



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

May 18, 2011

FILE NO. 11-002

LEGISLATIVE BRANCH:

Authority of Commission on Government  
Forecasting and Accountability over Certain  
State Employees' Group Health Benefit Contracts

The Honorable Jeffrey M. Schoenberg  
Co-Chair, Commission on Government  
Forecasting and Accountability  
State Senator, 9<sup>th</sup> District  
703 Stratton Office Building  
Springfield, Illinois 62706

The Honorable Patricia R. Bellock  
Co-Chair, Commission on Government  
Forecasting and Accountability  
State Representative, 47<sup>th</sup> District  
703 Stratton Office Building  
Springfield, Illinois 62706

Dear Senator Schoenberg and Representative Bellock:

I have your letter regarding the extent of the authority granted to the Commission on Government Forecasting and Accountability (the Commission) under the State Employees Group Insurance Act of 1971 (the Act) (5 ILCS 375/1 *et seq.* (West 2008)). Specifically, you

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have inquired as to the meaning of the phrase "with the advice and consent of the Commission" as used in section 6.2 of the Act (5 ILCS 375/6.2 (West 2008)). For the reasons stated below, it is my opinion that the phrase "with the advice and consent of the Commission" as used in section 6.2 of the Act confers upon the Commission the authority to review and approve or disapprove the recommendation that the State act as a self-insurer, in whole or in part, for health benefits. Section 6.2, however, does not authorize the Commission to approve or disapprove individual health benefit provider or administrator contracts.

## **BACKGROUND**

### **Commission on Government Forecasting and Accountability**

The Commission is a legislative support services agency, the membership of which consists of a bipartisan group of 12 members of the General Assembly appointed by the leadership of the General Assembly as provided by statute (25 ILCS 130/1-5(3) (West 2008), as amended by Public Act 96-959, effective July 1, 2010). Among its many duties, the Commission is charged with studying and providing the General Assembly with information on economic development and fiscal trends in Illinois and on the operations of State government, recommending State fiscal and economic policies to improve the functioning of State government, and developing a 3-year budget forecast for the State, including opportunities and threats concerning anticipated revenues and expenditures (25 ILCS 155/3(1) through (3), (12), (14) (West 2008), as amended by Public Act 96-958, effective July 1, 2010). The Commission is also charged with overseeing the administration of the State Employees' Group Insurance

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Program (State Insurance Program). *See* 5 ILCS 375/4, 5 (West 2008). With regard to the State Insurance Program, the Commission is required to issue estimates of the liabilities of the State Insurance Program (25 ILCS 155/4 (West 2008), as amended by Public Act 96-958, effective July 1, 2010) and to meet with the Department of Central Management Services (CMS) to "advise [CMS] on all matters relating to policy and the administration of" the Act (5 ILCS 375/4 (West 2008)).

### **State Insurance Program**

The General Assembly has determined that it is in the best interests of the State to provide a program of health benefits, group life insurance benefits, and other employee benefits for persons in the service of the State of Illinois, employees of certain specified entities,<sup>1</sup> and their qualifying dependents. 5 ILCS 375/2 (West 2008). The Act provides that "[t]he implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members<sup>2</sup> and their dependents." 5 ILCS 375/5 (West 2008).

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<sup>1</sup>The Act includes within its provisions "employees of local governments, employees of rehabilitation facilities, employees of domestic violence shelters and services, and employees of child advocacy centers, and certain of their dependents." Further, it extends its provisions to "certain benefit recipients of the Teachers' Retirement System of the State of Illinois and their dependent beneficiaries and \* \* \* certain eligible retired community college employees and their dependent beneficiaries." 5 ILCS 375/2 (West 2008).

<sup>2</sup>The term "member" is defined to include "an employee, annuitant, retired employee or survivor." 5 ILCS 375/3(l) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011. The term "employee" means each officer or employee in the service of a department who meets certain specified statutory criteria. 5 ILCS 375/3(k) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011. The term "department" means "any department, institution, board, commission, officer, court or any agency of the State government receiving appropriations and having power to certify payrolls to the Comptroller authorizing payments of salary and wages against such appropriations as are made by the General Assembly from any State fund, or against trust funds held by the State Treasurer" and certain other specified governmental entities. 5 ILCS 375/3(g) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011.

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To that end, the State has created the State Insurance Program, a program of health benefits provided to participating State employees which gives them a choice of either the Quality Care Health Plan (QCHP)<sup>3</sup> or various types of managed care plans.<sup>4</sup> See Commission on Government Forecasting & Accountability, *Liabilities of the State Employees' Group Health Insurance Program Fiscal Year 2012 (Liabilities), Benefits, 5* (March 2011), *available at* <http://www.ilga.gov/commission/cgfa2006/Upload/StateEmployeesInsuranceFY2012.PDF>. Three of the State Insurance Program's eight managed care plans are self-insured contracts. Commission on Government Forecasting & Accountability, *Funding & Plan Design Summary of the State Employees' Group Insurance Program (Summary), QCHP Plan Design, 10, 12, Managed Care Plan Design, 14* (October 2005), *available at* <http://www.ilga.gov/commission/>

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<sup>3</sup>QCHP is a self-insured plan administered by Cigna. As a self-insured plan, the State pays claims directly and assumes 100% of the risks for insuring State employees. Summary, QCHP Plan Design, 10; 5 ILCS 375/6.2 (West 2008). The current QCHP contract with Cigna expires in 2012. E-mail from Anthony R. Bolton, Revenue Analyst, Commission on Government Forecasting and Accountability, to Kristin Creel, Assistant Attorney General, Office of the Illinois Attorney General (May 13, 2011, 13:06 CST).

<sup>4</sup>There are currently eight different managed care plans from which State employees may choose to obtain their health care services: (1) Health Alliance HMO; (2) Health Alliance Illinois; (3) Health Link OAP; (4) HMO Illinois; (5) Humana Benefit Plan of Illinois (formerly OSF Healthplan); (6) Humana Benefit Plan of Illinois/Humana Benefit of Winnebago (formerly OSF Winnebago); (7) PersonalCare; and (8) Unicare HMO. E-mail from Anthony R. Bolton, Revenue Analyst, Commission on Government Forecasting and Accountability, to Kristin Creel, Assistant Attorney General, Office of the Illinois Attorney General (May 13, 2011, 13:06 CST).

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cgfa2006/Upload/2005FundingPlanDesign.pdf.<sup>5</sup> As of March 2011, there were 351,566 participants in the State Insurance Program: 232,710 in managed care and 118,856 in the QCHP. Liabilities, Membership, 6.

### **State Insurance Program Administration**

The State Insurance Program is administered by CMS and the Illinois Department of Healthcare and Family Services (DHFS). Specifically, DHFS is responsible for rate development and vendor negotiations, health care procurement, contract implementation and fiscal monitoring, contract amendments, and the purchasing aspects of health care plans administered by the State, while CMS is charged with the administration and management of

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<sup>5</sup>If State Insurance Program plans are self-insured, either wholly or in part, their qualifying claims are paid directly by the State of Illinois and the State assumes 100% of the risk for insuring the participating State members. Based on information provided by the Commission, the following managed care contracts are self-insured: Health Alliance Illinois, Health Link OAP, and Humana Benefit Plan of Illinois/Humana Benefit Plan of Winnebago (formerly OSF Winnebago). See E-mail from Anthony R. Bolton, Revenue Analyst, Commission on Government Forecasting and Accountability, to Kristin Creel, Assistant Attorney General, Office of the Illinois Attorney General (May 13, 2011, 13:06 CST); see also Summary, Contracts, 25, 26, 29.

For fully-insured products, the State pays a contracted rate per person, per month, and the vendor assumes all of the risk for insuring the participating State members. Summary, Contracts, 27, 28, 30, 31. Based on information provided by the Commission, the following contracts were fully-insured: Health Alliance HMO, HMO Illinois, Humana Benefit Plan of Illinois (OSF Healthplan), PersonalCare, and Unicare HMO. See E-mail from Anthony R. Bolton, Revenue Analyst, Commission on Government Forecasting and Accountability, to Kristin Creel, Assistant Attorney General, Office of the Illinois Attorney General (May 13, 2011, 13:06 CST); see also Summary, Contracts, 24, 27, 28, 30, 31.

According to the information provided by the Commission, each of the foregoing contracts expire in 2011 (as noted previously, the QCHP administrator contract expires in 2012). The Illinois Department of Healthcare and Family Services has proposed new contracts with only HealthLink OAP and HMO Illinois. The Department of Healthcare and Family Services has also proposed contracts with the following new vendors: Personal Care OAP, which is self-insured, and Blue Advantage, which is fully-insured. E-mails from Anthony R. Bolton, Revenue Analyst, Commission on Government Forecasting and Accountability, to Kristin Creel, Assistant Attorney General, Office of the Illinois Attorney General (May 13, 2011, 13:06, 15:45 CST).

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employee benefits. *See* Executive Order No. 2005-3, issued April 1, 2005.<sup>6</sup> For purposes of this inquiry, CMS and DHFS will be referred to collectively as "the Director," consistent with the definition set forth in the Act. *See* 5 ILCS 375/3(i) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011.

### **State Group Health Benefits Contracts**

Section 6.2 of the Act anticipates that the State may want to act as a self-insurer, in whole or in part, for health benefits. Specifically, section 6.2 provides, in pertinent part:

*When the Director, with the advice and consent of the Commission, determines that it would be in the best interests of the State and its employees, the program<sup>7</sup> of health benefits under this Act may be administered with the State as a self-insurer in whole or in part. The State assumes the risks of the program. (Emphasis added.)*

You have inquired about the extent of the Commission's authority under section 6.2 of the Act. Section 6.2 is a narrowly tailored statutory provision intended to address the provision of health benefits through a self-insurance program. This section provides that health benefits may be administered with the State as a self-insurer, in whole or in part, "[w]hen the Director, with the

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<sup>6</sup>*See* 5 ILCS 375/15 (West 2008) (providing that the "Director" shall administer the Act); 5 ILCS 375/3(i) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011 (defining "Director" to include the Director of CMS "or of any successor agency designated to administer this Act"); 5 ILCS 375/6.5 (West 2008), as amended by Public Act 96-1519, effective February 4, 2011; 5 ILCS 375/10 (West 2009 Supp.), as amended by Public Acts 96-1232, effective July 23, 2010; 96-1519, effective February 4, 2011 (indicating that DHFS has been designated to procure healthcare contracts).

<sup>7</sup>As used in the Act, the term "program" means "the group life insurance, health benefits and other employee benefits designed and contracted for by the Director under this Act." 5 ILCS 375/3(n) (West 2009 Supp.), as amended by Public Act 96-1519, effective February 4, 2011.

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advice and consent of the Commission, determines that it would be in the best interests of the State and its employees[.]" Whether section 6.2 gives the Commission further authority to provide advice and consent on the individual health benefit provider or administrator contracts is answered by reviewing section 5 of the Act.

Section 5 of the Act (5 ILCS 375/5 (West 2008)) sets out the specific process for the formation and execution of employee benefit contracts, including health benefit contracts. Unless waived by the Commission, all contracts for the provision of employee benefits must satisfy the following requirements in section 5.

Section 5 of the Act contains a number of provisions requiring that the Director provide information to the Commission. Specifically, by April 1 of each year, the Director must provide "information to the Commission concerning the status of the employee benefits program to be offered for the next fiscal year." The information is to include, at a minimum, "documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program." 5 ILCS 375/5(i) (West 2008). By the first of each month thereafter, the Director must provide updated, and any new, information to the Commission until the employee benefits program for the next fiscal year is determined. 5 ILCS 375/5(i) (West 2008). The Director must also promptly respond to any written request from the Commission concerning employee benefits programs. 5 ILCS 375/5(i) (West 2008). Further, upon the Commission's written request, within 30 days after notice of the awarding or letting of a contract

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in the Illinois Procurement Bulletin, the Director must provide information in his or her possession concerning the proposed contract. 5 ILCS 375/5(ii) (West 2008). No contract subject to the statutory requirements may be entered into until the expiration of a 30-day period after the notice of the award or letting of the contract, unless the Commission waives the waiting period. 5 ILCS 375/5(iii) (West 2008). Any substantive modification to any proposed contract is subject to the same reporting and waiting period requirements as the original proposed contract. 5 ILCS 375/5(iv) (West 2008). By the beginning of the annual benefit choice period (generally May 1 of the fiscal year preceding the year for which the program is to be offered), the Director must transmit to the Commission a copy of each final contract or agreement for the employee benefits to be offered for the next fiscal year. 5 ILCS 375/5(v) (West 2008). The Commission has the sole discretion to waive the reporting and waiting-period requirements. 5 ILCS 375/5 (West 2008).

Upon the Director's compliance with all statutory reporting requirements and the expiration of the 30-day waiting period, section 5 authorizes the Director to execute all necessary health benefit contracts and provides:

*The Director shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members and, where elected, their eligible dependents. Any contract or, if applicable, contracts or other arrangement for provision of benefits shall be on terms consistent with State policy and based on, but not limited to, such criteria as administrative cost, service capabilities of the carrier or other contractor and premiums, fees or charges as related to benefits.*



\* \* \*

*The Director is authorized to execute a contract, or contracts, for the programs of \* \* \* health benefits \* \* \* and administrative services authorized by this Act \* \* \*. All of the benefits provided under this Act may be included in one or more contracts, or the benefits may be classified into different types with each type included under one or more similar contracts with the same or different companies.*

*The term of any contract may not extend beyond 5 fiscal years. Upon recommendation of the Commission, the Director may exercise renewal options of the same contract for up to a period of 5 years. (Emphasis added.)*

In evaluating and entering into health benefit contracts, the Director may consider affordability, cost of coverage and care, and competition among health insurers and providers. 5 ILCS 375/5 (West 2008).

### ANALYSIS

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Illinois Department of Healthcare & Family Services v. Warner*, 227 Ill. 2d 223, 229 (2008). Legislative intent is best evidenced by the language used in the statute, and if statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). Further, a statute should be evaluated as a whole; each provision should be construed in connection with every other section. *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 291 (2004).

Under the plain and unambiguous language of section 6.2, the State may choose to self-insure, in whole or in part, for health benefits. The Director's decision to self-insure requires the "advice and consent of the Commission[.]" However, the phrase "advice and consent" is not defined in the Act.<sup>8</sup>

Undefined statutory terms must be given their ordinary and commonly understood meaning. *Wauconda Fire Protection District v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 430 (2005). The term "advice" commonly refers to a "recommendation regarding a decision or course of conduct: COUNSEL[.]" Webster's New Collegiate Dictionary 17 (1979). The word "consent" means "compliance in or approval of what is done or proposed by another[.]" Webster's New Collegiate Dictionary 239 (1979). Construing these terms together within the context of the Act, the phrase "with the advice and consent of the Commission" would commonly refer to the Commission's act of reviewing the Director's self-insurance proposal, providing its counsel on the proposal, and approving or disapproving the Director's proposal to pursue a self-insurance program as the circumstances warrant.

Applying this analysis to section 6.2, it is clear that the Commission is authorized to review and to approve or disapprove of the Director's recommendation for the State to self-insure, in whole or in part, for health benefits. Nothing in the language of section 6.2, however, suggests that the Commission possesses the authority to review and approve or disapprove the

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<sup>8</sup>The legislative debates for House Bill 1941, which as enacted became Public Act 83-042, effective August 2, 1983, and which added section 6.2 of the Act, are also silent with regard to the meaning of the term "advice and consent." Further, no Illinois court has construed the phrase in the context of this Act.

individual health benefit or self-insurance program contracts. Unlike section 5, which expressly authorizes the Director to execute health benefit contracts and requires the Director to provide information regarding these contracts to the Commission, section 6.2 is entirely devoid of the term "contract." Rather, section 6.2 refers only to the larger policy issue of whether it is in the best interests of the State and its employees for the State to self-insure.

A review of the other sections of the Act indicates that the phrase "with the advice and consent of the Commission" is used in only one other provision.<sup>9</sup> The phrase is noticeably absent from section 5 of the Act, which addresses the actual award and execution of contracts for State employees' group health benefits. Other than allowing the Commission to obtain information regarding health benefit contracts and authorizing it to waive the reporting and waiting period requirements, the only reference in section 5 to Commission action relates to the Director's exercise of the renewal options on previously executed health benefit contracts, "upon recommendation of the Commission[.]" Accordingly, the inclusion of the "advice and consent" language in section 6.2 demonstrates the General Assembly's intent that the Commission have a more active role in the decision to initiate a self-insured health plan, than its general oversight

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<sup>9</sup>The phrase appears in section 13.1 of the Act (5 ILCS 375/13.1 (West 2008)), which authorizes the Health Insurance Reserve Fund, "a trust fund outside the State Treasury[.]" As originally enacted by Public Act 83-042, effective August 2, 1983, section 13.1 provided, in pertinent part:

The Director, *with the advice and consent of the Commission*, shall establish premiums for optional coverage for dependents of eligible members *for the self-insurance health plan*. (Emphasis added.) Ill. Rev. Stat. 1983, ch. 127, par. 533.1.

The phrase "for the self-insurance health plan" has subsequently been replaced with "for the health plans." See Public Act 91-390, effective July 30, 1999; 5 ILCS 375/13.1(c) (West 2008).

authority with respect to contracts for health benefits. This heightened role in determining whether the State should assume the risk of self-insuring, in whole or in part, for health benefits is consistent with the Commission's other duties to monitor the long-term debt position of the State, to recommend State fiscal and economic policies to improve the functioning of State government, and to develop a 3-year budget forecast for the State that includes opportunities and threats concerning anticipated revenues and expenditures. 25 ILCS 155/3 (West 2008), as amended by Public Act 96-958, effective July 1, 2010.<sup>10</sup> Given these other duties of the Commission, it is reasonable that the General Assembly would intend for the Commission to approve or disapprove a recommendation that the State self-insure for health benefits based on its determination of whether the risks and benefits of self-insurance would be in the best interests of the State and its employees.

### CONCLUSION

The phrase "with the advice and consent of the Commission" in section 6.2 of the State Employees Group Insurance Act of 1971 confers upon the Commission on Government Forecasting and Accountability the authority to approve or disapprove the Director's recommendation to self-insure based upon its determination of whether it would be in the best interests of the State and its employees to self-insure, in whole or in part, for health benefits. It does not authorize the Commission to approve or disapprove individual health benefit provider or administrator contracts.

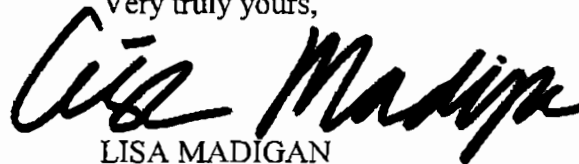
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<sup>10</sup>As noted previously, the State assumes 100% of the risk with programs of self-insurance. 5 ILCS 375/6.2 (West 2008); *see also* 1974 Ill. Att'y Gen. Op. 74, 78 ("Self-insurance naturally implies that the entity is undertaking a risk which could result in a liability of an uncertain amount").

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In so concluding, I would note that the Commission may find it helpful to review individual health benefit provider and administrator contracts to determine whether a self-insurance program is in the State's best interest and to determine the costs of operating such a program. The Act, however, does not authorize this review to extend to approving or disapproving specific health benefit provider or administrator contracts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is written in a cursive, flowing style with some loops and flourishes.

LISA MADIGAN  
ATTORNEY GENERAL