the statute on its face contains no ambiguous or contradictory provisions, only an assertion that the adopted statute does not reflect the legislative intent. Griffin does not hold that the statute can be rewritten in this circumstance to bring it into conformance with a legislative intent that does not appear in the statutory language.

I conclude that the newly-enacted uniform health benefit plan statutes are not ambiguous. Any such insurance plan must include coverage for the services and articles enumerated in Mont. Code Ann. § 33-22-1521(2). The plans are not exempt from the provisions of title 33, chapter 22, which require additional benefits; where they overlap, sections 33-22-245 and -522 must control, as they are more specific to the uniform health benefit plans and more recent.

THEREFORE, IT IS MY OPINION:

Uniform health benefit plans, authorized by 1995 Montana Laws chapter 527, must include coverage for the services and articles specifically referred to in sections 33-22-245 and -522 and the mandated benefit provisions of title 33, chapter 22.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/bch/brf