July 14, 1976

Dear :

It has been brought to the attention of this office that the (Named) Health Care Service Plan Act of 1976, has recently gone into effect in the state of (deleted). We have undertaken a comprehensive review of the (Named) Act, and have noted your tentative conclusion, as stated in your April 16, 1976 Notice of Hearing, that "employer 'self-insured' or 'self-administered' health care plans for employees are health care service plans subject to licensing under the Act." (Emphasis in the Notice of Hearing).

The Department of Labor is charged with administration and enforcement of certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, et seq. Among such provisions is §514(a) of ERISA which provides:

EFFECT ON OTHER LAWS

> Sec. 514(a) Except as provided in subsection (b) of this section, the provisions of this title and Title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

The effect of this section is to preempt all state laws which relate to employee benefit plans subject to the coverage of T1tle I or ERISA (Protection of Employee Benefit Rights), whether such state laws conflict with the terms of the federal legislation or would merely supplement the federal scheme. The coverage of ERISA extends to employee benefit plans established or maintained by employers engaged in commerce, or by employee organizations representing employees so engaged. ERISA §4(a). The term "employee benefit plan" encompasses both pension plans and welfare plans. Included in the definition of welfare plans found in §3(1) of ERISA are plans established or maintained by employers or employee organizations, or both, for the purpose of providing "medical, surgical or hospital care or benefits' to their participants and beneficiaries.

The (Named) Act may be read, particularly in conjunction with your April 16, 1976 Notice, to be applicable to employee welfare benefit plan now subject to the coverage of ERISA. It is the view of the Department of Labor that to the extent that the (Named) Act may be applicable by its terms to such ERISA-covered plans, the Act is preempted by §514 of ERISA. The reasons for broad preemption of State laws under ERISA were succinctly stated by Senator Williams, a major sponsor and floor manager of the bill, during its final consideration.

> Both the House and Senate bills provided for preemption of State law, but -- with one major exception appearing in the House Bill--- defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme. Although the desirability of further regulation - at either the State or Federal level - undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required - but for certain exceptions - the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec. S15751 (daily ed. Aug. 22, 1974).

The major reasons for broad preemption disclosed in these remarks include (1) the need to prevent conflicting regulation over interstate plans, (2) the desire to avoid the litigation that would result from piecemeal preemption, (3) the emergence of a pervasive Federal interest in employee benefit plans, and (4) the existence of a comprehensive federal program for future study (see §3022).

The (Named) Act is replete with provisions of the type that gave rise to these concerns. They include, but are not limited to, specification of mandatory health care services and coverage (§513671, 1373 (c) and (d); annual reporting requirements (§§1371, 1383); approval of plan financial responsibility (§1372); and regulatory authority to control handling of plan assets (§1376). Most troublesome

is the overall requirement that plans subject to the Act must be licensed and approved by the State.

Should it be determined that the (Named) Act is applicable by its terms to employee welfare benefit plans subject to the coverage of ERISA, the nature of the former would mandate a conclusion that it is a state law relating to employee benefit plans within the meaning of §514 of ERISA. As such, the (Named) Act would be preempted by ERISA to the extent it would otherwise be applicable to ERISA-covered plans.

I hope that this information and the expression of our views will be of assistance to you in your implementation of the (Named) Act within the limits of federal law. I would appreciate an expression of your response to the position outlined above.

Sincerely,