

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-17A  
103(a)

JAN 29 1981

Mr. J. Robert Ash  
Employers Dental Services, Inc.  
4431 East Broadway  
Tucson, Arizona 85711

Dear Mr. Ash:

This is in response to your letter requesting an advisory opinion regarding the application of certain reporting and disclosure provisions of the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to your request.

Your letter concerns the question whether an "Employer Group Agreement" between Employer Dental Services, Inc. (EDS) and an employer sponsoring a prepaid dental plan, under which EDS agrees to provide specified dental benefits to employees and their eligible dependents is an insurance contract or policy issued by an insurance company or similar organization which is qualified to do business in a state for purposes of 29 C.F.R. §2520.104-20(b)(ii). Section 2520.104-20 provides a limited exemption from certain reporting and disclosure requirements of Part 1 of Title I of ERISA for certain small welfare plans. Plans for which the exemption is available include welfare plans under which, among other requirements, benefits are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any state.

According to your letter and supplements thereto, EDS is incorporated under the laws of the State of Arizona and, while not an "insurance company", is authorized by the Director of Insurance of that State to conduct one or more prepaid plans as a "Prepaid dental plan organization" in accordance with §§20-1001 through 20-1018 of Article 7, Chapter 4, Title 20 of the Arizona Revised Statutes (cited Ariz. Rev. Stat.). EDS engages in the design and administration of prepaid dental programs sponsored by employers for their employees and dependents. The terms and conditions of such prepaid dental programs are contained in a Master Contract, a copy of which was included with your submission. Each employer adopting a dental program executes an "Employer Group Agreement" with EDS in which the Master Contract is incorporated by reference. Premiums paid to EDS as consideration for its services pursuant to the "Employer Group Agreement" are paid either totally by the employer from its general assets or

partly in this manner and partly from contributions by participants or, in some cases, entirely from contributions by participants. EDS secures professionals licensed to practice dentistry in Arizona to provide the dental services and such professionals execute an agreement with EDS. This agreement contains the terms and conditions under which the dentist or dental group is to provide professional services to participating employees of adopting employers. Under the agreement some services are to be provided to participating employees and their dependents free of charge, while others are to be provided at specified charges to be paid by such participants and dependents.

As a "Prepaid dental plan organization" defined in Ariz. Rev. Stat. §20-1001.4, EDS, in accordance with Ariz. Rev. Stat. §20-1002, is required to obtain and maintain a certificate of authority issued by the Director of Insurance and to comply with the requirements set forth in Ariz. Rev. Stat. §20-1003 et seq., which provide, in part, that: a prepaid dental plan organization shall apply to the director of insurance for a certificate of authority; a certificate of authority shall be granted upon certain findings by the director including a finding that the organization is financially responsible and may reasonably be expected to meet its obligations to members and prospective members; a prepaid dental plan organization shall maintain a deposit with the state treasurer for the benefit and protection of persons covered by the prepaid dental plan; a prepaid dental plan organization shall maintain a financial reserve consisting of two percent of prepaid charges up to a maximum amount of five hundred thousand dollars; every prepaid dental plan organization shall file an annual report with the director, including a financial statement of the organization certified by an independent public accountant.

Based on the foregoing information regarding the regulation by the Arizona State Director of Insurance to which EDS, as a prepaid dental plan organization is subject, it is the view of the Department that for purposes of §2520.104-20, EDS is an organization which is similar to an insurance company which is qualified to do business in a state, provided that a certificate of authority duly issued by the Director of Insurance of the State of Arizona is maintained. In view of your representations regarding the manner in which EDS operates, moreover, it appears that the "Employer Group Agreement" between EDS and an employer sponsoring a prepaid dental plan is an insurance contract or policy issued by an organization similar to an insurance company which is qualified to do business in a state for purposes of §2520.104-20(b)(ii). Accordingly, to the extent that such an agreement is funded through premiums which are either paid totally by an employer from its general assets or partly from contributions by its employees or members, an employee welfare benefit plan under which benefits are provided exclusively through such an agreement would qualify for the limited exemption set forth at 29 C.F.R. §2520.104-20, provided such a welfare plan satisfies all other requirements for that exemption.<sup>1</sup>

---

<sup>1</sup> Although your inquiry was limited to the application of regulation section 2520.104-20, it should be noted that the relevant term "similar organization" is used also in 29 C.F.R. §2520.104-44, which provides a limited exemption for annual reporting by unfunded and by certain insured welfare plans which may have 100 or more participants. Accordingly, the opinion

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (issued August 27, 1976). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator of Pension and Welfare Benefit Programs

---

expressed herein regarding the application of §2520.104-20 would apply equally to the application of §2520.104-44.