

OPINION NO. 89-089**Syllabus:**

1. Every sickness and accident insurance policy delivered, issued for delivery, or used in this state must contain the provisions prescribed by R.C. 3923.04-.07 unless the policy is one of those enumerated in R.C. 3923.12 or R.C. 3923.13 or is otherwise exempted by statute from R.C. 3923.04-.07.
2. The authority of the Superintendent of Insurance under R.C. 3923.021 to review premium rates for individual policies of sickness and accident insurance extends to all individual sickness and accident policies; it does not extend to those policies enumerated in R.C. 3923.12 or R.C. 3923.13 or to those designated as group policies by other statutory provisions.
3. Whether a particular policy of sickness and accident insurance is a group policy or an individual policy is a question of fact.

To: George Fabe, Director, Department of Insurance, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 3, 1989

I have before me your request for an opinion concerning the authority of the Department of Insurance to review premium rates for certain sickness and accident insurance policies and to require that such policies include standard provisions set forth in R.C. 3923.04 through 3923.07. You have phrased your questions as follows:

1. Sections 3923.04 through 3923.07, Revised Code, require that certain standard provisions be included in all sickness and accident insurance policies except for policies specifically exempted by Section 3923.20, Revised Code. Section 3923.20, Revised Code, exempts from the standard provisions requirements sickness and accident policies enumerated in Sections 3923.12 and 3923.13, Revised Code. Must all policies of sickness and accident insurance that do not meet the definition of a group in Section 3923.12, Revised Code, or of a special group for blanket sickness and accident insurance in R.C. 3923.13, Revised Code, include the standard policy provisions stated in Sections 3923.04 through 3923.07, Revised Code?
2. Section 3923.021, Revised Code, gives the Superintendent of Insurance authority to review premium rates for any individual policy of sickness and accident insurance. The Revised Code does not define the phrase "individual policy of sickness and accident insurance" but does define group sickness and accident insurance in 3923.12 and blanket sickness and accident insurance for special groups in 3923.13. Does the Superintendent's authority to review premium rates pursuant to Section 3923.021, Revised Code, extend to all sickness and accident policies not referred to as group policies in 3923.12 or 3923.13, Revised Code?

Your specific concern is whether the Department's authority to review premium rates and to require inclusion of standard policy provisions extends to sickness and accident insurance policies issued to the "small group" market, which you have described as "'groups' of fewer than ten employees or otherwise not meeting one of the statutory definitions of group health insurance."

Your first question relates to standard provisions for sickness and accident insurance policies. Those provisions are prescribed by R.C. 3923.04 ("[e]xcept as provided in section 3923.07 of the Revised Code, every policy of sickness and accident insurance delivered, issued for delivery, or used in this state shall contain the standard provisions specified in this section in the words in which the same appear in this section"); R.C. 3923.05 ("[e]xcept as provided in section 3923.07 of the Revised Code, no policy of sickness and accident insurance delivered, issued for delivery, or used in this state shall contain provisions respecting the matters set forth in this section unless such provisions are in the words in which the same appear in this section"); R.C. 3923.06 (policy provisions used under R.C. 3923.04, 3923.05, or 3923.07 "shall be printed in each policy of sickness and accident insurance" in the order in which they appear in R.C. 3923.04 and 3923.05 or in another acceptable location); and R.C. 3923.07 ("[i]f any policy provision set forth in section 3923.04 or 3923.05 of the Revised Code is in whole or in part inapplicable or inconsistent with the coverage provided by a policy of sickness and accident insurance, the insurer shall, with the approval of the superintendent of insurance, omit the provision from the policy or modify the provision). The language of these provisions is comprehensive and by its terms applies to all policies of sickness and accident insurance delivered, issued for delivery, or used in this state. Certain exceptions are, however, provided by statute.

R.C. 3923.20 specifies that certain forms of policies are excluded from the requirements of R.C. 3923.04-.07, as follows:

Sections 3923.03 to 3923.07, inclusive, of the Revised Code, do not apply to those forms of sickness and accident policies enumerated in sections 3923.12 and 3923.13 of the Revised Code, provided that no such policy shall contain any provision relative to notice or proof of loss, or the time for paying benefits, or the time within which suit may be brought upon the policy, which in the opinion of the superintendent of insurance is less favorable to the insured than would be permitted by the standard provisions set forth in section 3923.04 of the Revised Code. (Emphasis added.)

R.C. 3923.12¹ defines "group sickness and accident insurance," and R.C. 3923.13² defines "blanket sickness and accident insurance." The forms of insurance enumerated in those sections are, thus, exempted from the provisions of R.C. 3923.03-.07 pursuant to R.C. 3923.20. In addition, R.C. 3923.121, which authorizes the issuance of association group sickness and accident insurance for persons 65 and older, and R.C. 3923.123, which authorizes the issuance of association group sickness and accident insurance for unemployed persons, both specify that, in reviewing forms pertaining to such insurance, the Superintendent of Insurance is not bound by R.C. 3923.04-.07. It should be noted that policies issued in accordance with R.C. 3923.121 are enumerated in R.C. 3923.12(A)(4) and are, therefore, exempt from R.C. 3923.03-.07 both pursuant to R.C. 3923.20 and pursuant to R.C. 3923.121.

It thus appears from the provisions discussed above that every sickness and accident insurance policy delivered, issued for delivery, or used in this state must

1 R.C. 3923.12 states:

(A) Group sickness and accident insurance is that form of sickness and accident insurance covering groups of persons, with or without one or more of their dependents and members of their immediate families, and issued upon one of the following bases:

(1) Under a policy issued to an employer, who shall be deemed the policyholder, insuring at least ten employees of such employer, for the benefit of persons other than the employer;

(2) Under a policy issued to an association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such;

(3) Under a policy issued to any other substantially similar group which, in the discretion of the superintendent of insurance, may be subject to the issuance of a group sickness and accident policy;

(4) Under a policy issued in accordance with section 3923.121 [association group sickness and accident insurance for persons 65 and older] of the Revised Code. (Emphasis added.)

2 R.C. 3923.13 states:

Blanket sickness and accident insurance is that form of sickness and accident insurance covering special groups of persons as enumerated in one of the following divisions:

(A) Under a policy issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier;

(B) Under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment;

(C) Under a policy issued to a college, school, or other institution of learning, or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers;

(D) Under a policy issued in the name of any volunteer fire department or first aid or other similar volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group;

(E) Under a policy issued to any other substantially similar group which, in the discretion of the superintendent of insurance, may be subject to the issuance of a blanket sickness and accident policy. (Emphasis added.)

contain the provisions prescribed by R.C. 3923.04-.07, unless the policy is a group or blanket policy enumerated in R.C. 3923.12 or 3923.13 or is, by some statutory provision other than R.C. 3923.20, exempted from the coverage of R.C. 3923.04-.07.

A literal interpretation of R.C. 3923.20 has been adopted by the courts. See *Green v. Credit Life Ins. Co.*, 8 Ohio App. 2d 163, 220 N.E.2d 835 (Mahoning County 1966) (finding that a credit group accident and health insurance policy issued under R.C. Chapter 3918 did not come within R.C. 3923.12 or 3923.13 and, therefore, was required to comply with R.C. 3923.04). Where the language of a statute is clear, the statute speaks for itself, and there is no need for interpretation. See, e.g., *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927); *Sweetland v. Miles*, 101 Ohio St. 501, 130 N.E. 22 (1920). I conclude, therefore, that every sickness and accident insurance policy delivered, issued for delivery, or used in this state must contain the provisions prescribed by R.C. 3923.04-.07, unless the policy is one of those enumerated in R.C. 3923.12 or R.C. 3923.13 or is otherwise exempted by statute from the coverage of R.C. 3923.04-.07.

While the answer to your first question thus appears to follow directly from the statutes that you have cited, some confusion results from the fact that there are no statutory provisions directly addressing the type of small group sickness and accident insurance with which you are concerned. R.C. 3923.03 states, in part:

No policy of sickness and accident insurance shall be delivered, issued for delivery, or used in this state unless all the following requirements are complied with:

.....
(C) It purports to insure only one person, except that a policy may be issued to the head of a family,....covering any two or more members of any one family....

R.C. 3923.20 excludes policies enumerated in R.C. 3923.12 and 3923.13 from this provision. Group and blanket policies enumerated in R.C. 3923.12 and 3923.13 are, accordingly, permitted to insure more than one person or family. As your request indicates, however, R.C. 3923.12 provides generally for groups of at least ten employees or twenty-five association members. Various other statutes specifically designate certain types of sickness and accident insurance as group insurance.³ See, e.g., R.C. 3918.03(D) (providing for the issuance of "[g]roup policies of accident and health insurance...to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage"); R.C. 3923.123; R.C. 3923.41 (providing for the issuance of group policies of long-term care insurance). Statutory provisions specifically designating certain types of sickness and accident insurance as group insurance appear to prevail over R.C. 3923.03(C) on the matter of insuring more than a single person or family. See R.C. 1.51. Unless a policy comes under such a provision, however, it appears to be subject to R.C. 3923.03(C) if it is not enumerated in R.C. 3923.12 or 3923.13. See R.C. 3923.20.

Your request addresses, in particular, sickness and accident insurance for small groups. You state that such policies are issued to "'groups' of fewer than ten employees or otherwise not meeting one of the statutory definitions of group health insurance." It is, however, not clear how a policy of sickness and accident insurance may be issued to a small group unless the group policy either is authorized by a specific statute or is within R.C. 3923.12 or 3923.13. A group policy that is not authorized by a specific statute and does not meet the statutory definitions set forth in R.C. 3923.12(A)(1) (policy issued to an employer, insuring at least ten employees,

³ R.C. 3923.38, which governs an employee's privilege to continue coverage upon termination of employment, contains a definition of "group policy" that includes certain group sickness and accident policies or contracts, private or public employer self-insurance plans, and other plans that provide health care benefits for employees. That definition is applicable only to R.C. 3923.38 and is not relevant to the questions you have raised.

for the benefit of persons other than the employer); R.C. 3923.12(A)(2) (policy issued to an association, insuring at least twenty-five members, for the benefit of persons other than the association or its officers or trustees); R.C. 3923.12(A)(4) (policy issued in accordance with R.C. 3923.121 as association group insurance for persons 65 and older); R.C. 3923.13(A) (policy issued to a common carrier, covering persons who may become passengers on the common carrier); R.C. 3923.13(B) (policy issued to an employer, covering a group of employees defined by reference to exceptional hazards incident to the employment); R.C. 3923.13(C) (policy issued to a school or college, covering students or teachers); R.C. 3923.13(D) (policy issued to a volunteer fire department or first aid or similar group, covering the members), may come within R.C. 3923.12(A)(3) or R.C. 3923.13(E), which specifically provide for substantially similar groups determined, in the discretion of the Superintendent of Insurance, to be subject to the issuance of a group or blanket sickness and accident insurance policy.⁴ If a policy of sickness and accident insurance that purports to be a group or blanket policy is not authorized by a specific statute and does not come within R.C. 3923.12 or 3923.13, then it appears to be subject to the requirement of R.C. 3923.03(C) that it may insure only a single person or family. See generally R.C. 3923.09.⁵

Whether a particular policy of sickness and accident insurance is a group or individual policy is a question of fact. See *Breeding v. Fireman's Fund American Life Ins. Co.*, 27 Ohio App. 3d 81, 499 N.E.2d 890 (Montgomery County 1985). I am unable to resolve such questions by means of a formal opinion. See, e.g., 1986 Op. Att'y Gen. No. 86-076.

⁴ R.C. 3923.02 requires that policies of sickness and accident insurance and certificates of group sickness and accident insurance be filed with the Superintendent of Insurance before they are delivered, issued for delivery, or used in this state. The Superintendent is authorized to disapprove the items filed with him, as follows:

If the superintendent finds that any such form of policy, certificate, indorsement, rider, or application which has been filed with him by an insurer contains any provision which is contrary to the law of this state, or contains inconsistent provisions, or contains any question, provision, title, heading, backing, or other indication of its contents, which is ambiguous, misleading, or deceptive, or likely to mislead or deceive the policyholder, certificate holder or applicant, he shall give written notice of his finding to the insurer which has filed such form, and thereafter no insurer which has filed such form shall deliver, issue for delivery, or use such form in this state.

R.C. 3923.02 (emphasis added). See also R.C. 3923.021. It might be argued that the failure of the Superintendent to disapprove a policy that purports to be a group policy establishes its status as a group policy. That argument was, however, rejected by the court in *Breeding v. Fireman's Fund American Life Ins. Co.*, 27 Ohio App. 3d 81, 84, 499 N.E.2d 890, 894 (Montgomery County 1985) ("[w]e do not think the inaction of the Superintendent of Insurance - upon which no evidence was offered to the trial court - is dispositive of whether [a particular policy] is group insurance").

⁵ R.C. 3923.09 states:

A policy of sickness and accident insurance issued in violation of sections 3923.01 to 3923.22, inclusive, of the Revised Code, is valid but shall be construed as provided by such sections, and when any provision in such policy is in conflict with such sections, the rights, duties, and obligations of the insurer, the policyholder, and the beneficiary shall be governed by such sections.

Your second question relates to the Superintendent's authority to review premium rates under R.C. 3923.021. R.C. 3923.021(B) states:

With respect to any filing, made pursuant to section 3923.02 of the Revised Code, of any premium rates for any individual policy of sickness and accident insurance or for any indorsement or rider pertaining thereto, the superintendent of insurance may, within thirty days after filing:

(1) Disapprove such filing if he finds that the benefits provided are unreasonable in relation to the premium charged....

(2) Set a date for a public hearing...[and] within twenty days after the commencement of a hearing,...issue a written order...either approving...or disapproving such filing....

(3) Take no action, in which case such filing shall be deemed to be approved....

R.C. 3923.02 requires that policies of sickness and accident insurance, certificates of group insurance, indorsements, riders, and applications, together with premium rates and classifications of risks, be filed with the Superintendent of Insurance, as follows:

No certificate shall be furnished by any insurer in connection with, or pursuant to any provision of, any group sickness and accident insurance policy delivered, issued for delivery, or used in this state, and no policy of sickness and accident insurance shall be delivered, issued for delivery, or used in this state, nor shall any indorsement, rider, or application which becomes or which is designed to become a part of any such policy or certificate be delivered, issued for delivery, or used in this state, until a copy of the form of such policy, certificate, indorsement, rider, or application and of the premium rates and of the classification of risks pertaining thereto has been filed with the superintendent of insurance. No such policy, certificate, indorsement, rider or application shall be delivered, issued for delivery, or used until the expiration of thirty days after the form of such policy, certificate, indorsement, rider, or application has been filed with the superintendent, unless he has previously given to the insurer his written approval thereto. (Emphasis added.)

R.C. 3923.02 authorizes the Superintendent to disapprove any such form of policy, certificate, indorsement, rider, or application if he finds that it contains a provision that is contrary to law, if it is inconsistent, or if it is ambiguous, misleading, or deceptive. See note 4, *supra*. R.C. 3923.021(B) authorizes the Superintendent to disapprove premium rates filed pursuant to R.C. 3923.02, but specifies that such authority extends only to "premium rates for any individual policy of sickness and accident insurance or for any indorsement or rider pertaining thereto." Your question is whether the Superintendent's authority to review premium rates for individual policies of sickness and accident insurance includes the authority to review premium rates for all sickness and accident policies not referred to as group policies in R.C. 3923.12 or 3923.13.

As your letter indicates, the term "individual policy of sickness and accident insurance" is not defined for purposes of R.C. 3923.021.⁶ The term "individual policy" is, however, consistently used in R.C. Chapter 3923 in contrast with the term

⁶ "Individual policy" is defined in R.C. 3923.39, for purposes of that section, to mean "a policy other than a policy issued pursuant to section 3923.11, 3923.12 [group sickness and accident insurance], or 3923.13 [blanket sickness and accident insurance] of the Revised Code." R.C. 3923.11 governs franchise plans and states:

Sickness and accident insurance on a franchise plan is that form of sickness and accident insurance issued to either of the following:

(A) Five or more employees of any corporation,

"group policy." *See, e.g.*, R.C. 3923.122 (providing that certain group sickness and accident insurance policies shall give the insured the option to convert to an individual policy being issued by the insurer); R.C. 3923.27 ("[n]o policy of sickness and accident insurance..., including both individual and group policies, that provides hospitalization coverage for mental illness" shall exclude coverage for hospitalization in an accredited tax-supported institution); R.C. 3923.40 ("[n]o individual or group policy of sickness and accident insurance providing family coverage" may be delivered, issued, or renewed unless it covers adopted children on the same basis as other dependents); R.C. 3923.41 ("[l]ong-term care insurance' includes group and individual policies or riders..."). *See generally* *Breeding v. Fireman's Fund American Life Ins. Co.*, 27 Ohio App. 3d at 84, 499 N.E.2d at 893-94 (whether a particular health insurance policy is an individual policy or a group policy is a question of fact). It appears that insurance that is not expressly described as a group or blanket policy is classified as an individual policy. *See, e.g.*, R.C. 3923.10 ("[i]ndustrial sickness and accident insurance is that form of sickness and accident insurance under individual policies for which the premium is payable weekly..."); R.C. 3923.11 (sickness and accident insurance on a franchise plan; *see* note 6, *supra*). Blanket sickness and accident insurance is described in R.C. 3923.13 as "covering special groups." It is clear that blanket policies, as defined in R.C. 3923.13, and group policies, as defined in R.C. 3923.12, are not "individual policies" for purposes of R.C. 3923.021, and that the premium rates of such policies are not subject to review pursuant to R.C. 3923.021(B). There are, in addition, certain types of policies of sickness and accident insurance that are designated as group policies by other statutory provisions. *See, e.g.*, R.C. 3918.03(D); R.C. 3923.123; R.C. 3923.41 ("[l]ong-term care insurance includes group and individual policies or riders..."). Those policies may be subject to review by the Superintendent of Insurance pursuant to R.C. 3923.02 or similar provisions. *See, e.g.*, R.C. 3918.07; R.C. 3923.123; R.C. 3923.42(B); R.C. 3923.45. They are, however, clearly not individual policies, and, therefore, the premium rates of such policies are not subject to review by the Superintendent pursuant to R.C. 3923.021(B). *Cf.* R.C. 3923.46 (providing that premium rates for individual policies of long-term care insurance shall be filed in accordance with R.C. 3923.021, but not containing a similar requirement relating to group policies of long-term care insurance).

The authority of the Superintendent of Insurance under R.C. 3923.021 to review and approve or disapprove premium rates for individual policies of sickness and accident insurance extends to all individual sickness and accident policies. Such authority does not extend to policies that are not individual policies. In particular, it

copartnership, or individual employer, or of any governmental corporation or agency or a department thereof;

(B) Ten or more members of any trade or professional association, or labor union, or any other association having had an active existence for at least two years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance. *In order that such sickness and accident insurance be considered as issued on a franchise plan, such employees or such members, with or without one or more of their dependents and members of their immediate families, must be issued the same form of an individual policy, varying only as to amounts and kinds of coverage applied for by such employees or such members, under an arrangement by which the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of such employer or association.* (Emphasis added.)

A franchise plan thus consists of individual policies purchased for a number of employees or association members. R.C. 3923.39 deals with a consolidated corporation's authority to cancel individual policies for nonpayment. The definition of "individual policy" appearing in that provision is not directly applicable to R.C. 3923.021.

excludes the policies that are enumerated in R.C. 3923.12 or R.C. 3923.13 and also sickness and accident insurance policies that are designated as group policies by other statutory provisions.⁷

Your question relates specifically to insurance policies issued to small groups. As discussed above, it appears that such policies must either come within R.C. 3923.12(A)(3), R.C. 3923.13(E), or some specific statutory provision, or else be subject to the requirement of R.C. 3923.03(C) that they insure only one person or family. The Superintendent is not authorized by R.C. 3923.021 to review the premium rates of a policy that comes within R.C. 3923.12, R.C. 3923.13, or a specific statute designating it as a group policy. Whether a particular sickness and accident insurance policy is a group policy or an individual policy is a question of fact and is not addressed in this opinion. See *Breeding v. Fireman's Fund American Life Ins. Co.*

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Every sickness and accident insurance policy delivered, issued for delivery, or used in this state must contain the provisions prescribed by R.C. 3923.04-.07 unless the policy is one of those enumerated in R.C. 3923.12 or R.C. 3923.13 or is otherwise exempted by statute from R.C. 3923.04-.07.
2. The authority of the Superintendent of Insurance under R.C. 3923.021 to review premium rates for individual policies of sickness and accident insurance extends to all individual sickness and accident policies; it does not extend to those policies enumerated in R.C. 3923.12 or R.C. 3923.13 or to those designated as group policies by other statutory provisions.
3. Whether a particular policy of sickness and accident insurance is a group policy or an individual policy is a question of fact.

⁷ The Superintendent of Insurance is granted express authority to review premium rates of certain group sickness and accident insurance policies. See, e.g., R.C. 3923.121(D) (group policies for association group insurance for persons 65 and older); R.C. 3923.123(D) (group policies for association group insurance for unemployed persons). See also R.C. 3923.33(E) (authorizing the Superintendent to adopt rules establishing minimum standards for loss ratios of individual or group Medicare supplement policies); R.C. 3923.44(F) (authorizing the Superintendent to adopt rules establishing loss ratio standards for individual or group long-term care insurance policies).