



May 3, 2005

Neal B. Childers, Esq.
Georgia Department of Community Health
2 Peachtree Street, NW
Atlanta, GA 30303-3159

2005-07A
ERISA SEC.
3(32)

Dear Mr. Childers:

This is in response to your request for an advisory opinion from the Department of Labor (Department) regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Specifically, you ask whether employees of certain federally qualified health centers in the State of Georgia may participate in the Georgia State Health Benefit Plan ("SHBP") without adversely affecting the status of the SHBP as a "governmental plan" within the meaning of section 3(32) of ERISA.

The following summary is based on facts and representations we received in support of your request. In accordance with section 45-18-2 of the Official Code of Georgia, the Georgia Department of Community Health established the SHPB to provide employees and retired employees of the State with, among other benefits, group health insurance for hospitalization, surgery, and medical treatment and care. The Public Employee Health Benefits Division of the Georgia Department of Community Health is responsible for the day-to-day operations of the SHBP. There are currently approximately 315,000 participants in the plan, of which approximately 1,500 are not governmental employees of the State, a political subdivision of the State, or of an agency or instrumentality of either. You represent that State policy requires the preservation of the SHBP's governmental plan status under Title I of ERISA. For purposes of this opinion, we assume, without examining the issue, that the SHBP, as currently structured and operated, is a "governmental plan" within the meaning of ERISA § 3(32).

The SHBP is considering an amendment that would allow all the employees of federally qualified health centers (FQHC) in the State of Georgia to qualify for participation in the SHBP. There are approximately 880 employees employed by eighteen FQHCs operating in the State. You represent that section 1905 of the Social Security Act defines FQHCs to include diverse types of organizations and programs that are eligible to receive federal funding under section 330 of the Public Health Service Act for serving certain medically underserved areas or populations. Both public and private not-for-profit health centers may qualify as FQHCs. Public FQHCs in Georgia are defined by Ga. Code Ann § 31-7-51 as those owned or operated by a municipality, county, hospital authority, or a combination thereof. You represent that the FQHCs that are the subject of your request

are not owned or operated by a municipality, county, hospital authority, or a combination thereof, and that they are not otherwise agencies or instrumentalities of the State of Georgia. For the purposes of this opinion we assume, therefore, without examining or expressing an opinion on the issue, that none of the FQHCs that are the subject of your request would constitute an “agency” or “instrumentality” of state government within the meaning of section 3(32) of ERISA.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to an employee benefit plan that is a “governmental plan” as defined in section 3(32) of ERISA. Section 3(32) defines governmental plan, in pertinent part, as “a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.” It is well established that, in the Department’s view, participation by a de minimis number of private sector employees will not adversely affect a plan’s status as a governmental plan. *See, e.g.*, Advisory Opinion 95-15A (Jun. 26, 1995); Advisory Opinion 95-27A (Nov. 8, 1995). However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan under Title I of ERISA.

Based on the representations and assumptions described above, it is the opinion of the Department that the SHBP’s status as a governmental plan under section 3(32) of ERISA would not be adversely affected by the participation of 880 employees of FQHCs in the State of Georgia. These 880 employees, together with the approximately 1,500 other non-governmental employees currently participating in SHBP, represent less than one percent of the total participants in the Plan, and in the Department’s view, comprise no more than a de minimis number of the Plan’s total participants.

This letter constitutes an advisory opinion under ERISA Procedure 76-1, and is issued subject to the provisions of that procedure, including section 10 thereof concerning the effect of advisory opinions. This letter relates solely to the application of the provisions of Title I of ERISA and is not determinative of any particular tax treatment under the Internal Revenue Code. Questions regarding any applicable provisions of the Internal Revenue Code should be directed to the Internal Revenue Service.

Sincerely,

John J. Canary
Chief, Division of Coverage, Reporting & Disclosure
Office of Regulations and Interpretations