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OPINION NO. 85-225

December 27, 1985

Mahlon A. Martin, Director
Department of Finance and Administration
P. O. Box 3278
Little Rock, Arkansas 72203

Dear Mr. Martin:

This letter is in response to your recent letter requesting an opinion from the Attorney General's Office.

As background information, you state that a possibility exists that the State Employees' Insurance Program may have to offer participation in Health Maintenance Organization (HMOs) to its participants.

You then ask the following questions:

1. Would it be mandatory that the State matching funds for each State employee electing to join an HMO be used to defray the cost of the premium?
2. If not mandatory, would it be optional at the decision of the State Employees' Insurance Advisory Committee?

HMOs are regulated by federal law, 42 USC 300(e) and 42 CFR §110.801 et seq.

Pursuant to 42 CFR §110.802(b), as a condition to receipt of funds under specific sections of the Public Health Service Act, the State is subject to the provisions of 42 CFR §110.801 et seq if (1) it offers, directly or indirectly, a health benefits plan (see §110.801) to eligible employees and (2) has received a request from a qualified HMO to be included in the plan. If the State meets the criteria of §110.802 it must include in the plan the option for membership in qualified HMOs to each eligible employee and dependent residing in the HMOs' service area. 42 CFR §110.804. The request for inclusion in the plan must comply with §110.803.

Contributions for HMOs are addressed by 42 CFR §110.808(a) which requires that the HMO option be included in the plan

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on terms no less favorable, with respect to the employer's contribution or designee's cost for health benefits, than other alternatives in the plan. The following paragraphs in §110.808 address issues relevant to the employer's contributions and allocation of expenses.

It is my opinion that the State must offer HMOs as an option in health benefit plans in order to receive certain federal funds. The State must make a contribution to the HMO option cost and the amount must be calculated under the provisions of 42 CFR §110.801 et seq, a copy of which is enclosed for your use.

The foregoing opinion which I hereby approve was drafted by Thomas S. Gay, Assistant Attorney General.

Sincerely,



STEVE CLARK
Attorney General

JSC:TSG:jk

Encl.